THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 150  Session of 2015

INTRODUCED BY TEPLITZ, BLAKE, HUGHES, SCHWANK, COSTA, BOSCOLA, SMITH, FARNESE, TARTAGLIONE AND RAFFERTY, JANUARY 16, 2015

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, JANUARY 16, 2015

AN ACT

Amending the act of December 17, 1968 (P.L.1224, No.387), entitled "An act prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, giving the Attorney General and District Attorneys certain powers and duties and providing penalties," further providing for definitions.

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

Section 1. The definitions of "unfair methods of competition" and "unfair or deceptive acts or practices" in section 2(4) of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, reenacted and amended November 24, 1976 (P.L.1166, No.260) and amended December 4, 1996 (P.L.906, No.146), are amended to read:

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

* * *

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

(i) Passing off goods or services as those of another;
(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

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

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

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

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

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

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

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

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

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

(xii) Promising or offering prior to time of sale to pay,
credit or allow to any buyer, any compensation or reward for the
procurement of a contract for purchase of goods or services with
another or others, or for the referral of the name or names of
another or others for the purpose of attempting to procure or
procuring such a contract of purchase with such other person or
persons when such payment, credit, compensation or reward is
contingent upon the occurrence of an event subsequent to the
time of the signing of a contract to purchase;
(xiii) Promoting or engaging in any plan by which goods or
services are sold to a person for a consideration and upon the
further consideration that the purchaser secure or attempt to
secure one or more persons likewise to join the said plan; each
purchaser to be given the right to secure money, goods or
services depending upon the number of persons joining the plan.
In addition, promoting or engaging in any plan, commonly known
as or similar to the so-called "Chain-Letter Plan" or "Pyramid
Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any
scheme for the disposal or distribution of property, services or
anything of value whereby a participant pays valuable
consideration, in whole or in part, for an opportunity to
receive compensation for introducing or attempting to introduce
one or more additional persons to participate in the scheme or
for the opportunity to receive compensation when a person
introduced by the participant introduces a new participant. As
used in this subclause the term "consideration" means an
investment of cash or the purchase of goods, other property,
training or services, but does not include payments made for
sales demonstration equipment and materials for use in making
sales and not for resale furnished at no profit to any person in
the program or to the company or corporation, nor does the term
apply to a minimal initial payment of twenty-five dollars ($25) or less;

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

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

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

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

(A) the identity of the seller;

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

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

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

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

(xix) Soliciting any order for the sale of goods to be ordered by the buyer through the mails or by telephone unless,
at the time of the solicitation, the seller has a reasonable
basis to expect that it will be able to ship any ordered
merchandise to the buyer:
(A) within that time clearly and conspicuously stated in any
such solicitation; or
(B) if no time is clearly and conspicuously stated, within
thirty days after receipt of a properly completed order from the
buyer, provided, however, where, at the time the merchandise is
ordered, the buyer applies to the seller for credit to pay for
the merchandise in whole or in part, the seller shall have fifty
days, rather than thirty days, to perform the actions required
by this subclause;
(xx) Failing to inform the purchaser of a new motor vehicle
offered for sale at retail by a motor vehicle dealer of the
following:
(A) that any rustproofing of the new motor vehicle offered
by the motor vehicle dealer is optional;
(B) that the new motor vehicle has been rustproofed by the
manufacturer and the nature and extent, if any, of the
manufacturer's warranty which is applicable to that
rustproofing;
The requirements of this subclause shall not be applicable and a
motor vehicle dealer shall have no duty to inform if the motor
vehicle dealer rustproofed a new motor vehicle before offering
it for sale to that purchaser, provided that the dealer shall
inform the purchaser whenever dealer rustproofing has an effect
on any manufacturer's warranty applicable to the vehicle. This
subclause shall not apply to any new motor vehicle which has
been rustproofed by a motor vehicle dealer prior to the
effective date of this subclause.
Selling or issuing a gift card or gift certificate as those terms are defined in section 1301.1 of the act of April 9, 1929 (P.L.343, No.176), known as the "The Fiscal Code," that contains an expiration date, a period of time after which the gift card or gift certificate expires or any type of postsale charge or fee, including, but not limited to, a service charge, dormancy fee, account maintenance fee, cash-out fee, replacement card fee or activation or reactivation fee.

Refusing to redeem the cash balance of a gift card or gift certificate as those terms are defined in section 1301.1 of "The Fiscal Code" when the cash balance thereof may be reasonably ascertained as five dollars ($5) or less.

Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

Section 2. This act does not apply to gift cards or gift certificates sold or issued on or before the effective date of this section.

Section 3. This act shall take effect in 60 days.