

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 39 Session of 2011

INTRODUCED BY DePASQUALE, BOBACK, BRADFORD, BRIGGS, V. BROWN, BUXTON, CALTAGIRONE, CARROLL, COHEN, FREEMAN, GEIST, GEORGE, GOODMAN, GROVE, HORNAMAN, KORTZ, MANN, MATZIE, MILLER, MURPHY, M. O'BRIEN, PASHINSKI, PRESTON, READSHAW, SCAVELLO, SHAPIRO, K. SMITH, M. SMITH, STURLA, SWANGER, VULAKOVICH, WAGNER, WATSON, YOUNGBLOOD, HARKINS, DeLUCA, SCHRODER, FABRIZIO, B. BOYLE, JOSEPHS, DEASY AND KULA, JANUARY 19, 2011

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 19, 2011

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, for unlawful
7 acts or practices and exclusions and for civil penalties; and
8 adding provisions relating to unsafe children's products.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

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

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

1 * * *

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

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

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

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

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

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

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

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

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

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

28 (x) Advertising goods or services with intent not to supply
29 reasonably expectable public demand, unless the advertisement
30 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,

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

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

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

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

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

18 (A) the identity of the seller;

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

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

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

29 (xviii) Using a contract, form or any other document related
30 to a consumer transaction which contains a confessed judgment

1 clause that waives the consumer's right to assert a legal
2 defense to an action;

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

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

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

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

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

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

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

1 on any manufacturer's warranty applicable to the vehicle. This
2 subclause shall not apply to any new motor vehicle which has
3 been rustproofed by a motor vehicle dealer prior to the
4 effective date of this subclause[.];

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

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

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

21 Section 2. Section 3 of the act, amended November 29, 2006
22 (P.L.1624, No.185), is amended to read:

23 Section 3. Unlawful Acts or Practices; Exclusions.--Unfair
24 methods of competition and unfair or deceptive acts or practices
25 in the conduct of any trade or commerce as defined by
26 [subclauses (i) through (xxi) of] clause (4) of section 2 of
27 this act and regulations promulgated under section 3.1 of this
28 act are hereby declared unlawful. The provisions of this act
29 shall not apply to any owner, agent or employe of any radio or
30 television station, or to any owner, publisher, printer, agent

1 or employe of an Internet service provider or a newspaper or
2 other publication, periodical or circular, who, in good faith
3 and without knowledge of the falsity or deceptive character
4 thereof, publishes, causes to be published or takes part in the
5 publication of such advertisement.

6 Section 3. Section 8 of the act is amended by adding a
7 subsection to read:

8 Section 8. Civil Penalties.--* * *

9 (c) (1) Any person against whom an injunction is obtained
10 by the Attorney General under section 4 of this act for a
11 violation of section 2(4)(xxi) of the act shall pay a civil
12 penalty in the amount of five hundred dollars (\$500) for each
13 violation, which penalty shall be in addition to other relief
14 which may be granted under sections 2 and 4.1 of the act. Each
15 unsafe children's product sold or offered for sale in violation
16 of section 2(4)(xxi) of the act shall constitute a separate
17 violation.

18 (2) All civil penalties collected under this subsection
19 shall be dedicated to the Attorney General for enforcing the
20 provisions of this act.

21 Section 4. The act is amended by adding a section to read:

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

25 (1) It does not conform to all Federal laws and regulations
26 setting forth standards for that children's product, including
27 standards endorsed or established by the Consumer Product Safety
28 Commission or the American Society for Testing and Materials as
29 adopted by the Consumer Product Safety Commission and such
30 nonconformance results in a substantial product hazard as

1 determined by the Consumer Product Safety Commission.

2 (2) It has been recalled by an agency of the Federal
3 Government or its manufacturer in cooperation with the
4 government and the recall has not been rescinded.

5 (3) An agency of the Federal Government or the product's
6 manufacturer has issued a warning that the product's intended
7 use constitutes a safety hazard and the warning has not been
8 rescinded. Warnings about proper use or handling of a product
9 shall not constitute a regulated warning under this clause.

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

18 (c) When the Consumer Product Safety Commission or the
19 manufacturer of a children's product in cooperation with the
20 Consumer Product Safety Commission issues a recall or warning
21 under subsection (a)(2) or (3), the manufacturer shall within
22 twenty-four hours or pursuant to Consumer Product Safety
23 Commission direction or corrective action plan undertake the
24 following actions to the extent required by the Consumer Product
25 Safety Commission:

26 (1) Notify each commercial customer, other than end
27 customers, to whom the manufacturer sold the product of the
28 recall or warning and transmit to each commercial customer a
29 copy of the recall notice or warning.

30 (2) Place conspicuously on its Internet website details

1 regarding the recall or warning to the extent applicable, which
2 details shall include, if required by the Consumer Product
3 Safety Commission:

4 (i) a link to the list established under subsection (b) on
5 the Internet website of the Attorney General;

6 (ii) a link to the Internet website maintained by the
7 Federal Government for the purpose of posting recalls of or
8 warnings about children's products; or

9 (iii) the following:

10 (A) a description and picture of the product;

11 (B) the reason for the recall or warning;

12 (C) instructions regarding how the customer may return the
13 recalled product or implement the warning; and

14 (D) a link to the specific recall notice or warning for the
15 product other than the links identified under subparagraph (i)
16 or (ii).

17 (d) When a retailer receives notice that a children's
18 product is the subject of a recall or a warning under subsection
19 (a) (2) or (3), the retailer shall:

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

21 (2) Within thirty days, attempt to contact each purchaser of
22 the product for whom the retailer has a shipping address or e-
23 mail address to inform the purchaser that the product has been
24 recalled or is subject to a warning to the extent required by
25 the Consumer Product Safety Commission.

26 (3) Within five business days, place conspicuously on its
27 Internet website details regarding the recall or warning to the
28 extent required by the Consumer Product Safety Commission, which
29 details shall include, if applicable:

30 (i) a link to the list established under subsection (b) on

1 the Internet website of the Attorney General;

2 (ii) a link to the Internet website maintained by the
3 Federal Government for the purpose of posting recalls of or
4 warnings about children's products; or

5 (iii) the following:

6 (A) a description and picture of the product;

7 (B) the reason for the recall or warning;

8 (C) instructions regarding how the customer may return the
9 recalled product or implement the warning; and

10 (D) a link to the specific recall notice or warning for the
11 product other than the links identified under subparagraph (i)
12 or (ii).

13 (e) A retailer that sells used or donated children's
14 products shall stop selling the product within five business
15 days after a children's product is placed on the Attorney
16 General's Internet website with a notation that sale of the
17 product is prohibited by the Consumer Product Safety Commission.

18 (f) In addition to the requirements under subsection (c), a
19 manufacturer that sells children's products directly to a
20 noncommercial customer shall comply with subsection (d)(1) and
21 (2).

22 (g) Compliance with a Consumer Product Safety Commission
23 corrective action plan shall be deemed a complete defense to an
24 alleged violation under this section.

25 (h) The Attorney General shall enforce the provisions of
26 subsections (c), (d), (e) and (f) upon a complaint that relates
27 to a children's product placed on the list maintained under
28 subsection (b) and that is filed with the Bureau of Consumer
29 Protection in the Office of Attorney General.

30 (i) For the purpose of this section, the term "manufacturer"

1 shall include the manufacturer, the importer, the wholesaler and
2 the distributor of a children's product.

3 Section 5. This act shall take effect in 60 days.