

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 485

Session of
1975

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TAYLOR, O'DONNELL, BELLOMINI AND M. M. MULLEN,
FEBRUARY 18, 1975

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, FEBRUARY 18, 1975

AN ACT

1 Reenacting and amending the act of December 17, 1968 (P.L.1224,
2 No.387), entitled "An act prohibiting unfair methods of
3 competition and unfair or deceptive acts or practices in the
4 conduct of any trade or commerce, giving the Attorney General
5 and District Attorneys certain powers and duties and
6 providing penalties," prohibiting additional unfair methods
7 of competition and unfair or deceptive acts or practices, and
8 giving additional powers and rights to consumers.

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

11 Section 1. The act of December 17, 1968 (P.L.1224, No.387),
12 known as the "Unfair Trade Practices and Consumer Protection
13 Law," is reenacted and amended to read:

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

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

18 (1) "Documentary material" means the original or a copy of

1 any book, record, report, memorandum, paper, communication,
2 tabulation, map, chart, photograph, mechanical transcription or
3 other tangible document or recording, wherever situate.

4 (1.1) "Goods" means any property, tangible or intangible,
5 real, personal or mixed, and any other article, commodity, or
6 thing of value.

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

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

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

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

19 (ii) Causing likelihood of confusion or of misunderstanding
20 as to the source, sponsorship, approval or certification of
21 goods or services;

22 (iii) Causing likelihood of confusion or of misunderstanding
23 as to affiliation, connection or association with, or
24 certification by, another;

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

27 (v) Representing that goods or services have sponsorship,
28 approval, characteristics, ingredients, uses, benefits or
29 quantities that they do not have or that a person has a
30 sponsorship, approval, status, affiliation or connection that he

1 does not have;

2 (vi) Representing that goods are original or new if they are
3 deteriorated, altered, reconditioned, reclaimed, used or
4 secondhand;

5 (vii) Representing that goods or services are of a
6 particular standard, quality or grade, or that goods are of a
7 particular style or model, if they are of another;

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

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

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

15 (xi) Making false or misleading statements of fact
16 concerning the reasons for, existence of, or amounts of price
17 reductions;

18 (xii) Promising or offering to pay, credit or allow to any
19 buyer, any compensation or reward for the procurement of a
20 contract [of purchase with others;] for purchase of goods or
21 services with another or others, or for the referral of the name
22 or names of another or others for the purpose of attempting to
23 procure or procuring such a contract of purchase with such other
24 person or persons;

25 (xiii) [Engaging in any other fraudulent conduct which
26 creates a likelihood of confusion or of misunderstanding.]

27 Promoting or engaging in any plan by which goods or services
28 are sold to a person for a consideration and upon the further
29 consideration that the purchaser secure or attempt to secure one
30 or more persons likewise to join the said plan; each purchaser

1 to be given the right to secure money, goods or services
2 depending upon the number of persons joining the plan. In
3 addition, promoting or engaging in any plan, commonly known as
4 or similar to the so-called "Chain-Letter Plan" or "Pyramid
5 Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any
6 scheme for the disposal or distribution of property, services or
7 anything of value whereby a participant pays valuable
8 consideration, in whole or in part, for an opportunity to
9 receive compensation for introducing or attempting to introduce
10 one or more additional persons to participate in the scheme or
11 for the opportunity to receive compensation when a person
12 introduced by the participant introduces a new participant;

13 (xiv) Failing to comply with any of the provisions of the
14 act of October 28, 1966 (P.L.55, No.7), known as the "Goods and
15 Services Installment Sales Act"; the act of August 14, 1963
16 (P.L.1082, No.464), known as the "Home Improvement Finance Act";
17 the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor
18 Vehicle Sales Finance Act"; or any other law of the Commonwealth
19 of Pennsylvania designed to protect the consumer who purchases
20 either with cash or with credit;

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

24 (xvi) Representing that services, replacements or repairs
25 are needed if they are not needed; or providing services,
26 replacements or repairs that are not needed;

27 (xvii) Engaging in any trade or commerce as defined in this
28 act without first obtaining a license or other permit to engage
29 in the same when said license or other permit is required by any
30 applicable law; or representing that such a license has been

1 obtained when it has not;

2 (xviii) Making repairs, improvements or replacements on
3 tangible, real or personal property, of a nature or quality
4 inferior to or below the standard of that promised;

5 (xix) Engaging in any other conduct which creates a
6 likelihood of confusion or of misunderstanding;

7 (xx) Engaging in any other act or practice which is unfair
8 or deceptive to the consumer.

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

21 Section 3.1. Regulations.--The Attorney General may adopt
22 such rules and regulations as may be necessary for the
23 enforcement and administration of this act, including
24 regulations clarifying and further defining "unfair methods of
25 competition" and "unfair or deceptive acts or practices" as set
26 forth in clause (4) of section 2 of this act. Such rules and
27 regulations when promulgated pursuant to the act of July 31,
28 1968 (P.L.769, No.240), known as the "Commonwealth Documents
29 Law," shall have the force and effect of law.

30 Section 4. Restraining Prohibited Acts.--Whenever the

1 Attorney General, [or a] any District Attorney, or the solicitor
2 of any county of the second class or city of the first or second
3 class has reason to believe that any person is using or is about
4 to use any method, act or practice declared by section 3 of this
5 act to be unlawful, and that proceedings would be in the public
6 interest, he may bring an action in the name of the Commonwealth
7 against such person to restrain by temporary or permanent
8 injunction the use of such method, act or practice. The action
9 may be brought in the court of common pleas of the county in
10 which such person resides, has his principal place of business,
11 or is doing business, or may be brought in the Commonwealth
12 Court. The said courts are authorized to issue temporary or
13 permanent injunctions to restrain and prevent violations of this
14 act, and such injunctions shall be issued without bond.

15 Section 4.1. Payment of Costs and Restitution.--Whenever any
16 court issues a permanent injunction to restrain and prevent
17 violations of this act as authorized in section 4 above, the
18 court may in its discretion provide for payment by defendant or
19 defendants to the Commonwealth of the costs and disbursements of
20 the action and the costs of the investigation leading to the
21 action. In addition, the court may in its discretion direct that
22 the defendant or defendants restore to any person in interest
23 any moneys or property, real or personal, which may have been
24 acquired by means of any violation of this act, under terms and
25 conditions to be established by the court.

26 Section 5. Assurances of Voluntary Compliance.--In the
27 administration of this act, the Attorney General may accept an
28 assurance of voluntary compliance with respect to any method,
29 act or practice deemed to be violative of the act from any
30 person who has engaged or was about to engage in such method,

1 act or practice. Such assurance may include a stipulation for
2 voluntary payment by the alleged violator of the costs of
3 investigation by the Attorney General and may also include a
4 stipulation for the restitution by the alleged violator to
5 consumers, of money, property or other things received from them
6 in connection with a violation of this act. Any such assurance
7 shall be in writing and be filed with the court of common pleas
8 in which the alleged violator resides, has his principal place
9 of business, or is doing business, or the Commonwealth Court.
10 Such assurance of voluntary compliance shall not be considered
11 an admission of violation for any purpose. Matters thus closed
12 may at any time be reopened by the Attorney General for further
13 proceedings in the public interest, pursuant to section 4.

14 Section 6. Civil Investigative Demand.--(a) Whenever the
15 Attorney General believes that any person may be in possession,
16 custody, or control of the original or a copy of any documentary
17 material relevant to the subject matter of an investigation of a
18 possible violation of this act, he may execute in writing and
19 cause to be served upon such a person, a civil investigative
20 demand requiring such person to produce such documentary
21 material and permit inspection and copying; providing that this
22 section shall not be applicable to criminal prosecutions.

23 (b) Each such demand shall:

24 (1) State the statute or regulation and section thereof, the
25 alleged violation of which is under investigation, and the
26 general subject matter of the investigation;

27 (2) Describe the class or classes of documentary material to
28 be produced thereunder with reasonable specificity so as fairly
29 to indicate the material demanded;

30 (3) Prescribe a return date within which the documentary

1 material is to be produced; and

2 (4) Identify the members of the Attorney General's staff to
3 whom such documentary material is to be made available for
4 inspection and copying.

5 (c) No such demand shall:

6 (1) Contain any requirement which would be unreasonable or
7 improper if contained in a subpoena duces tecum issued by a
8 court of this State; or

9 (2) Require the disclosure of any documentary material which
10 would be privileged, or which for any other reason would not be
11 required by a subpoena duces tecum issued by a court of this
12 State.

13 (d) Service of any such demand may be made by:

14 (1) Delivering a duly executed copy thereof to the person to
15 be served or to a partner or to any officer or agent authorized
16 by appointment or by law to receive service of process on behalf
17 of such person;

18 (2) Delivering a duly executed copy thereof to the principal
19 place of business in this State of the person to be served; or

20 (3) Mailing by registered or certified mail a duly executed
21 copy thereof addressed to the person to be served at the
22 principal place of business in this State, or, if said person
23 has no place of business in this State, to his principal office
24 or place of business.

25 (e) Documentary material demanded pursuant to the provisions
26 of this section shall be produced for inspection and copying
27 during normal business hours at the principal office or place of
28 business of the person served, or at such other times and places
29 as may be designated by the Attorney General.

30 (f) No documentary material produced pursuant to a demand

1 under this section shall, unless otherwise ordered by a court
2 for good cause shown, be produced for inspection or copying by,
3 nor shall the contents thereof be disclosed to, any person other
4 than the authorized employe of the Attorney General, without the
5 consent of the person who produced such material: Provided, That
6 under such reasonable terms and conditions as the Attorney
7 General shall prescribe, such documentary material shall be
8 available for inspection and copying by the person who produced
9 such material or any duly authorized representative of such
10 person. The Attorney General or any attorney designated by him
11 may use such documentary material or copies thereof as he
12 determines necessary in the enforcement of this act, including
13 presentation before any court: Provided, That any such material
14 which contains trade secrets or other highly confidential matter
15 shall not be presented except with the approval of the court in
16 which the action is pending after adequate notice to the person
17 furnishing such material.

18 (g) At any time before the return date specified in the
19 demand, or within twenty days after the demand has been served,
20 whichever period is shorter, a petition to extend the return
21 date for, or to modify or set aside the demand, stating good
22 cause, may be filed in the court of common pleas of the county
23 where the parties reside or in the Commonwealth Court.

24 (h) A person upon whom a demand is served pursuant to the
25 provisions of this section shall comply with the terms thereof
26 unless otherwise provided by order of court. Any person who,
27 with intent to avoid, evade or prevent compliance, in whole or
28 in part, with any civil investigative demand under this section,
29 removes from any place, conceals, withholds or destroys,
30 mutilates, alters or by any other means falsifies any

1 documentary material in the possession, custody or control of
2 any person subject of any such demand shall be guilty of an
3 offense against the Commonwealth of Pennsylvania, and shall be
4 subject, upon conviction thereof, to a fine not to exceed five
5 thousand dollars (\$5,000), or to imprisonment for a term of not
6 more than one year, or both.

7 (i) Whenever any person fails to comply with any civil
8 investigative demand duly served upon him under this section or
9 whenever satisfactory copying or reproduction of any such
10 material cannot be done and such person refuses to surrender
11 such material, the Attorney General, through such officers or
12 attorneys as he may designate, may file, in the court of common
13 pleas of the county in which such person resides, is found, or
14 transacts business, and serve upon such person a petition for an
15 order of such court for the enforcement of this section, except
16 that if such person transacts business in more than one county,
17 such petition shall be filed in the county in which such person
18 maintains his principal place of business, or in the
19 Commonwealth Court. Whenever any petition is filed in the court
20 of common pleas as authorized under this section, such court
21 shall have jurisdiction to hear and determine the matter so
22 presented, and to enter such order or orders as may be required
23 to carry into effect the provisions of this section. [Any final
24 order so entered shall be subject to appeal to the Pennsylvania
25 Supreme Court.]

26 Section 7. [Avoidance of Contract or Sale.--Where
27 merchandise having a sale price of twenty-five dollars (\$25) or
28 more is sold or contracted to be sold to a consumer, as a result
29 of, or in connection with, a direct contract with or call on the
30 consumer, at his residence, that consumer may avoid the contract

1 or sale by notifying, in writing, the seller within two full
2 business days following the day on which the contract or sale
3 was made and by returning or holding available for return to the
4 seller, in its original condition, any merchandise received
5 under the contract or sale. The time period provided for in this
6 section does not begin to run unless and until the consumer is
7 furnished the address at which notice to the seller can be
8 given. If these conditions are met, the seller must return to
9 the consumer the full amount of any payment made or
10 consideration given under the contract. As used in this section,
11 merchandise shall not be construed to mean real property.]

12 Contracts; Effect of Rescission.--(a) Where goods or services
13 having a sale price of twenty-five dollars (\$25) or more are
14 sold or contracted to be sold to a buyer, as a result of, or in
15 connection with, a contact with or call on the buyer at his
16 residence, that consumer may avoid the contract or sale by
17 notifying, in writing, the seller within three full business
18 days following the day on which the contract or sale was made
19 and by returning or holding available for return to the seller,
20 in its original condition, any merchandise received under the
21 contract or sale. Such notice of rescission shall be effective
22 upon depositing the same in the United States mail or upon other
23 service which gives the seller notice of rescission.

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

26 (1) A fully completed receipt or copy of any contract
27 pertaining to such sale, which is in the same language (Spanish,
28 English, etc.) as that principally used in the oral sales
29 presentation and which shows the date of the transaction and
30 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 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,

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

4 If you do not agree to return the goods to the
5 seller or if the seller does not pick them up within
6 twenty days of the date of your notice of cancellation,
7 you may retain or dispose of the goods without any
8 further obligation.

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

14 I hereby cancel this transaction.

15

16 _____ (Date)

17 _____

18 _____ Buyer's Signature

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

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

28 (e) The cancellation period provided for in this section
29 shall not begin to run until buyer has been informed orally of
30 his right to cancel and has been provided with copies of the

1 "Notice of Cancellation."

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

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

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

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

24 (j) Rights afforded under this section may be waived only in
25 circumstances where the goods or services are needed to meet a
26 bona fide immediate personal emergency of the buyer and the
27 buyer furnishes the seller with a separate dated and signed
28 personal statement in the buyer's handwriting describing the
29 situation requiring immediate remedy and expressly acknowledging
30 and waiving the right to cancel the sale within three business

1 days.

2 Section 8. Civil Penalties.--(a) Any person who violates the
3 terms of an injunction issued under section 4 of this act or any
4 of the terms of an assurance of voluntary compliance duly filed
5 in court under section 5 of this act shall forfeit and pay to
6 the Commonwealth a civil penalty of not more than [five thousand
7 dollars (\$5,000)] twenty-five thousand dollars (\$25,000) for
8 each violation. For the purposes of this section, the court [of
9 common pleas] issuing an injunction or in which an assurance of
10 voluntary compliance is filed shall retain jurisdiction, and the
11 cause shall be continued; and, in such cases, the Attorney
12 General, the appropriate District Attorney, or solicitor acting
13 in the name of the Commonwealth of Pennsylvania, may petition
14 for recovery of civil penalties and any other equitable relief
15 deemed needed or proper.

16 (b) In any action brought under section 4 of this act, if
17 the court finds that a person, firm or corporation is wilfully
18 using or has wilfully used a method, act or practice declared
19 unlawful by section 3 of this act, the Attorney General or the
20 appropriate District Attorney, acting in the name of the
21 Commonwealth of Pennsylvania, may recover, on behalf of the
22 Commonwealth of Pennsylvania, a civil penalty of not exceeding
23 five thousand dollars (\$5,000) per violation, which civil
24 penalty shall be in addition to other relief which may be
25 granted under sections 4 and 4.1 of this act.

26 Section 9. Forfeiture of [Corporate] Franchise or Right to
27 Do Business; Appointment of Receiver.-- Upon petition by the
28 Attorney General, District Attorney, or solicitor, the court [of
29 common pleas of the county] having jurisdiction, [as
30 hereinbefore authorized,] may, in its discretion, order the

1 dissolution, [or] suspension or forfeiture of the franchise of
2 any person, firm or corporation which violates the terms [of an
3 injunction issued under section 4] of this act. In addition, the
4 court may appoint a receiver of the assets of the company.

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

25 Section 9.2. Private and Class Actions.--(a) Any person who
26 purchases or leases goods or services primarily for personal,
27 family or household purposes and thereby suffers any
28 ascertainable loss of money or property, real or personal, as a
29 result of the use or employment by any person of a method, act
30 or practice declared unlawful by section 3 of this act, may

bring a private or class action in the court of common pleas of the county or judicial district in which the seller resides or has his principal place of business or is doing business or in which the transaction took place or where the buyer resides, to recover actual damages or five hundred dollars (\$500), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than five hundred dollars (\$500), and may provide such additional relief as it deems necessary or proper.

(b) In any action brought by a person under subsection (a) of this section, where such person prevails in whole or in part, the court shall award to the person commencing said action, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(c) 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.

Section 9.3. Contract Evidence.--Any contract which is entered into, in whole or in part, as the result of an unfair method of competition or unfair, deceptive act or practice as defined in this act, or which is entered into in whole or in part as a result of a violation or in violation of any statute of the Commonwealth of Pennsylvania or the United States of America designed to protect persons who purchase consumer goods or services for cash or for credit shall be voidable at the option of the consumer; and in the event of such avoidance all consideration given by such consumer shall be returned to him and he shall be entitled to such other relief as would be

1 available to him under this act or otherwise.

2 Section 9.4. Interpretation of This Act.--It is the intent
3 of the Legislature that in construing the provisions of clause
4 (4) of section 2 of this act, and regulations promulgated under
5 section 3.1, consideration and great weight shall be given to
6 the interpretations of the Federal Trade Commission and the
7 Federal Courts relating to section 5 (a) (1) of the Federal
8 Trade Commission Act (15 U.S.C. 45 (a) (1)), as from time to
9 time amended.

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

12 Section 2. This amendatory act shall take effect
13 immediately.