

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1074 Session of
2015

INTRODUCED BY GREENLEAF, TARTAGLIONE, FARNESE, VULAKOVICH,
RAFFERTY AND FONTANA, NOVEMBER 20, 2015

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
NOVEMBER 20, 2015

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 for
7 unlawful acts or practices and exclusions.

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

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

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

17 * * *

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

20 (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,

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

9 (xiii) Promoting or engaging in any plan by which goods or
10 services are sold to a person for a consideration and upon the
11 further consideration that the purchaser secure or attempt to
12 secure one or more persons likewise to join the said plan; each
13 purchaser to be given the right to secure money, goods or
14 services depending upon the number of persons joining the plan.
15 In addition, promoting or engaging in any plan, commonly known
16 as or similar to the so-called "Chain-Letter Plan" or "Pyramid
17 Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any
18 scheme for the disposal or distribution of property, services or
19 anything of value whereby a participant pays valuable
20 consideration, in whole or in part, for an opportunity to
21 receive compensation for introducing or attempting to introduce
22 one or more additional persons to participate in the scheme or
23 for the opportunity to receive compensation when a person
24 introduced by the participant introduces a new participant. As
25 used in this subclause the term "consideration" means an
26 investment of cash or the purchase of goods, other property,
27 training or services, but does not include payments made for
28 sales demonstration equipment and materials for use in making
29 sales and not for resale furnished at no profit to any person in
30 the program or to the company or corporation, nor does the term

1 apply to a minimal initial payment of twenty-five dollars (\$25)
2 or less;

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

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

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

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

14 (A) the identity of the seller;

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

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

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

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

29 (xix) Soliciting any order for the sale of goods to be
30 ordered by the buyer through the mails or by telephone unless,

1 at the time of the solicitation, the seller has a reasonable
2 basis to expect that it will be able to ship any ordered
3 merchandise to the buyer:

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

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

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

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

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

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

1 ~~(xxi)~~ Selling a good that fails to conspicuously state on
2 the label or packaging of the good an indication of the
3 manufacturer's estimated useful life for the good. This clause
4 shall not apply to a drug or food item required by law to
5 contain a label specifying an expiration date, sell-by date,
6 use-by date or other similar information relating to the time
7 period for safe consumption or best use of the drug or food
8 item.

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

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

14 Section 3. Unlawful Acts or Practices; Exclusions.--Unfair
15 methods of competition and unfair or deceptive acts or practices
16 in the conduct of any trade or commerce as defined [by
17 subclauses (i) through ~~(xxi)~~ of] in clause (4) of section 2 of
18 this act and regulations promulgated under section 3.1 of this
19 act are hereby declared unlawful. The provisions of this act
20 shall not apply to any owner, agent or employe of any radio or
21 television station, or to any owner, publisher, printer, agent
22 or employe of an Internet service provider or a newspaper or
23 other publication, periodical or circular, who, in good faith
24 and without knowledge of the falsity or deceptive character
25 thereof, publishes, causes to be published or takes part in the
26 publication of such advertisement.

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