

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2087 Session of  
2007

INTRODUCED BY DePASQUALE, BOBACK, BELFANTI, CALTAGIRONE,  
CARROLL, CRUZ, DALEY, FABRIZIO, HARKINS, HORNAMAN, JOSEPHS,  
KORTZ, LENTZ, MARSHALL, McCALL, McILVAINE SMITH, R. MILLER,  
MUNDY, PARKER, READSHAW, SABATINA, SAYLOR, SCAVELLO, SHAPIRO,  
SIPTROTH, SURRA, WANSACZ, J. WHITE, YUDICHAK, LEACH, GINGRICH  
AND RUBLEY, DECEMBER 5, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, DECEMBER 5, 2007

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 definitions; and adding  
7 provisions relating to unsafe children's products.

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

10 Section 1. The definition of "unfair methods of competition"  
11 and "unfair or deceptive acts or practices" in section 2(4) of  
12 the act of December 17, 1968 (P.L.1224, No.387), known as the  
13 Unfair Trade Practices and Consumer Protection Law, reenacted  
14 and amended November 24, 1976 (P.L.1166, No.260) and amended  
15 December 4, 1996 (P.L.906, No.146), is amended and the section  
16 is amended by adding a definition to read:

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

18 \* \* \*

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

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

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

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

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

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

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

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

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

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

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

30 (xi) Making false or misleading statements of fact

1 concerning the reasons for, existence of, or amounts of price  
2 reductions;

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

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

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

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

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

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

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

17 (A) the identity of the seller;

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

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

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

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

1 defense to an action;

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

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

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

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

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

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

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

1 subclause shall not apply to any new motor vehicle which has  
2 been rustproofed by a motor vehicle dealer prior to the  
3 effective date of this subclause[.];

4 (xxi) Knowingly selling or offering for sale a children's  
5 product that has been identified as unsafe and listed in  
6 accordance with section 9.4(b); and

7 [~~(xxi)~~] (xxii) Engaging in any other fraudulent or deceptive  
8 conduct which creates a likelihood of confusion or of  
9 misunderstanding.

10 (5) "Children's product" means a product that is designed or  
11 intended for the care of or use by a child who is under twelve  
12 years of age and the product is designed or intended to come  
13 into contact with the child while the product is being used. For  
14 the purpose of this act, the term does not include a product if  
15 it may be used by or for the care of a child who is under twelve  
16 years of age but was designed or intended for use by the general  
17 population and not solely by a child under twelve years of age.  
18 The term also does not include a medication, drug or food, or a  
19 product designed to be ingested.

20 Section 2. The act is amended by adding a section to read:

21 Section 9.4. Unsafe Children's Products.--(a) A children's  
22 product shall be deemed unsafe if it meets any of the following  
23 criteria:

24 (1) It does not conform to all Federal laws and regulations  
25 setting forth standards for that children's product, including  
26 standards endorsed or established by the Consumer Product Safety  
27 Commission or the American Society for Testing and Materials.

28 (2) It has been recalled by an agency of the Federal  
29 Government or its manufacturer and the recall has not been  
30 rescinded.

1       (3) An agency of the Federal Government or the product's  
2 manufacturer has issued a warning that the product's intended  
3 use constitutes a safety hazard and the warning has not been  
4 rescinded.

5       (b) The Attorney General shall create or adopt by reference,  
6 and shall maintain and update, a list of children's products  
7 that have been deemed unsafe under subsection (a). The Attorney  
8 General shall make the list available to the public at no cost  
9 and shall post it conspicuously on the Attorney General's  
10 Internet website. The Attorney General shall also provide links  
11 on the Internet website to government agencies or organizations  
12 that provide information regarding unsafe children's products.

13       (c) When the Consumer Product Safety Commission or the  
14 manufacturer of a children's product issues a recall or warning  
15 under subsection (a)(2) or (3), the manufacturer shall within  
16 twenty-four hours:

17       (1) Notify each customer to whom the manufacturer sold the  
18 product of the recall or warning and transmit to each customer a  
19 copy of the recall notice or warning.

20       (2) Place information conspicuously on its Internet website  
21 regarding the recall or warning. The information shall include  
22 the following:

23       (i) a description of the product;

24       (ii) a picture of the product;

25       (iii) the reason for the recall or warning;

26       (iv) instructions regarding how the customer shall return  
27 the recalled product or implement the warning; and

28       (v) a link to the recall notice or warning.

29       (d) When a retailer receives notice that a children's  
30 product is the subject of a recall or a warning under subsection

1 (a)(2) or (3), the retailer shall:

2 (1) Within three business days, stop selling the product.

3 (2) Within thirty days, attempt to contact each purchaser of  
4 the product for whom the retailer has a shipping address or e-  
5 mail address to inform the purchaser that the product has been  
6 recalled or is subject to a warning.

7 (3) Within five business days, place information  
8 conspicuously on its Internet website regarding the recall or  
9 warning. The information shall include the following:

10 (i) a description of the product;

11 (ii) a picture of the product;

12 (iii) the reason for the recall or warning;

13 (iv) instructions regarding how the customer shall return  
14 the recalled product or implement the warning; and

15 (v) a link to the recall notice or warning.

16 (e) A retailer that sells used or donated children's  
17 products shall comply with subsection (d) within five business  
18 days after a children's product is placed on the Attorney  
19 General's Internet website.

20 (f) A manufacturer that sells children's products shall  
21 comply with subsection (d)(1) and (2).

22 (g) For the purpose of this section, the term "manufacturer"  
23 shall include the manufacturer, the importer, the wholesaler and  
24 the distributor of a children's product.

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