

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2127 Session of
2005

INTRODUCED BY PAYNE, BELFANTI, CALTAGIRONE, CAPPELLI, CAWLEY,
COHEN, CREIGHTON, DeWEESE, FABRIZIO, FAIRCHILD, HENNESSEY,
LEACH, MANDERINO, REICHLEY, SANTONI, SOLOBAY, THOMAS, WALKO,
WILT AND YOUNGBLOOD, OCTOBER 25, 2005

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 25, 2005

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 business practices.

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

9 Section 1. Sections 2(4) and 3 of the act of December 17,
10 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
11 Consumer Protection Law, reenacted and amended November 24, 1976
12 (P.L.1166, No.260) and amended December 4, 1996 (P.L.906,
13 No.146), are amended to read:

14 Section 2. Definitions.--As used in this act[.]:

15 * * *

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

18 (i) Passing off goods or services as those of another;

19 (ii) Causing likelihood of confusion or of misunderstanding

1 as to the source, sponsorship, approval or certification of
2 goods or services;

3 (iii) Causing likelihood of confusion or of misunderstanding
4 as to affiliation, connection or association with, or
5 certification by, another;

6 (iv) Using deceptive representations or designations of
7 geographic origin in connection with goods or services;

8 (v) Representing that goods or services have sponsorship,
9 approval, characteristics, ingredients, uses, benefits or
10 quantities that they do not have or that a person has a
11 sponsorship, approval, status, affiliation or connection that he
12 does not have;

13 (vi) Representing that goods are original or new if they are
14 deteriorated, altered, reconditioned, reclaimed, used or
15 secondhand;

16 (vii) Representing that goods or services are of a
17 particular standard, quality or grade, or that goods are of a
18 particular style or model, if they are of another;

19 (viii) Disparaging the goods, services or business of
20 another by false or misleading representation of fact;

21 (ix) Advertising goods or services with intent not to sell
22 them as advertised;

23 (x) Advertising goods or services with intent not to supply
24 reasonably expectable public demand, unless the advertisement
25 discloses a limitation of quantity;

26 (xi) Making false or misleading statements of fact
27 concerning the reasons for, existence of, or amounts of price
28 reductions;

29 (xii) Promising or offering prior to time of sale to pay,
30 credit or allow to any buyer, any compensation or reward for the

1 procurement of a contract for purchase of goods or services with
2 another or others, or for the referral of the name or names of
3 another or others for the purpose of attempting to procure or
4 procuring such a contract of purchase with such other person or
5 persons when such payment, credit, compensation or reward is
6 contingent upon the occurrence of an event subsequent to the
7 time of the signing of a contract to purchase;

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

1 or less;

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

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

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

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

13 (A) the identity of the seller;

14 (B) that the purpose of the call is to sell goods or
15 services;

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

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

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

28 (xix) Soliciting any order for the sale of goods to be
29 ordered by the buyer through the mails or by telephone unless,
30 at the time of the solicitation, the seller has a reasonable

1 basis to expect that it will be able to ship any ordered
2 merchandise to the buyer:

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

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

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

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

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

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

30 (xxi) Not providing at least 25 days from the date a bill of

1 account is dated on its face, for payment to be made.

2 (xxii) Engaging in any other fraudulent or deceptive conduct
3 which creates a likelihood of confusion or of misunderstanding.

4 Section 3. Unlawful Acts or Practices; Exclusions.--Unfair
5 methods of competition and unfair or deceptive acts or practices
6 in the conduct of any trade or commerce as defined [by
7 subclauses (i) through (xxi) of clause (4) of section 2] under
8 section 2(4) of this act and regulations promulgated under
9 section 3.1 of this act are hereby declared unlawful. The
10 provisions of this act shall not apply to any owner, agent or
11 employe of any radio or television station, or to any owner,
12 publisher, printer, agent or employe of a newspaper or other
13 publication, periodical or circular, who, in good faith and
14 without knowledge of the falsity or deceptive character thereof,
15 publishes, causes to be published or takes part in the
16 publication of such advertisement.

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