

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 754 Session of
1999

INTRODUCED BY PESCI, KAISER, READSHAW, WALKO, BUNT, HARHAI,
CURRY, SOLOBAY, LAUGHLIN, WOJNAROSKI, CLARK, CORRIGAN,
TRAVAGLIO, HALUSKA, SEYFERT, ROBERTS, S. H. SMITH, MAYERNIK,
B. SMITH, MUNDY, STABACK, TIGUE, MAHER, DALEY, McILHINNEY,
FARGO, HERSHEY, SAYLOR, WILT, SAINATO, KELLER, TRELLO,
BELFANTI, MELIO, GRUCELA, M. COHEN, DeLUCA, STETLER,
MICHLOVIC AND WASHINGTON, MARCH 9, 1999

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 9, 1999

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," further defining "unfair methods of competition"
7 and "unfair or deceptive acts or practices."

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

10 Section 1. Section 2(4) of the 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, 1976
13 (P.L.1166, No.260) and amended December 4, 1996 (P.L.906,
14 No.146), is amended to read:

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

16 * * *

17 (4) "Unfair methods of competition" and "unfair or deceptive
18 acts or practices" mean any one or more of the following:

1 (i) Passing off goods or services as those of another;
2 (ii) Causing likelihood of confusion or of misunderstanding
3 as to the source, sponsorship, approval or certification of
4 goods or services;
5 (iii) Causing likelihood of confusion or of misunderstanding
6 as to affiliation, connection or association with, or
7 certification by, another;
8 (iv) Using deceptive representations or designations of
9 geographic origin in connection with goods or services;
10 (v) Representing that goods or services have sponsorship,
11 approval, characteristics, ingredients, uses, benefits or
12 quantities that they do not have or that a person has a
13 sponsorship, approval, status, affiliation or connection that he
14 does not have;
15 (vi) Representing that goods are original or new if they are
16 deteriorated, altered, reconditioned, reclaimed, used or
17 secondhand;
18 (vii) Representing that goods or services are of a
19 particular standard, quality or grade, or that goods are of a
20 particular style or model, if they are of another;
21 (viii) Disparaging the goods, services or business of
22 another by false or misleading representation of fact;
23 (ix) Advertising goods or services with intent not to sell
24 them as advertised;
25 (x) Advertising goods or services with intent not to supply
26 reasonably expectable public demand, unless the advertisement
27 discloses a limitation of quantity;
28 (xi) Making false or misleading statements of fact
29 concerning the reasons for, existence of, or amounts of price
30 reductions;

1 (xii) Promising or offering prior to time of sale to pay,
2 credit or allow to any buyer, any compensation or reward for the
3 procurement of a contract for purchase of goods or services with
4 another or others, or for the referral of the name or names of
5 another or others for the purpose of attempting to procure or
6 procuring such a contract of purchase with such other person or
7 persons when such payment, credit, compensation or reward is
8 contingent upon the occurrence of an event subsequent to the
9 time of the signing of a contract to purchase;

10 (xiii) Promoting or engaging in any plan by which goods or
11 services are sold to a person for a consideration and upon the
12 further consideration that the purchaser secure or attempt to
13 secure one or more persons likewise to join the said plan; each
14 purchaser to be given the right to secure money, goods or
15 services depending upon the number of persons joining the plan.
16 In addition, promoting or engaging in any plan, commonly known
17 as or similar to the so-called "Chain-Letter Plan" or "Pyramid
18 Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any
19 scheme for the disposal or distribution of property, services or
20 anything of value whereby a participant pays valuable
21 consideration, in whole or in part, for an opportunity to
22 receive compensation for introducing or attempting to introduce
23 one or more additional persons to participate in the scheme or
24 for the opportunity to receive compensation when a person
25 introduced by the participant introduces a new participant. As
26 used in this subclause the term "consideration" means an
27 investment of cash or the purchase of goods, other property,
28 training or services, but does not include payments made for
29 sales demonstration equipment and materials for use in making
30 sales and not for resale furnished at no profit to any person in

1 the program or to the company or corporation, nor does the term
2 apply to a minimal initial payment of twenty-five dollars (\$25)
3 or less;

4 (xiv) Failing to comply with the terms of any written
5 guarantee or warranty given to the buyer at, prior to or after a
6 contract for the purchase of goods or services is made;

7 (xv) Knowingly misrepresenting that services, replacements
8 or repairs are needed if they are not needed;

9 (xvi) Making repairs, improvements or replacements on
10 tangible, real or personal property, of a nature or quality
11 inferior to or below the standard of that agreed to in writing;

12 (xvii) Making solicitations for sales of goods or services
13 over the telephone without first clearly, affirmatively and
14 expressly stating:

15 (A) the identity of the seller;

16 (B) that the purpose of the call is to sell goods or
17 services;

18 (C) the nature of the goods or services; and

19 (D) that no purchase or payment is necessary to be able to
20 win a prize or participate in a prize promotion if a prize
21 promotion is offered. This disclosure must be made before or in
22 conjunction with the description of the prize to the person
23 called. If requested by that person, the telemarketer must
24 disclose the no-purchase/no-payment entry method for the prize
25 promotion;

26 (xviii) Using a contract, form or any other document related
27 to a consumer transaction which contains a confessed judgment
28 clause that waives the consumer's right to assert a legal
29 defense to an action;

30 (xix) Soliciting any order for the sale of goods to be

1 ordered by the buyer through the mails or by telephone unless,
2 at the time of the solicitation, the seller has a reasonable
3 basis to expect that it will be able to ship any ordered
4 merchandise to the buyer:

5 (A) within that time clearly and conspicuously stated in any
6 such solicitation; or

7 (B) if no time is clearly and conspicuously stated, within
8 thirty days after receipt of a properly completed order from the
9 buyer, provided, however, where, at the time the merchandise is
10 ordered, the buyer applies to the seller for credit to pay for
11 the merchandise in whole or in part, the seller shall have fifty
12 days, rather than thirty days, to perform the actions required
13 by this subclause;

14 (xx) Failing to inform the purchaser of a new motor vehicle
15 offered for sale at retail by a motor vehicle dealer of the
16 following:

17 (A) that any rustproofing of the new motor vehicle offered
18 by the motor vehicle dealer is optional;

19 (B) that the new motor vehicle has been rustproofed by the
20 manufacturer and the nature and extent, if any, of the
21 manufacturer's warranty which is applicable to that
22 rustproofing;

23 The requirements of this subclause shall not be applicable and a
24 motor vehicle dealer shall have no duty to inform if the motor
25 vehicle dealer rustproofed a new motor vehicle before offering
26 it for sale to that purchaser, provided that the dealer shall
27 inform the purchaser whenever dealer rustproofing has an effect
28 on any manufacturer's warranty applicable to the vehicle. This
29 subclause shall not apply to any new motor vehicle which has
30 been rustproofed by a motor vehicle dealer prior to the

effective date of this subclause.

(xxi) Distributing written prize promotion materials that:

(A) represent that a person is a winner of the prize promotion or has already won a prize in the promotion unless that person has in fact won the prize in the promotion;

(B) fail to contain a copy of the official rules of the prize promotion;

(C) fail to include a prominent statement that:

(1) no purchase or payment is necessary to be able to win a prize or participate in the prize promotion;

(2) is stated in readily understandable terms in the official rules and on the entry form; and

(3) is set forth in a separate paragraph in all capital letters with contrasting typeface not smaller than the largest typeface used in the text of the official rules or entry form;

(D) state that an entry form in the prize promotion that is accompanied by an order for the product or service solicited in the materials will be eligible to receive additional prizes or be more likely to win than an entry form not accompanied by such an order; and

(E) state that an entry form in the prize promotion that is not accompanied by an order for the product or service solicited in the materials will not be eligible to receive additional prizes or be less likely to win than an entry form accompanied by such an order.

(xxii) Receiving a completed entry form in a written prize promotion that does not contain an order for the product or service solicited by the prize promotion's materials and treating the entry form less favorably in the selection process for a winner of the prize than an entry form with an order for

1 the product or service.

2 [(xxi)] (xxx) Engaging in any other fraudulent or deceptive
3 conduct which creates a likelihood of confusion or of
4 misunderstanding.

5 Section 2. This act shall take effect in 60 days.