

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1038 Session of
2011

INTRODUCED BY SWANGER, BEAR, CALTAGIRONE, DeLUCA, DONATUCCI,
GINGRICH, GOODMAN, GROVE, HORNAMAN, JOSEPHS, KAUFFMAN, KOTIK,
KULA, McGEEHAN, MICOZZIE, MIRABITO, MOUL, MURT, PETRARCA,
READSHAW, REICHLEY, ROCK, VULAKOVICH AND WHITE,
MARCH 14, 2011

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 14, 2011

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 providing for contracts and effect of
7 rescission.

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

10 Section 1. Section 7(a), (b), (c) and (j.1) of the act of
11 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
12 Practices and Consumer Protection Law, reenacted and amended
13 November 24, 1976 (P.L.1166, No.260), and amended or added
14 December 4, 1996 (P.L.906, No.146) and November 30, 2004
15 (P.L.1553, No.196), are amended and the section is amended by
16 adding a subsection to read:

17 Section 7. Contracts; Effect of Rescission.--(a) [Where]
18 (1) Except as otherwise provided in paragraph (2), where goods
19 or services having a sale price of twenty-five dollars (\$25) or

1 more are sold or contracted to be sold to a buyer, as a result
2 of, or in connection with, a contact with or call on the buyer
3 or resident at his residence either in person or by telephone,
4 that consumer may avoid the contract or sale by notifying, in
5 writing, the seller within three full business days following
6 the day on which the contract or sale was made and by returning
7 or holding available for return to the seller, in its original
8 condition, any merchandise received under the contract or sale.
9 Such notice of rescission shall be effective upon depositing the
10 same in the United States mail or upon other service which gives
11 the seller notice of rescission.

12 (2) Where goods or services having a sale price of twenty-
13 five dollars (\$25) or more are sold or contracted to be sold to
14 a buyer who is at least 65 years of age, as a result of, or in
15 connection with, a contact with or call on the buyer or resident
16 at his residence either in person or by telephone, that consumer
17 may avoid the contract or sale by notifying, in writing, the
18 seller within 15 full business days following the day on which
19 the contract or sale was made and by returning or holding
20 available for return to the seller, in its original condition,
21 any merchandise received under the contract or sale. Such notice
22 of rescission shall be effective upon depositing the same in the
23 United States mail or upon other service which gives the seller
24 notice of rescission.

25 (b) [At] Except as otherwise provided under subsection
26 (b.1), at the time of the sale or contract the buyer shall be
27 provided with:

28 (1) A fully completed receipt or copy of any contract
29 pertaining to such sale, which is in the same language (Spanish,
30 English, etc.) as that principally used in the oral sales

1 presentation, and also in English, and which shows the date of
2 the transaction and contains the name and address of the seller,
3 and in immediate proximity to the space reserved in the contract
4 for the signature of the buyer or on the front page of the
5 receipt if a contract is not used and in bold face type of a
6 minimum size of ten points, a statement in substantially the
7 following form:

8 "You, the buyer, may cancel this transaction at any time
9 prior to midnight of the third business day after the date of
10 this transaction. See the attached notice of cancellation
11 form for an explanation of this right."

12 (2) A completed form in duplicate, captioned "Notice of
13 Cancellation," which shall be attached to the contract or
14 receipt and easily detachable, and which shall contain in ten-
15 point bold face type the following information and statements in
16 the same language (Spanish, English, etc.) as that used in the
17 contract:

18 Notice of Cancellation

19 (Enter Date of Transaction)

20 You may cancel this transaction, without any penalty or
21 obligation, within three business days from the above date.

22 If you cancel, any property traded in, any payments made
23 by you under the contract or sale, and any negotiable
24 instrument executed by you will be returned within ten
25 business days following receipt by the seller of your
26 cancellation notice, and any security interest arising out of
27 the transaction will be cancelled.

28 If you cancel, you must make available to the seller at
29 your residence in substantially as good condition as when
30 received, any goods delivered to you under this contract or

1 sale; or you may, if you wish, comply with the instructions
2 of the seller regarding the return shipment of the goods at
3 the seller's expense and risk.

4 If you do make the goods available to the seller and the
5 seller does not pick them up within twenty days of the date
6 of your notice of cancellation, you may retain or dispose of
7 the goods without any further obligation.

8 If you fail to make the goods available to the seller, or
9 if you agree to return the goods to the seller and fail to do
10 so, then you remain liable for performance of all obligations
11 under the contract.

12 To cancel this transaction, mail or deliver a signed and
13 dated copy of this cancellation notice or any other written
14 notice, or send a telegram, to (name of seller), at (address
15 of seller's place of business) not later than midnight of
16 (date).

17 I hereby cancel this transaction.

18

19 (Date)

20

21 (Buyer's Signature)

22 (b.1) For a buyer who is at least 65 years of age, the
23 statement required by subsection (b.1) shall be in the same
24 form, except that the right to cancel shall state the fifteenth
25 business day and the notice of cancellation required by
26 subsection (b) (2) shall be in the same form, except that the
27 right to cancel shall state the time period of fifteen business
28 days.

29 (c) [Before] (1) Except as otherwise provided in paragraph
30 (2), before furnishing copies of the "Notice of Cancellation" to

1 the buyer, both copies shall be completed by entering the name
2 of the seller, the address of the seller's place of business,
3 the date of the transaction, and the date, not earlier than the
4 third business day following the date of the transaction, by
5 which the buyer may give notice of cancellation.

6 (2) Before furnishing copies of the "Notice of Cancellation"
7 to a buyer who is at least 65 years of age, both copies shall be
8 completed by entering the name of the seller, the address of the
9 seller's place of business, the date of the transaction, and the
10 date, not earlier than the fifteenth business day following the
11 date of the transaction, by which the buyer may give notice of
12 cancellation.

13 * * *

14 (j.1) (1) Rights afforded under this section may be waived
15 only through the execution of an emergency authorization form:

16 (i) where goods or services have a sale price of twenty-five
17 dollars (\$25) or more;

18 (ii) are contracted to be sold to a buyer as a result of or
19 in connection with a contact made by the buyer to the seller;
20 and

21 (iii) the goods or services contracted for are needed to
22 remedy a bona fide emergency on the buyer's residential real
23 property. Nothing in this subsection shall prohibit a seller
24 contacted by a buyer as a result of a bona fide emergency from
25 taking any immediate preliminary steps necessary to remedy a
26 clear and immediate danger that may cause death or serious
27 bodily injury to the buyer, the seller or other persons without
28 having to obtain the emergency authorization form.

29 (2) To obtain a waiver under this section, the seller must
30 furnish the buyer with an emergency work authorization form as

1 well as a written estimate of the goods or the performance of
2 services. This authorization will allow the seller to
3 immediately proceed with the delivery of the goods or the
4 performance of the services necessary to remedy the bona fide
5 emergency.

6 (3) [The] Except as otherwise provided in paragraph (3.1),
7 the emergency work authorization form provided for in this
8 section shall be:

9 (i) on a preprinted card at least four inches by six inches
10 in size; and

11 (ii) the writing thereon must be in at least ten-point bold
12 face type in the following form:

13 Emergency Work Authorization

14 (Enter Date of Transaction)

15 You, the buyer, having initiated the contract for the
16 goods and services of (enter the name of the seller), the
17 seller, for the remediation of a bona fide emergency hereby
18 authorize the seller to immediately proceed with the delivery
19 of goods or the performance of services necessary to remedy
20 the bona fide emergency. By providing the seller with this
21 authorization, you agree to make full payment for the goods
22 or services provided. You agree not to exercise the rights
23 afforded you by the Unfair Trade Practices and Consumer
24 Protection Law to cancel the contract within three business
25 days from the above date.

26 You, the buyer, attest that the attached estimate is an
27 accurate description of the goods and services which will be
28 provided by the seller for the correction of the bona fide
29 emergency:

30

1 (Date)

2

3 (Buyer's Signature)

4 (3.1) For a buyer who is at least 65 years of age, the
5 emergency work authorization form required under paragraph (3)
6 (ii) shall state fifteen business days instead of three business
7 days.

8 * * *

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