

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

Act of Dec. 17, 1968, P.L. 1224, No. 387

Cl. 12

(Reenacted and amended Nov. 24, 1976, P.L.1166, No.260)

AN ACT

Prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, giving the Attorney General and District Attorneys certain powers and duties and providing penalties.

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

Section 1. Short Title.--This act shall be known and may be cited as the "Unfair Trade Practices and Consumer Protection Law."

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

(1) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.

(1.1) "Internet service provider" means a person who furnishes a service that enables users to access content, information, electronic mail or other services offered over the Internet, and access to proprietary content, information and other services as part of a package of services offered to consumers. ((1.1) added Nov. 29, 2006, P.L.1624, No.185)

(2) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities.

(3) "Trade" and "commerce" mean the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth.

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

(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, 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," "Pyramid Club" or "Pyramid Promotional Scheme." 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. The term "Pyramid Promotional Scheme" means any plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services or intangible property by a participant or other persons introduced into the plan or operation. The term includes any plan or operation under which

the number of people who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, and includes any plan or operation under which a person, on giving any consideration, obtains any goods, services or intangible property in addition to the right to receive compensation. As used in this subclause the term "consideration" means an investment of cash or the purchase of goods, other property, training or services, but does not include payments made for sales demonstration equipment and materials for use in making sales and not for resale furnished at no profit to any person in the program or to the company or corporation, nor does the term apply to a minimal initial payment of twenty-five dollars (\$25) or less; ((xiii) amended Nov. 25, 2020, P.L.1216, No.123)

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

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

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

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

(A) the identity of the seller;

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

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

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

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

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

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

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

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

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

(B) that the new motor vehicle has been rustproofed by the manufacturer and the nature and extent, if any, of the

manufacturer's warranty which is applicable to that rustproofing;

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

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

((4) amended Dec. 4, 1996, P.L.906, No.146)

(5) "Bona fide inventory repurchase program" means a program by which an entity repurchases from a salesperson current and marketable inventory in the possession of the salesperson, on request and on commercially reasonable terms, when the salesperson's business relationship is terminated. ((5) added Nov. 25, 2020, P.L.1216, No.123)

(6) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months after the date of purchase at not less than ninety percent (90%) of the original net cost, less appropriate set-offs and legal claims, if any. ((6) added Nov. 25, 2020, P.L.1216, No.123)

(7) "Compensation" means a payment of any money, a thing of value or financial benefit conferred in return for inducing another person to participate in a Pyramid Promotional Scheme. ((7) added Nov. 25, 2020, P.L.1216, No.123)

(8) "Consideration" means the payment of cash or the purchase of goods, services or intangible property. The term shall not include the purchase of goods or services furnished at cost to be used in making sales and not for resale or time and effort spent in pursuit of sales or recruiting activities. The term shall not include payment for sales demonstration, equipment and materials furnished at cost for use in making sales and not for resale. ((8) added Nov. 25, 2020, P.L.1216, No.123)

(9) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids and sales kits that an entity requires independent salespersons to purchase. ((9) added Nov. 25, 2020, P.L.1216, No.123)

(10) "Inventory loading" means the requirement or encouragement by a plan or operation to have the independent salesperson of the plan or operation purchase inventory in an amount that exceeds the amount that the salesperson can expect to resell for ultimate consumption or to use or consume in a reasonable time period, or both. ((10) added Nov. 25, 2020, P.L.1216, No.123)

(11) "Person" means an individual, corporation, trust, estate, partnership, unincorporated association or any other legal or commercial entity. ((11) added Nov. 25, 2020, P.L.1216, No.123)

(12) "Promote" means to contrive, prepare, establish, plan, operate, advertise or otherwise induce or attempt to induce another person to participate in a Pyramid Promotional Scheme. ((12) added Nov. 25, 2020, P.L.1216, No.123)

(13) "Current and marketable" excludes inventory that:

(i) is no longer within its commercially reasonable use or shelf-life period;

(ii) was clearly described to salespersons prior to purchase as seasonal, discontinued or special promotion products not

subject to the plan or organization's inventory repurchase program; or

(iii) has been used or opened.

((13) added Nov. 25, 2020, P.L.1216, No.123)

Section 3. Unlawful Acts or Practices; Exclusions.--(a)

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act and regulations promulgated under section 3.1 of this act are hereby declared unlawful. The provisions of this act shall not apply to any owner, agent or employe of any radio or television station, or to any owner, publisher, printer, agent or employe of an Internet service provider or a newspaper or other publication, periodical or circular, who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement.

(b) The provisions of this act may not be construed to prohibit a plan or operation, or to define a plan or operation as a Pyramid Promotional Scheme, if the participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property for personal use, consumption or resale if the plan or operation does not cause inventory loading, and the plan or operation implements a bona fide inventory repurchase program.

(1) A person must clearly describe a bona fide inventory repurchase program in its recruiting literature, sales manual or contracts with independent salespersons. The recruiting literature, sales manual or contract must disclose any inventory that is not eligible for repurchase under the program.

(2) A bona fide inventory repurchase program is not required to apply to inventory that is no longer within the inventory's commercially reasonable use or shelf-life period or has been used or opened.

(c) Before a salesperson of the entity purchases any inventory, the entity must clearly describe the inventory that is excluded from the entity's bona fide inventory repurchase program as seasonal, discontinued or special promotion products and the inventory that is not subject to the entity's bona fide inventory repurchase program.

((3) amended Nov. 25, 2020, P.L.1216, No.123)

Section 3.1. Regulations.--The Attorney General may adopt, after public hearing, such rules and regulations as may be necessary for the enforcement and administration of this act. Such rules and regulations when promulgated pursuant to the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law," shall have the force and effect of law.

Section 4. Restraining Prohibited Acts.--Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.

(4 repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 4.1. Payment of Costs and Restitution.--Whenever any court issues a permanent injunction to restrain and prevent violations of this act as authorized in section 4 above, the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or

property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court.

(4.1 repealed in part Apr. 28, 1978, P.L.202, No.53)

Compiler's Note: Section 4(a) Act 53 of 1978 provided that the partial repeal of section 4.1 shall take effect one year after the general effective date of Act 53.

Section 5. Assurances of Voluntary Compliance.--In the administration of this act, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator providing for the restitution by the alleged violator to consumers, of money, property or other things received from them in connection with a violation of this act. Any such assurance shall be in writing and be filed with the court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to section 4.

(5 repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 7. Contracts; Effect of Rescission.--(a) Where goods or services having a sale price of twenty-five dollars (\$25) or more are sold or contracted to be sold to a buyer, as a result of, or in connection with, a contact with or call on the buyer or resident at his residence either in person or by telephone, that consumer may avoid the contract or sale by notifying, in writing, the seller within three full business days following the day on which the contract or sale was made and by returning or holding available for return to the seller, in its original condition, any merchandise received under the contract or sale. Such notice of rescission shall be effective upon depositing the same in the United States mail or upon other service which gives the seller notice of rescission. ((a) amended Dec. 4, 1996, P.L.906, No.146)

(b) At the time of the sale or contract the buyer shall be provided with:

(1) A fully completed receipt or copy of any contract pertaining to such sale, which is in the same language (Spanish, English, etc.) as that principally used in the oral sales presentation, and also in English, and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) A completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point bold face type the following information and statements in the same language (Spanish, English, etc.) as that used in the contract:

Notice of Cancellation

(Enter Date of Transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction.

.....
(Date)

.....
(Buyer's Signature)

(c) Before furnishing copies of the "Notice of Cancellation" to the buyer, both copies shall be completed by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Each buyer shall be informed at the time he signs the contract or purchases the goods or services, of his right to cancel.

(e) The cancellation period provided for in this section shall not begin to run until buyer has been informed of his right to cancel and has been provided with copies of the "Notice of Cancellation."

(f) Seller shall not misrepresent in any manner the buyer's right to cancel.

(g) Any valid notice of cancellation by a buyer shall be honored and within ten business days after the receipt of such notice, seller shall (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) No note or other evidence of indebtedness shall be negotiated, transferred, sold or assigned by the seller to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Seller shall, within ten business days of receipt of the buyer's notice of cancellation, notify him whether the seller intends to repossess or to abandon any shipped or delivered goods. If seller elects to repossess, he must do so within twenty days of the date of buyer's notice of cancellation or forfeit all rights to the delivered goods.

(j) ((j) deleted by amendment Nov. 30, 2004, P.L.1553, No.196)

(j.1) (1) Rights afforded under this section may be waived only through the execution of an emergency authorization form:

(i) where goods or services have a sale price of twenty-five dollars (\$25) or more;

(ii) are contracted to be sold to a buyer as a result of or in connection with a contact made by the buyer to the seller; and

(iii) the goods or services contracted for are needed to remedy a bona fide emergency on the buyer's residential real property. Nothing in this subsection shall prohibit a seller contacted by a buyer as a result of a bona fide emergency from taking any immediate preliminary steps necessary to remedy a clear and immediate danger that may cause death or serious bodily injury to the buyer, the seller or other persons without having to obtain the emergency authorization form.

(2) To obtain a waiver under this section, the seller must furnish the buyer with an emergency work authorization form as well as a written estimate of the goods or the performance of services. This authorization will allow the seller to immediately proceed with the delivery of the goods or the performance of the services necessary to remedy the bona fide emergency.

(3) The emergency work authorization form provided for in this section shall be:

(i) on a preprinted card at least four inches by six inches in size; and

(ii) the writing thereon must be in at least ten-point bold face type in the following form:

Emergency Work Authorization

(Enter Date of Transaction)

You, the buyer, having initiated the contract for the goods and services of (enter the name of the seller), the seller, for the remediation of a bona fide emergency hereby authorize the seller to immediately proceed with the delivery of goods or the performance of services necessary to remedy the bona fide emergency. By providing the seller with this authorization, you agree to make full payment for the goods or services provided. You agree not to exercise the rights afforded you by the Unfair Trade Practices and Consumer Protection Law to cancel the contract within three business days from the above date.

You, the buyer, attest that the attached estimate is an accurate description of the goods and services which will be provided by the seller for the correction of the bona fide emergency:

.....

(Date)

.....

(Buyer's Signature)

((j.1) added Nov. 30, 2003, P.L.1553, No.196)

(j.2) Prior to the buyer signing the emergency authorization form, the seller shall provide the buyer with a written estimate of the total cost of the goods or services, including any fee for the service call. The estimate shall be provided prior to

the delivery of the goods or the performance of the services necessary to remedy a bona fide emergency. If the cost of the goods or services actually provided exceeds the estimate provided, the seller must obtain further written authorization from the buyer to perform the additional work or service. Nothing in this subsection shall be construed to prohibit the seller from charging the buyer a fee for a service call for the purpose of determining the cause of and the appropriate remedy of the bona fide emergency, regardless of whether further goods or services are provided. The seller shall immediately disclose to the buyer whether a service call fee shall be charged upon initiation by the buyer of a contract for goods or services for the remediation of a bona fide emergency. The seller may also charge a fee for immediate preliminary steps without having to obtain a written emergency authorization. ((j.2) added Nov. 30, 2004, P.L.1553, No.196)

(k) As used in this section, merchandise shall not be construed to mean real property.

(l) The provisions of this section shall not apply to the sale or contract for the sale of goods or services having a sale price of less than twenty-five dollars (\$25).

(l.1) This section shall not apply, however, to the sale of precious metals, bonds or foreign currency when the value of the items can fluctuate daily. ((l.1) added Dec. 4, 1996, P.L.906, No.146)

(m) A "Notice of Cancellation" which contains the form and content required by rule or regulation of the Federal Trade Commission shall be deemed to be in compliance with the requirements of this section.

(n) As used in this section, "bona fide emergency" means any condition existing on the buyer's residential real property which renders or has the capability to render the residential real property uninhabitable. The term includes, but shall not be limited to, conditions significantly affecting the heating system, electrical system, plumbing system, ventilation system, roof or outer walls of the residential real property. ((n) added Nov. 30, 2004, P.L.1553, No.196)

(o) As used in this section, "immediate preliminary steps" means only those steps necessary to eliminate a clear and immediate danger that may cause death or serious bodily injury to the buyer, the seller or other persons. The term includes, but shall not be limited to, termination of the carrying of gas, oil or oil product, sewage or water through an underground pipe or the carrying of electric or communication service through an underground conductor, pipe or structure. The term shall not be construed as including any other steps necessary to repair and remedy the bona fide emergency. ((o) added Nov. 30, 2004, P.L.1553, No.196)

Compiler's Note: Section 2 of Act 196 of 2004 provided that the amendment or addition of section 7(j), (j.1), (j.2), (n) and (o) shall apply to contracts entered into on or after the effective date of Act 196.

Section 8. Civil Penalties.--(a) Any person who violates the terms of an injunction issued under section 4 of this act or any of the terms of an assurance of voluntary compliance duly filed in court under section 5 of this act shall forfeit and pay to the Commonwealth a civil penalty of not more than five thousand dollars (\$5,000) for each violation. For the purposes of this section the court issuing an injunction or in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause shall be continued; and, in such

cases, the Attorney General, or the appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may petition for recovery of civil penalties and any other equitable relief deemed needed or proper.

(b) In any action brought under section 4 of this act, if the court finds that a person, firm or corporation is wilfully using or has wilfully used a method, act or practice declared unlawful by section 3 of this act, the Attorney General or the appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty of not exceeding one thousand dollars (\$1,000) per violation, which civil penalty shall be in addition to other relief which may be granted under sections 4 and 4.1 of this act. Where the victim of the wilful use of a method, act or practice declared unlawful by section 3 of this act is sixty years of age or older, the civil penalty shall not exceed three thousand dollars (\$3,000) per violation, which penalty shall be in addition to other relief which may be granted under sections 2 and 4.1 of this act.

(8 amended Dec. 4, 1996, P.L.906, No.146)

Section 9. Forfeiture of Franchise or Right to Do Business; Appointment of Receiver.--Upon petition by the Attorney General, the court having jurisdiction, may, in its discretion, order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under section 4 of this act. In addition, the court may appoint a receiver of the assets of the company.

Section 9.1. Powers of Receiver.--When a receiver is appointed by the court pursuant to this act, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys, and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description of the person or persons for whom the receiver is appointed, received by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained provable losses. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

Section 9.2. Private Actions.--(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees. ((a) amended Dec. 4, 1996, P.L.906, No.146)

(b) Any permanent injunction, judgment or order of the court made under section 4 of this act shall be prima facie evidence in an action brought under section 9.2 of this act that the defendant used or employed acts or practices declared unlawful by section 3 of this act.

(9.2 repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 9.3. Dog Purchaser Protection.--(a) (1) A seller shall provide a purchaser of a dog with a health record for a dog at the time of sale. In addition, the seller shall provide to the purchaser a health certificate issued by a veterinarian within twenty-one days prior to the date of sale for the dog or a guarantee of good health issued and signed by the seller. The health record supplied by the seller shall set forth the following:

(i) The dog's breed. If the breed is unknown or mixed, the health record shall so indicate. If the dog is advertised or represented as registrable, the name and address of the pedigree registry organization where the dam and sire are registered shall be indicated.

(ii) The dog's date of birth. If the dog is not advertised as or sold as purebred, registered or registrable, the date of birth may be approximated if not known by the seller.

(iii) The dog's sex.

(iv) The dog's color and markings.

(v) A list of all vaccinations, if known, administered to the dog, the date and type of vaccinations and the name of the person who administered them, if known, up to the date of sale; a record of any known disease, illness or condition with which the dog is or has been afflicted at the time of the sale; and a record of any veterinary treatment or medication received by the dog while in possession of the seller to treat any disease, illness or condition.

(vi) The date, dosage and type of any parasitical medicine, if known, that was administered to the dog.

(vii) The name, address and signature of the seller, along with a statement affirming all of the information provided in this subsection is true to the best of the seller's knowledge and belief.

(2) (i) A health certificate issued by a veterinarian shall certify the dog sold by the seller to be apparently free of any contagious or infectious illness and apparently free from any defect which is congenital or hereditary and diagnosable with reasonable accuracy and does not appear to be clinically ill from parasitic infestation at the time of the physical examination. The health certificate shall include the name, address and signature of the veterinarian and the date the dog was examined.

(ii) A guarantee of good health issued by the seller, and dated and signed by the seller and the purchaser on the date of the sale, warranting that the dog being sold is apparently free of and does not exhibit any signs of any contagious or infectious disease, is apparently free from and does not exhibit any signs of any defect which is congenital or hereditary; and does not exhibit any signs of being clinically ill or exhibit any signs of a parasitic infestation on the date of the sale. The guarantee of good health shall clearly state in bold type:

THIS GUARANTEE DOES NOT WARRANT THAT THIS DOG HAS BEEN EXAMINED BY A VETERINARIAN. THE PURCHASER IS ENCOURAGED TO HAVE THIS DOG EXAMINED BY A VETERINARIAN AS SOON AFTER PURCHASE AS IS FEASIBLE.

The seller shall also verbally state these facts to the purchaser.

(b) If, within ten days after the date of purchase, a dog purchased from a seller is determined, through physical examination, diagnostic tests or necropsy by a veterinarian, to be clinically ill or dies from any contagious or infectious illness or any parasitic illness which renders it unfit for purchase or results in its death, the purchaser may exercise one of the following options:

(1) Return the dog to the seller for a complete refund of the purchase price, not including the sales tax.

(2) Return the dog to the seller for a replacement dog of equal value of the purchaser's choice, providing a replacement dog is available.

(3) Retain the dog and be entitled to receive reimbursement from the seller for reasonable veterinary fees incurred in curing or attempting to cure the affected dog, subject to the limitation that the seller's liability for reimbursement shall not exceed the purchase price, not including sales tax, of the dog. This clause shall apply only if the purchaser's veterinarian determines the dog's illness can be treated and corrected by procedures that are appropriate and customary. The value of these services is considered reasonable if comparable to the value of similar services rendered by other licensed veterinarians in reasonable proximity to the treating veterinarian. Reimbursement shall not include the costs of the initial veterinary examination fee and diagnostic or treatment fees not directly related to the veterinarian's certification that the animal is unfit for purchase pursuant to this section. If, however, the purchaser's veterinarian determines the dog's illness is incurable, only the options in clauses (1) and (2) of this subsection shall apply.

For the purposes of this subsection, veterinary findings of intestinal and external parasites shall not be grounds for declaring the dog unfit for purchase unless the dog is clinically ill or dies due to that condition. A dog shall not be found unfit for purchase on account of injury sustained or illness most likely contracted subsequent to the date of sale. If, within thirty days after the date of purchase, a dog purchased from a seller is certified through physical examination, diagnostic tests or necropsy by a veterinarian that the dog has or died from a defect which is congenital or hereditary and which adversely affects or affected the health of the animal, the purchaser may exercise one of the options as provided in clauses (1), (2) and (3) of this subsection. Remedies available under clauses (1), (2) and (3) of this subsection shall also apply to replacement dogs.

(c) A veterinarian's certification of illness, congenital or hereditary defects or death shall be necessary for a refund or replacement or to receive reimbursement for veterinary costs if the dog is retained by the purchaser and treated for illness or congenital or hereditary defect as provided in this section. The veterinarian's certification shall be supplied at the purchaser's expense. The veterinarian's certification shall state the following information:

(1) The purchaser's name and address.

(2) The date the dog was examined.

(3) The breed and age of the dog.

(4) (i) That the veterinarian examined the dog.

(ii) That the dog has or had an illness as described in subsection (b) of this section or a defect as described in subsection (b) of this section which renders it unfit for purchase or which resulted in its death.

(iii) The precise findings of the examination, diagnostic tests or necropsy.

(5) The treatment recommended, if any, and an estimate of the actual cost of the treatment should the purchaser choose to retain the dog and seek reimbursement for veterinary fees to cure or attempt to cure the dog.

(6) The veterinarian's name, address, telephone number and signature.

Within two business days of a veterinary examination which certifies illness, defect or death, the purchaser shall notify the seller of the name, address and telephone number of the examining veterinarian. Failure to notify the seller or to carry out the recommended treatment prescribed by the examining veterinarian who made the initial diagnosis until a remedy as provided for in subsection (b) of this section is agreed upon shall result in the purchaser's forfeiture of rights under this section. Subsection (b) of this section shall not apply where a seller who has provided a health certificate issued by a veterinarian discloses in writing at the time of sale the health problem for which the buyer later seeks to return the dog. Such disclosures shall be signed by both the seller and purchaser. Where the seller has provided a guarantee of good health, subsection (b) of this section shall apply regardless of whether the seller disclosed the health problem at the time of sale.

(d) The refund or reimbursement required by this section shall be made by the seller not later than fourteen days following receipt of the veterinarian's certification that the dog is unfit for purchase or has died from a condition defined as unfit for purchase in this section. The certification shall be presented to the seller not later than five days following receipt thereof by the purchaser.

(e) In the event that the seller wishes to contest a demand for refund, replacement or reimbursement made by a purchaser pursuant to this section, the seller shall have the right, within two business days of notification by purchaser of a condition which renders the dog unfit for purchase as required in subsection (b) of this section, to require the purchaser to produce the dog for examination by a licensed veterinarian designated by the seller. The veterinarian's fee for this examination, including any diagnostic tests or necropsy, shall be paid by the seller. If the dog is incapable of being transported because of being hospitalized, the purchaser's attending veterinarian shall provide all relevant information regarding the case as requested by the seller's veterinarian. Unless the dog is hospitalized, failure to produce the dog within two business days from examination by the purchaser will nullify any obligation to replace, refund or reimburse by the seller. Upon examination, if the purchaser and the seller are unable to reach an agreement which constitutes one of the options set forth in this section within fourteen days following receipt of the dog for the examination, either party may initiate an action in a court of competent jurisdiction.

(f) (1) Any seller who advertises or otherwise represents that a dog is registered or registerable shall provide the purchaser of the dog with the following information at the time of sale:

(i) The breeder's name and address.

(ii) The name and registration number of the dam and sire of the purchased dog's litter.

(iii) The name and address of the pedigree registry organization where the dam and sire are registered.

(2) All documentation necessary to effect the registration of the dog shall be provided by the seller to the owner within one hundred twenty days of the date of sale. The one-hundred-twenty-day period may be extended by the seller if the dog is being imported from outside the United States by notifying the purchaser in writing of the reason for the extension and a reasonable estimate of the arrival date of the registration documents.

(3) If the seller fails to provide this documentation within one hundred twenty days of the date of sale or fails to notify the purchaser of an extension under clause (2) of this subsection, the purchaser may elect one of the following remedies:

(i) Return the dog and receive a full refund of the purchase price, not including sales tax.

(ii) Retain the dog and receive a refund from the seller in an amount equal to fifty per cent of the purchase price.

(4) The seller may withhold the dog's registration application until the purchaser supplies the seller with a signed veterinarian's certificate stating that the dog has been spayed or neutered, provided that withholding of the application was agreed to in writing by the purchaser at the time of sale. The seller shall provide the registration application within ten days of receiving the veterinarian's certificate if the certificate is supplied beyond the one-hundred-twenty-day period provided for in clause (2) of this subsection.

(g) (1) A summary of the provisions of this section shall be conspicuously posted in the place of business of persons subject to this section. The Office of Attorney General shall promulgate regulations specifying the contents of the summary which must be posted. In addition, the posted notice shall state that the health record information is available on request.

(2) At the time of the sale, the seller shall provide the purchaser with a written notice setting forth the rights provided under this section. The notice shall include the following statement:

THIS DISCLOSURE OF RIGHTS IS A SUMMARY OF PENNSYLVANIA LAW. THE ACTUAL PROVISIONS OF THE LAW ARE IN SECTION 9.3 OF THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW.

(h) (1) The Office of Attorney General shall enforce the provisions of this section.

(2) In addition to any other penalty under this act, a civil penalty of up to one thousand dollars (\$1,000) on any current licensee shall be levied against any person who violates any provision of this section or any person who conducts business under this section without proper license to do so. A penalty shall be levied for each violation.

(3) A purchaser shall file a complaint pursuant to this section by reporting it to the Bureau of Consumer Protection of the Office of Attorney General.

(i) As used in this section:

"Seller" means a kennel, pet shop operator or other individual who sells dogs to the public and who owns or operates a kennel or pet shop licensed by the Pennsylvania Department of Agriculture or the United States Department of Agriculture. The term shall not include nonprofit kennels as defined under the act of December 7, 1982 (P.L.784, No.225), known as the "Dog Law."

"Unfit for purchase" means any disease, deformity, injury, physical condition, illness or any defect which is congenital or hereditary and which severely affects the health of the

animal or which was manifest, capable of diagnosis or likely to have been contracted on or before the sale and delivery of the animal to the consumer.

"Veterinarian" means an individual licensed under the laws of this Commonwealth or any other state to practice veterinary medicine and surgery.

(9.3 added June 25, 1997, P.L.287, No.27)

Section 9.4. Collection, Verification and Disclosure of Information by Online Marketplaces to Inform Consumers.--(a)

An online marketplace shall require that a high-volume third-party seller on the online marketplace's platform provide the online marketplace with the following information not later than ten days after qualifying as a high-volume third-party seller on the platform:

(1) A bank account number or, if the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller. The required bank account or payee information shall be provided by the high-volume third-party seller to any of the following:

(i) The online marketplace.

(ii) A payment processor or other third party contracted by the online marketplace to maintain the information if the online marketplace ensures that the online marketplace can obtain the information on demand from the payment processor or other third party.

(2) Contact information for the high-volume third-party sellers as follows:

(i) If the high-volume third-party seller is an individual, the individual's name.

(ii) If the high-volume third-party seller is not an individual, one of the following forms of contact information:

(A) A copy of a valid government-issued identification for an individual acting on behalf of the high-volume third-party seller, including the individual's name.

(B) A copy of a valid government-issued record or tax document, including the business name and physical address of the high-volume third-party seller.

(iii) A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.

(iv) A current working telephone number.

(v) A current working email address.

(b) An online marketplace shall have all of the following duties:

(1) Periodically, but not less than annually, issue a written or electronic notice to a high-volume third-party seller on the online marketplace's platform of the requirement to keep the information collected under subsection (a) current.

(2) Require a high-volume third-party seller on the online marketplace's platform to, not later than ten days after receiving the notice under this subsection:

(i) Submit any changes to the information under subsection (a).

(ii) Certify that there have been no changes to the information required under subsection (a).

(c) Immediately following the ten days, if a high-volume third-party seller does not comply with subsection (b)(2), the online marketplace shall provide the high-volume third-party seller with a second written or an electronic notice and an opportunity to comply with subsection (b)(2).

(d) If a high-volume third-party seller fails to comply within ten days after the issuance of the second notice, the online marketplace shall suspend the future sales activity of the high-volume third-party seller until the high-volume third-party seller complies with subsection (b) (2).

(e) An online marketplace shall verify all of the following:

(1) The information collected under subsection (a) not later than ten days after the collection.

(2) A change to the information under subsection (a) not later than ten days after being notified of the change by a high-volume third-party seller under subsection (b) (2) (i).

(f) If a high-volume third-party seller provides a copy of a valid government-issued record or tax document under subsection (a) (2) (ii) (B), the information contained in the record or tax document shall be presumed to be verified as of the date of issuance of the record or tax document.

(g) Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by Federal or State law. An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical and technical safeguards, appropriate to the nature of the data collected under this section and the purposes for which the data will be used, to protect the data from unauthorized use, disclosure, access, destruction or modification.

(h) An online marketplace shall require a high-volume third-party seller that has an aggregate total of twenty thousand dollars (\$20,000) or more in annual gross revenues on the online marketplace and uses the online marketplace's platform to do all of the following:

(1) Provide the information specified under subsection (i) to the online marketplace.

(2) Disclose the information specified under subsection (i) to a consumer in a conspicuous manner in all of the following:

(i) The order confirmation message or other document or communication made to the consumer after a purchase is finalized.

(ii) The consumer's account transaction history.

(i) Except as provided under subsection (j), a high-volume third-party seller specified under subsection (h) shall provide and disclose all of the following information in accordance with subsection (h):

(1) The identity of the high-volume third-party seller, including the full name of the high-volume third-party seller, which may include the high-volume third-party seller's name or company name or the name by which the high-volume third-party seller or company operates on the online marketplace.

(2) The physical address of the high-volume third-party seller.

(3) The contact information for the high-volume third-party seller to allow for the direct, unhindered communication with the high-volume third-party seller by a consumer on the online marketplace, including any of the following:

(i) A current working telephone number.

(ii) A current working email address.

(iii) Any other means of direct electronic messaging, including messaging provided by the online marketplace.

(4) Whether the high-volume third-party seller used a different seller than listed on the product listing, prior to purchase, to supply a consumer product to a consumer and, upon the request of the consumer who purchased the consumer product from the high-volume third-party seller via the online

marketplace, the information specified under clauses (1), (2) and (3) relating to the different seller.

(j) Subject to the limitations under subsection (k), upon the request of a high-volume third-party seller, an online marketplace may provide for the partial disclosure of the information specified under subsection (i)(1), (2) and (3) to a consumer in accordance with the following:

(1) If the high-volume third-party seller certifies to the online marketplace that the high-volume third-party seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may do any of the following:

(i) Disclose to the consumer only the country and, if applicable, the state where the high-volume third-party seller resides.

(ii) Inform the consumer that there is no business address available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by telephone, email or any other means of electronic messaging provided to the high-volume third-party seller by the online marketplace.

(2) If the high-volume third-party seller certifies to the online marketplace that the high-volume third-party seller is a business that has a physical address for product returns, the online marketplace may disclose the high-volume third-party seller's physical address for product returns.

(3) If the high-volume third-party seller certifies to the online marketplace that the high-volume third-party seller does not have a telephone number other than a personal telephone number, the online marketplace shall inform the consumer that there is no telephone number available for the high-volume third-party seller and consumer inquiries should be submitted to the high-volume third-party seller's email address or other means of electronic messaging provided to such seller by the online marketplace.

(k) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace to justify a partial disclosure under subsection (j) or the high-volume third-party seller has requested and received an authorization for a partial disclosure under subsection (j) and has not provided responsive answers within a reasonable time frame to a consumer inquiry submitted to the high-volume third-party in accordance with subsection (i), the online marketplace shall, after providing the high-volume third-party seller with a written or an electronic notice and an opportunity to respond not later than ten days after the issuance of the notice, suspend the future sales activity of the high-volume third-party seller unless the high-volume third-party seller consents to the disclosure of the identity information required under subsection (i)(1), (2) and (3).

(l) An online marketplace shall, in a clear and conspicuous manner, disclose to a consumer on each product listing of a high-volume third-party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

(m) If a high-volume third-party seller does not comply with the requirements to provide and disclose information on the platform under this section, the online marketplace shall, after providing the high-volume third-party seller with a written or an electronic notice and an opportunity to provide or disclose the information not later than ten days after the

issuance of the notice, suspend the future sales activity of the high-volume third-party seller until the high-volume third-party seller complies with the requirements under this section.

(n) This section shall not be construed to prevent an online marketplace from preventing fraud, abuse or spam through any legal capacity on the online marketplace.

(o) The Attorney General shall enforce the provisions of this section. In addition to the relief under this act pursuant to sections 4 and 4.1, a civil penalty of up to one thousand dollars (\$1,000) may be levied against any person or entity that violates this section. A penalty may be levied for each violation.

(p) A political subdivision may not establish, mandate or otherwise require an online marketplace to collect or verify information from a high-volume third-party seller or disclose information to a consumer.

(q) As used in this section:

"Consumer product" as defined under section 101(1) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Public Law 93-637, 15 U.S.C. § 2301(1)).

"High-volume third-party seller" means a participant in an online marketplace who is a third-party seller and who, for a continuous period of twelve months during the previous twenty-four months, has entered into at least two hundred discrete sales of new or unused consumer products and an aggregate total of at least five thousand dollars (\$5,000) gross revenues. For purposes of calculating the number of discrete sales or the aggregate gross revenues under this definition, an online marketplace shall only count sales made through the online marketplace and for which payment was processed by the online marketplace directly or through the online marketplace's payment processor.

"Online marketplace" means any person or entity that operates a consumer-directed, electronically based or accessed platform that includes features that allow for, facilitate or enable a third-party seller to engage in the sale, purchase, payment, storage, shipping or delivery of a consumer product in the United States; is used by a third-party seller and has a contractual or similar relationship with a consumer to govern the consumer's use of the platform to purchase a consumer product.

"Seller" means a person who sells, offers to sell or contracts to sell a consumer product through an online marketplace's platform.

"Third-party seller" means a seller, independent of an online marketplace, who sells, offers to sell or contracts to sell a consumer product in the United States through an online marketplace. The term does not include any of the following:

(1) A seller who operates an online marketplace's platform.

(2) A business entity that meets all of the following criteria:

(i) The business entity has made the business entity's name, business address and contact information available to the public.

(ii) The business entity has an ongoing contractual relationship with an online marketplace to provide the online marketplace with the manufacturing, distribution, wholesaling or fulfillment of the shipment of a consumer product.

(iii) The business entity had provided the information described under subsection (a) to an online marketplace, which has been verified in accordance with this section.

"Verify" means to confirm information provided to an online marketplace under this section, including the use of a method that enables the online marketplace to reliably determine the validity of the information corresponding to a high-volume third-party seller or an individual acting on the high-volume third-party seller's behalf and confirm that the information is not misappropriated or falsified.

(9.4 added July 11, 2022, P.L.733, No.64)

Section 10. Effective Date.--This act shall take effect immediately.