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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2212 Session of  
2001

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INTRODUCED BY MARKOSEK, JAMES, MANN, STABACK, TIGUE, WANSACZ,  
MUNDY, WALKO, FREEMAN, CAPPELLI, FRANKEL, SOLOBAY, HORSEY,  
MANDERINO, FEESE, TRICH, COY, BELARDI, PALLONE, FAIRCHILD,  
DALEY, ZIMMERMAN, CLARK, WOJNAROSKI, CREIGHTON, MELIO,  
BELFANTI, PRESTON, McGEEHAN, R. STEVENSON, GRUCELA, HARHAI,  
McCALL, SHANER, YOUNGBLOOD, LAUGHLIN, G. WRIGHT AND COSTA,  
DECEMBER 5, 2001

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, DECEMBER 5, 2001

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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 unfair methods of  
7 competition and unfair or deceptive acts or practices.

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

10 Section 1. Sections 2(4) and 3 of the act of December 17,  
11 1968 (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), are amended to read:

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

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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) Failing to inform the purchaser of a magazine subscription offered for sale by any method of solicitation for charitable purposes or otherwise of the following:

(A) The terms and conditions of the subscription, including a statement of whether the subscription will be automatically renewed without sending a renewal announcement or rejection form, which shall be clearly and conspicuously stated in all promotional materials, announcements, rejection forms or any other documents that may be mailed to the subscriber;

(B) the extent of any approval period during which the subscriber may accept or reject magazines forwarded as a result of an automatic subscription renewal;

(C) the deadline for returning the rejection form to avoid shipment of the magazines, if such forms are forwarded;

(D) how the subscriber can cancel the subscription before the subscription's expiration date to avoid automatic renewal;  
and

(E) whether the cost of postage and handling is included in billing charges.

For the purposes of this subclause, "any method of solicitation" shall mean any solicitation for the sale of magazine subscriptions, for charitable purposes or otherwise, made orally in person, through door-to-door solicitation, by telephone or any solicitation by mail, Internet or by any other method.

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

Section 3. Unlawful Acts or Practices; Exclusions.--Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by

1 [subclauses (i) through (xxi) of] clause (4) of section 2 of  
2 this act and regulations promulgated under section 3.1 of this  
3 act are hereby declared unlawful. The provisions of this act  
4 shall not apply to any owner, agent or employe of any radio or  
5 television station, or to any owner, publisher, printer, agent  
6 or employe of a newspaper or other publication, periodical or  
7 circular, who, in good faith and without knowledge of the  
8 falsity or deceptive character thereof, publishes, causes to be  
9 published or takes part in the publication of such  
10 advertisement.

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