

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 73

Session of
1981

INTRODUCED BY FREIND, JANUARY 19, 1981

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JANUARY 19, 1981

AN ACT

1 Amending the act of December 17, 1968 (P.L.1224, No.387),
2 entitled "An act prohibiting unfair methods of competition
3 and unfair or deceptive acts or practices in the conduct of
4 any trade or commerce, giving the Attorney General and
5 District Attorneys certain powers and duties and providing
6 penalties," adding provisions relating to unit pricing on
7 consumer commodities and making related editorial changes.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Sections 2, 3 and 3.1, act of December 17, 1968
11 (P.L.1224, No.387), known as the "Unfair Trade Practices and
12 Consumer Protection Law," reenacted and amended November 24,
13 1976 (P.L.1166, No.260), are amended to read:

14 Section 2. Definitions.--As used in this act.

15 "Consumer commodity" means any merchandise, wares, article,
16 product, comestible or commodity of any kind or class produced,
17 distributed or offered for retail sale for consumption by
18 individuals other than at the retail establishment, or for use
19 by individuals for purposes of personal care or in the
20 performance of services rendered within the household, and which

1 is consumed or expended in the course of such use.

2 [(1)] "Documentary material" means the original or a copy of
3 any book, record, report, memorandum, paper, communication,
4 tabulation, map, chart, photograph, mechanical transcription or
5 other tangible document or recording, wherever situate.

6 [(2)] "Person" means natural persons, corporations, trusts,
7 partnerships, incorporated or unincorporated associations, and
8 any other legal entities.

9 "Price per measure" means the retail price of a consumer
10 commodity expressed per such unit of weight, standard measure or
11 standard count as the Attorney General shall designate by
12 regulation.

13 [(3)] "Trade" and "commerce" mean the advertising, offering
14 for sale, sale or distribution of any services and any property,
15 tangible or intangible, real, personal or mixed, and any other
16 article, commodity, or thing of value wherever situate, and
17 includes any trade or commerce directly or indirectly affecting
18 the people of this Commonwealth.

19 [(4)] "Unfair methods of competition" and "unfair or
20 deceptive acts or practices" mean any one or more of the
21 following[:].

22 [(i)] (1) Passing off goods or services as those of
23 another[;].

24 [(ii)] (2) Causing likelihood of confusion or of
25 misunderstanding as to the source, sponsorship, approval or
26 certification of goods or services[;].

27 [(iii)] (3) Causing likelihood of confusion or of
28 misunderstanding as to affiliation, connection or association
29 with, or certification by, another[;].

30 [(iv)] (4) Using deceptive representations or designations

1 of geographic origin in connection with goods or services[;]_

2 [(v)] (5) Representing that goods or services have
3 sponsorship, approval, characteristics, ingredients, uses,
4 benefits or quantities that they do not have or that a person
5 has a sponsorship, approval, status, affiliation or connection
6 that he does not have[;]_

7 [(vi)] (6) Representing that goods are original or new if
8 they are deteriorated, altered, reconditioned, reclaimed, used
9 or secondhand[;]_

10 [(vii)] (7) Representing that goods or services are of a
11 particular standard, quality or grade, or that goods are of a
12 particular style or model, if they are of another[;]_

13 [(viii)] (8) Disparaging the goods, services or business of
14 another by false or misleading representation of fact[;]_

15 [(ix)] (9) Advertising goods or services with intent not to
16 sell them as advertised[;]_

17 [(x)] (10) Advertising goods or services with intent not to
18 supply reasonably expectable public demand, unless the
19 advertisement discloses a limitation of quantity[;]_

20 [(xi)] (11) Making false or misleading statements of fact
21 concerning the reasons for, existence of, or amounts of price
22 reductions[;]_

23 [(xii)] (12) Promising or offering prior to time of sale to
24 pay, credit or allow to any buyer, any compensation or reward
25 for the procurement of a contract for purchase of goods or
26 services with another or others, or for the referral of the name
27 or names of another or others for the purpose of attempting to
28 procure or procuring such a contract of purchase with such other
29 person or persons when such payment, credit, compensation or
30 reward is contingent upon the occurrence of an event subsequent

1 to the time of the signing of a contract to purchase[;]_.
2 [(xiii)] (13) Promoting or engaging in any plan by which
3 goods or services are sold to a person for a consideration and
4 upon the further consideration that the purchaser secure or
5 attempt to secure one or more persons likewise to join the said
6 plan; each purchaser to be given the right to secure money,
7 goods or services depending upon the number of persons joining
8 the plan. In addition, promoting or engaging in any plan,
9 commonly known as or similar to the so-called "Chain-Letter
10 Plan" or "Pyramid Club." The terms "Chain-Letter Plan" or
11 "Pyramid Club" mean any scheme for the disposal or distribution
12 of property, services or anything of value whereby a participant
13 pays valuable consideration, in whole or in part, for an
14 opportunity to receive compensation for introducing or
15 attempting to introduce one or more additional persons to
16 participate in the scheme or for the opportunity to receive
17 compensation when a person introduced by the participant
18 introduces a new participant. As used in this subclause the term
19 "consideration" means an investment of cash or the purchase of
20 goods, other property, training or services, but does not
21 include payments made for sales demonstration equipment and
22 materials for use in making sales and not for resale furnished
23 at no profit to any person in the program or to the company or
24 corporation, nor does the term apply to a minimal initial
25 payment of twenty-five dollars (\$25) or less[;]_.
26

27 [(xiv)] (14) Failing to comply with the terms of any written
28 guarantee or warranty given to the buyer at, prior to or after a
29 contract for the purchase of goods or services is made[;]_.
30

31 [(xv)] (15) Knowingly misrepresenting that services,
32 replacements or repairs are needed if they are not needed[;]_.
33

1 [(xvi)] (16) Making repairs, improvements or replacements on
2 tangible, real or personal property, of a nature or quality
3 inferior to or below the standard of that agreed to in
4 writing[;].

5 [(xvii)] (17) Engaging in any other fraudulent conduct which
6 creates a likelihood of confusion or of misunderstanding.

7 (18) For any person engaged in the sale, display or offering
8 for sale of consumer commodities at retail from one or more
9 retail establishments whose combined total floor area exceeds
10 four thousand square feet or whose combined total annual gross
11 receipts from the sale of consumer commodities in the preceding
12 year exceeded three million dollars (\$3,000,000), offering for
13 sale any consumer commodity unless such consumer commodity is
14 plainly marked by a stamp, tag, label or sign at the point of
15 display with the price per measure of such consumer commodity.

16 Section 3. Unlawful Acts or Practices; Exclusions.--Unfair
17 methods of competition and unfair or deceptive acts or practices
18 in the conduct of any trade or commerce as defined [by
19 subclauses (i) through (xvii) of clause (4) of] in section 2 of
20 this act and regulations promulgated under section 3.1 of this
21 act are hereby declared unlawful. The provisions of this act
22 shall not apply to any owner, agent or employe of any radio or
23 television station, or to any owner, publisher, printer, agent
24 or employe of a newspaper or other publication, periodical or
25 circular, who, in good faith and without knowledge of the
26 falsity or deceptive character thereof, publishes, causes to be
27 published or takes part in the publication of such
28 advertisement.

29 Section 3.1. Regulations.--(a) The Attorney General may
30 adopt, after public hearing, such rules and regulations as may

1 be necessary for the enforcement and administration of this act.
2 Such rules and regulations when promulgated pursuant to the act
3 of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth
4 Documents Law," shall have the force and effect of law.

5 (b) The Attorney General may by regulation, and in each
6 instance after public hearing, provide for the manner in which
7 price per measure shall be calculated and displayed, establish
8 and modify a list of consumer commodities exempt from the
9 provisions of section 2(18), and define the classes of retail
10 establishment exempted from the requirements of said section
11 2(18). However, in no case shall persons with annual gross
12 receipts from the sale of consumer commodities in the preceding
13 tax year of more than three million dollars (\$3,000,000) from
14 all retail establishments with a total floor area of more than
15 four thousand square feet each be exempt from the provisions of
16 section 2(18). The Attorney General, in promulgating unit
17 pricing regulations, shall not exempt consumer commodities or
18 retail establishments from the provisions of section 2(18)
19 except where compliance therewith would be impractical,
20 unreasonably burdensome or unnecessary for adequate protection
21 of consumers. The Attorney General shall maintain at all times
22 and make public a clearly defined list of specific commodities
23 exempt from the provisions of section 2(18) and of all classes
24 of retail commodities and all classes of retail establishments
25 required to be in compliance with section 2(18) and any
26 regulations issued hereunder.

27 Section 2. This act shall take effect in 90 days.