

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1391

Session of
1977

INTRODUCED BY MESSRS. GREENFIELD, CIANCIULLI, GRAY, GIAMMARCO,
COHEN, BORSKI, MRS. SCANLON, MESSRS. GLEESON, BROWN AND
SCHMITT, JUNE 22, 1977

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 6, 1977

AN ACT

1 Providing for the return of certain defective ~~merchandise~~ GOODS <—
2 and for a refund of the purchase price; providing for
3 enforcement powers of the Attorney General for certain
4 actions in equity and for the payment of costs and
5 restitution.

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

8 Section 1. The following words and phrases when used in this
9 act shall have, unless the context clearly indicates otherwise,
10 the meanings given to them in this section:

11 ~~"Merchandise." Tangible personal property used primarily for~~ <—
12 ~~personal, family or household purposes excepting motor vehicles.~~

13 "GOODS." ALL THINGS (INCLUDING SPECIALLY MANUFACTURED GOODS) <—
14 WHICH ARE MOVABLE AT THE TIME OF IDENTIFICATION TO THE CONTRACT
15 FOR SALE OTHER THAN THE MONEY IN WHICH THE PRICE IS TO BE PAID,
16 INVESTMENT SECURITIES, THINGS IN ACTION, AND MOTOR VEHICLES.

17 "Merchant." A person who deals in ~~merchandise~~ GOODS of the <—
18 kind or otherwise by his occupation holds himself out as having

1 knowledge or skill peculiar to the practices or merchandise <—
2 GOODS involved in the transaction or to whom such knowledge or <—
3 skill may be attributed by his employment of an agent or broker
4 or other intermediary who by his occupation holds himself out as
5 having such knowledge or skill.

6 "Motor vehicle." Any self-propelled device in which, upon
7 which, or by which any person or property is or may be
8 transported or drawn upon a public highway, excepting tractors,
9 power shovels, road machinery, agricultural machinery and other
10 machinery not designed primarily for highway transportation, but
11 which may incidentally transport persons or property on a public
12 highway, and excepting such devices which move upon or are
13 guided by a track or travel through the air and shall include
14 trailers and semitrailers.

15 ~~Section 2. (a) A warranty that merchandise shall be fit is <—~~
16 ~~implied in a sale of merchandise if the seller is a merchant~~
17 ~~with respect to merchandise of that kind. Under this act the~~
18 ~~serving for value of food or drink to be consumed either on the~~
19 ~~premises or elsewhere is not a sale of merchandise.~~

20 ~~(b) For the purposes of this act, merchandise to be fit must~~
21 ~~be at least such as is fit for the ordinary purposes for which~~
22 ~~such merchandise is used.~~

23 ~~Section 3. (a) If the seller of new (unused) merchandise~~
24 ~~breaches the implied warranty of fitness established by this~~
25 ~~act, the seller of such merchandise shall give a cash refund to~~
26 ~~the buyer in the amount of the sale price, if the buyer tenders~~
27 ~~a sales receipt or other documentary proof of purchase, and~~
28 ~~returns the goods to the place of sale within seven full~~
29 ~~business days following the day on which the sale was made, in~~
30 ~~the same condition as at the time of sale, excepting such change~~

~~1 in condition which is necessarily caused in discovering the~~
~~2 breach of warranty, if the merchandise cannot be replaced with~~
~~3 fit merchandise or repaired to a condition of fitness within~~
~~4 seven full business days following the day that the goods are~~
~~5 returned. The buyer may at any time after the purchase agree to~~
~~6 extend or waive the time for repairs provided in this section.~~

7 SECTION 2. (A) IF THE SELLER OF NEW (UNUSED) GOODS WHICH <—
8 WERE PURCHASED FOR USE FOR PRIMARILY PERSONAL, FAMILY OR
9 HOUSEHOLD PURPOSES BREACHES AN IMPLIED WARRANTY OF
10 MERCHANTABILITY ARISING UNDER SECTION 2-314 OF THE ACT OF APRIL
11 6, 1953 (P.L.3, NO.1), KNOWN AS THE "UNIFORM COMMERCIAL CODE,"
12 OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARISING
13 UNDER SECTION 2-315 OF THE SAID ACT, THE BUYER MAY REVOKE HIS
14 ACCEPTANCE OF THE GOODS BY RETURNING THE GOODS TO THE PLACE OF
15 SALE WITHIN SEVEN FULL BUSINESS DAYS FOLLOWING THE DAY ON WHICH
16 THE SALE WAS MADE, IN THE SAME CONDITION AS AT THE TIME OF SALE,
17 EXCEPTING SUCH CHANGE IN CONDITION WHICH IS NECESSARILY CAUSED
18 IN DISCOVERING THE BREACH OF WARRANTY AND TENDERING A SALES
19 RECEIPT OR OTHER DOCUMENTARY PROOF OF PURCHASE. IF THE BUYER
20 REVOKES HIS ACCEPTANCE PURSUANT TO THIS SECTION, THE SELLER
21 SHALL GIVE A CASH REFUND TO THE BUYER IN THE AMOUNT OF THE
22 PURCHASE PRICE IF THE GOODS CANNOT BE REPLACED WITH CONFORMING
23 GOODS OR REPAIRED TO A CONDITION OF CONFORMITY WITH THE
24 WARRANTIES WITHIN SEVEN FULL BUSINESS DAYS FOLLOWING THE DAY
25 THAT THE GOODS ARE RETURNED. THE BUYER MAY AT ANY TIME AFTER THE
26 PURCHASE AGREE TO EXTEND OR WAIVE THE TIME FOR REPAIRS PROVIDED
27 IN THIS SECTION BUT SUCH EXTENSION OR WAIVER SHALL BE EFFECTIVE
28 ONLY IF IT IS STATED IN A WRITING SIGNED BY THE BUYER. IF A
29 WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A
30 PARTICULAR PURPOSE IS IMPLIED IN A SALE OF GOODS WHICH WERE

1 PURCHASED FOR USE FOR PRIMARILY PERSONAL, FAMILY OR HOUSEHOLD
2 PURPOSES, THE SELLER SHALL NOT LIMIT THE RIGHT OF THE BUYER TO
3 RECEIVE A CASH REFUND UNDER THIS ACT AND ANY SUCH LIMITATION OF
4 THE BUYER'S RIGHT SHALL BE VOID AND UNENFORCEABLE.

5 (b) This section shall not apply in cases where the buyer
6 has recourse to the Public Utility Commission.

7 (c) When the seller delivers ~~merchandise~~ GOODS by United <—
8 States mail or other delivery service, the buyer shall be deemed
9 to have returned such ~~merchandise~~ GOODS upon depositing the <—
10 merchandise in the United States mail, or with the same delivery
11 service as used for delivery to the buyer, with the proper
12 delivery fee and instructions for return to the seller, provided
13 that the merchandise is subsequently delivered to the seller.

14 Section 4 3. A cash refund may be a credit to the account of <—
15 the buyer if the original sale is a credit sale: Provided, That
16 any credit balance in the account after such credit is entered
17 shall be refunded upon request of the buyer. Such credit may be
18 entered and any credit balance may be refunded within a
19 reasonable time after the return of the ~~merchandise~~ GOODS: And, <—
20 provided further, That the credit to the account shall be
21 effective as of the date on which the ~~merchandise~~ ~~was~~ GOODS WERE <—
22 returned. If the payment was by personal check, the cash refund
23 shall be made after the check has been honored.

24 Section 5 4. The Attorney General shall have the power to <—
25 enforce this act.

26 Section 6 5. In the administration of this act, the Attorney <—
27 General may accept an assurance of voluntary compliance with
28 respect to any method, act or practice deemed to be violative of
29 the act from any person who has engaged or was about to engage
30 in such method, act or practice. Such assurance may include a

1 stipulation for voluntary payment by the alleged violator
2 providing for the restitution by the alleged violator to buyers
3 of money, property or other things received from them in
4 connection with the violation of this act. Any such assurance
5 shall be in writing and be filed with the court of common pleas
6 in the county in which the alleged violator resides, has his
7 principal place of business, or is doing business, or the
8 Commonwealth Court. Such assurance of voluntary compliance shall
9 not be considered an admission of violation for any purpose.
10 Matters thus closed may at any time be reopened by the Attorney
11 General for further proceedings in the public interest.

12 Section 7 6. Whenever the Attorney General has reason to <—
13 believe that any person is using or is about to use any method,
14 act or practice declared in this act to be unlawful and that
15 proceedings would be in the public interest, he may bring an
16 action in the name of the Commonwealth against such person to
17 restrain by temporary or permanent injunction the use of such
18 method, act or practice. The action may be brought in the court
19 of common pleas of the county in which such person resides, has
20 his principal place of business, or is doing business, or may be
21 brought in the Commonwealth Court. The said courts are
22 authorized to issue temporary or permanent injunctions to
23 restrain and prevent violations of this act, and such
24 injunctions shall be issued without bond.

25 Section 8 7. Whenever any court issues a permanent <—
26 injunction to restrain and prevent violations of this act, the
27 court may in its discretion provide for payment by defendant or
28 defendants to the Commonwealth of the court costs of the action.
29 In addition, the court may in its discretion direct that the
30 defendant or defendants restore to any person in interest any

1 moneys or property, real or personal, which may have been
2 acquired by means of any violation of this act, under terms and
3 conditions established by the court.

4 Section ~~9~~ 8. Whenever ~~merchandise~~ GOODS shall be returned to <—
5 the seller and the seller fails to comply with the provisions of
6 this act such seller shall be liable to the buyer for the lesser
7 of three times the purchase price or the purchase price plus
8 \$200.

9 Section ~~10~~ 9. Except as provided in section 9 8, the rights, <—
10 duties and remedies established in this act shall be in addition
11 to other rights, duties and remedies under the law, INCLUDING <—
12 THE ACT OF APRIL 6, 1953 (P.L.3, NO.1), KNOWN AS THE "UNIFORM
13 COMMERCIAL CODE." THIS ACT SHALL NOT LIMIT THE RIGHT OF THE
14 SELLER TO DISCLAIM WARRANTIES.

15 Section ~~11~~ 10. This act shall take effect immediately. <—