

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 112 Session of
2003

INTRODUCED BY MARKOSEK, PRESTON, YOUNGBLOOD, READSHAW, LEDERER,
BAKER, SHANER, CAWLEY, LESCOVITZ, WRIGHT, STERN, DeWEESE,
SCHRODER, HERSHEY, YEWIC, BUNT, CRAHALLA, ROHRER, TIGUE,
FAIRCHILD, McILHATTAN, CREIGHTON, HARHAI, McGEEHAN, CURRY,
CORRIGAN, GRUCELA, THOMAS, FRANKEL, CRUZ, PALLONE, HORSEY,
BROWNE, FREEMAN, PISTELLA, COSTA, WANSACZ, LEACH, WASHINGTON,
BELARDI, SANTONI, BEBKO-JONES, MANN, LAUGHLIN, SOLOBAY,
BELFANTI, KELLER, TANGRETTI, DALEY AND MANDERINO,
FEBRUARY 4, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 4, 2003

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.

16 * * *

17 (4) "Unfair methods of competition" and "unfair or deceptive

1 acts or practices" mean any one or more of the following:

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

3 (ii) Causing likelihood of confusion or of misunderstanding
4 as to the source, sponsorship, approval or certification of
5 goods or services;

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

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

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

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

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

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

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

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

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

1 reductions;

2 (xii) Promising or offering prior to time of sale to pay,
3 credit or allow to any buyer, any compensation or reward for the
4 procurement of a contract for purchase of goods or services with
5 another or others, or for the referral of the name or names of
6 another or others for the purpose of attempting to procure or
7 procuring such a contract of purchase with such other person or
8 persons when such payment, credit, compensation or reward is
9 contingent upon the occurrence of an event subsequent to the
10 time of the signing of a contract to purchase;

11 (xiii) Promoting or engaging in any plan by which goods or
12 services are sold to a person for a consideration and upon the
13 further consideration that the purchaser secure or attempt to
14 secure one or more persons likewise to join the said plan; each
15 purchaser to be given the right to secure money, goods or
16 services depending upon the number of persons joining the plan.
17 In addition, promoting or engaging in any plan, commonly known
18 as or similar to the so-called "Chain-Letter Plan" or "Pyramid
19 Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any
20 scheme for the disposal or distribution of property, services or
21 anything of value whereby a participant pays valuable
22 consideration, in whole or in part, for an opportunity to
23 receive compensation for introducing or attempting to introduce
24 one or more additional persons to participate in the scheme or
25 for the opportunity to receive compensation when a person
26 introduced by the participant introduces a new participant. As
27 used in this subclause the term "consideration" means an
28 investment of cash or the purchase of goods, other property,
29 training or services, but does not include payments made for
30 sales demonstration equipment and materials for use in making

1 sales and not for resale furnished at no profit to any person in
2 the program or to the company or corporation, nor does the term
3 apply to a minimal initial payment of twenty-five dollars (\$25)
4 or less;

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

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

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

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

16 (A) the identity of the seller;

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

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

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

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

1 (xix) Soliciting any order for the sale of goods to be
2 ordered by the buyer through the mails or by telephone unless,
3 at the time of the solicitation, the seller has a reasonable
4 basis to expect that it will be able to ship any ordered
5 merchandise to the buyer:

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

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

15 (xx) Failing to inform the purchaser of a new motor vehicle
16 offered for sale at retail by a motor vehicle dealer of the
17 following:

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

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

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

1 been rustproofed by a motor vehicle dealer prior to the
2 effective date of this subclause.

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

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

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

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

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

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

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

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

29 Section 3. Unlawful Acts or Practices; Exclusions.--Unfair
30 methods of competition and unfair or deceptive acts or practices

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

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