

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 485**Session of
1975

INTRODUCED BY MESSRS. MANDERINO, SCHMITT, MRS. GILLETTE, MESSRS. ITKIN, PETRARCA, A. K. HUTCHINSON, IRVIS, MISCEVICH, VANN, MRKONIC, FINEMAN, GEORGE, ABRAHAM, TRELLO, FLAHERTY, MUSTO, SHUPNIK, WARGO, GIAMMARCO, REED, McLANE, WANSACZ, JOHNSON, KOWALYSHYN, TAYOUN, BLACKWELL, KOLTER, BRADLEY, RUGGIERO, DiDONATO, GREENFIELD, LEDERER, McCALL, MORRIS, PERRY, DOMBROWSKI, TAYLOR, O'DONNELL, BELLOMINI, M. M. MULLEN, COHEN AND MRS. TOLL FEBRUARY 18, 1975

AS REPORTED FROM COMMITTEE ON CUNSUMER PROTECTION, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 25, 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.

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

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

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

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

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

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

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

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

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

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

1 sponsorship, approval, status, affiliation or connection that he
2 does not have;

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

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

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

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

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

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

19 (xii) Promising or offering to pay, credit or allow to any
20 buyer, any compensation or reward for the procurement of a
21 contract [of purchase with others;] for purchase of goods or
22 services with another or others, or for the referral of the name
23 or names of another or others for the purpose of attempting to
24 procure or procuring such a contract of purchase with such other
25 person or persons WHEN SUCH PAYMENT, CREDIT, COMPENSATION OR ←
26 REWARD IS CONTINGENT UPON THE OCCURRENCE OF AN EVENT SUBSEQUENT
27 TO THE TIME OF THE SIGNING OF A CONTRACT TO PURCHASE;

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

30 Promoting or engaging in any plan by which goods or services

1 are sold to a person for a consideration and upon the further
2 consideration that the purchaser secure or attempt to secure one
3 or more persons likewise to join the said plan; each purchaser
4 to be given the right to secure money, goods or services
5 depending upon the number of persons joining the plan. In
6 addition, promoting or engaging in any plan, commonly known as
7 or similar to the so-called "Chain-Letter Plan" or "Pyramid
8 Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any
9 scheme for the disposal or distribution of property, services or
10 anything of value whereby a participant pays valuable
11 consideration, in whole or in part, for an opportunity to
12 receive compensation for introducing or attempting to introduce
13 one or more additional persons to participate in the scheme or
14 for the opportunity to receive compensation when a person
15 introduced by the participant introduces a new participant. AS ←
16 USED IN THIS SUBCLAUSE THE TERM "CONSIDERATION" MEANS AN
17 INVESTMENT OF CASH OR THE PURCHASE OF GOODS, OTHER PROPERTY,
18 TRAINING OR SERVICES, BUT DOES NOT INCLUDE PAYMENTS MADE FOR
19 SALES DEMONSTRATION EQUIPMENT AND MATERIALS FOR USE IN MAKING
20 SALES AND NOT FOR RESALE FURNISHED AT NO PROFIT TO ANY PERSON IN
21 THE PROGRAM OR TO THE COMPANY OR CORPORATION, NOR DOES THE TERM
22 APPLY TO A MINIMAL INITIAL PAYMENT OF TWENTY-FIVE DOLLARS (\$25)
23 OR LESS;

24 (xiv) Failing to comply with any of the provisions of the
25 act of October 28, 1966 (P.L.55, No.7), known as the "Goods and
26 Services Installment Sales Act"; the act of August 14, 1963
27 (P.L.1082, No.464), known as the "Home Improvement Finance Act";
28 the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor
29 Vehicle Sales Finance Act"; or any other law of the Commonwealth
30 of Pennsylvania designed to protect the consumer who purchases

1 either with cash or with credit;

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

5 (xvi) ~~Representing~~ KNOWINGLY MISREPRESENTING that services, <—
6 replacements or repairs are needed if they are not needed; ~~or~~ <—
7 ~~providing services, replacements or repairs that are not needed;~~

8 (xvii) Engaging in any trade or commerce as defined in this
9 act without first obtaining a license or other permit to engage
10 in the same when said license or other permit is required by any
11 applicable law; or representing that such a license has been
12 obtained when it has not;

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

16 ~~(xix) Engaging in any other conduct which creates a~~ <—
17 ~~likelihood of confusion or of misunderstanding;~~

18 ~~(xx) Engaging in any other act or practice which is unfair~~
19 ~~or deceptive to the consumer.~~

20 (XIX) ENGAGING IN ANY OTHER FRAUDULENT CONDUCT WHICH CREATES <—
21 A LIKELIHOOD OF CONFUSION OR OF MISUNDERSTANDING.

22 Section 3. Unlawful Acts or Practices; Exclusions.--Unfair
23 methods of competition and unfair or deceptive acts or practices
24 in the conduct of any trade or commerce as defined by SUBCLAUSES <—

25 (I) THROUGH (XIX) OF clause (4) of section 2 of this act and
26 regulations promulgated under section 3.1 of this act are hereby

27 declared unlawful. The provisions of this act shall not apply to
28 any owner, agent or employe of any radio or television station,
29 or to any owner, publisher, printer, agent or employe of a
30 newspaper or other publication, periodical or circular, who, in

1 good faith and without knowledge of the falsity or deceptive
2 character thereof, publishes, causes to be published or takes
3 part in the publication of such advertisement.

4 Section 3.1. Regulations.--The Attorney General may adopt
5 such rules and regulations as may be necessary for the
6 enforcement and administration of this act, including
7 regulations clarifying and further defining "unfair methods of
8 competition" and "unfair or deceptive acts or practices" as set
9 forth in SUBCLAUSES (I) THROUGH (XIX) OF clause (4) of section 2 <—
10 of this act. Such rules and regulations when promulgated
11 pursuant to the act of July 31, 1968 (P.L.769, No.240), known as
12 the "Commonwealth Documents Law," shall have the force and
13 effect of law.

14 Section 4. Restraining Prohibited Acts.--Whenever the
15 Attorney General, [or a] any District Attorney, or the solicitor
16 of any county ~~of the second class~~ or city of the first or second <—
17 class has reason to believe that any person is using or is about
18 to use any method, act or practice declared by section 3 of this
19 act to be unlawful, and that proceedings would be in the public
20 interest, he may bring an action in the name of the Commonwealth
21 against such person to restrain by temporary or permanent
22 injunction the use of such method, act or practice. The action
23 may be brought in the court of common pleas of the county in
24 which such person resides, has his principal place of business,
25 or is doing business, or may be brought in the Commonwealth
26 Court. The said courts are authorized to issue temporary or
27 permanent injunctions to restrain and prevent violations of this
28 act, and such injunctions shall be issued without bond.

29 Section 4.1. Payment of Costs and Restitution.--Whenever any
30 court issues a permanent injunction to restrain and prevent

1 violations of this act as authorized in section 4 above, the
2 court may in its discretion provide for payment by defendant or
3 defendants to the Commonwealth of the costs and disbursements of
4 the action and the costs of the investigation leading to the
5 action. In addition, the court may in its discretion direct that
6 the defendant or defendants restore to any person in interest
7 any moneys or property, real or personal, which may have been
8 acquired by means of any violation of this act, under terms and
9 conditions to be established by the court.

10 Section 5. Assurances of Voluntary Compliance.--In the
11 administration of this act, the Attorney General may accept an
12 assurance of voluntary compliance with respect to any method,
13 act or practice deemed to be violative of the act from any
14 person who has engaged or was about to engage in such method,
15 act or practice. Such assurance may include a stipulation for
16 voluntary payment by the alleged violator of the costs of
17 investigation by the Attorney General and may also include a
18 stipulation for the restitution by the alleged violator to
19 consumers, of money, property or other things received from them
20 in connection with a violation of this act. Any such assurance
21 shall be in writing and be filed with the court of common pleas
22 in which the alleged violator resides, has his principal place
23 of business, or is doing business, or the Commonwealth Court.
24 Such assurance of voluntary compliance shall not be considered
25 an admission of violation for any purpose. Matters thus closed
26 may at any time be reopened by the Attorney General for further
27 proceedings in the public interest, pursuant to section 4.

28 Section 6. Civil Investigative Demand.--(a) Whenever the
29 Attorney General believes that any person may be in possession,
30 custody, or control of the original or a copy of any documentary

1 material relevant to the subject matter of an investigation of a
2 possible violation of this act, he may execute in writing and
3 cause to be served upon such a person, a civil investigative
4 demand requiring such person to produce such documentary
5 material and permit inspection and copying; providing that this
6 section shall not be applicable to criminal prosecutions.

7 (b) Each such demand shall:

8 (1) State the statute or regulation and section thereof, the
9 alleged violation of which is under investigation, and the
10 general subject matter of the investigation;

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

14 (3) Prescribe a return date within which the documentary
15 material is to be produced; and

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

19 (c) No such demand shall:

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

23 (2) Require the disclosure of any documentary material which
24 would be privileged, or which for any other reason would not be
25 required by a subpoena duces tecum issued by a court of this
26 State.

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

28 (1) Delivering a duly executed copy thereof to the person to
29 be served or to a partner or to any officer or agent authorized
30 by appointment or by law to receive service of process on behalf

1 of such person;

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

4 (3) Mailing by registered or certified mail a duly executed
5 copy thereof addressed to the person to be served at the
6 principal place of business in this State, or, if said person
7 has no place of business in this State, to his principal office
8 or place of business.

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

14 (f) No documentary material produced pursuant to a demand
15 under this section shall, unless otherwise ordered by a court
16 for good cause shown, be produced for inspection or copying by,
17 nor shall the contents thereof be disclosed to, any person other
18 than the authorized employe of the Attorney General, without the
19 consent of the person who produced such material: Provided, That
20 under such reasonable terms and conditions as the Attorney
21 General shall prescribe, such documentary material shall be
22 available for inspection and copying by the person who produced
23 such material or any duly authorized representative of such
24 person. The Attorney General or any attorney designated by him
25 may use such documentary material or copies thereof as he
26 determines necessary in the enforcement of this act, including
27 presentation before any court: Provided, That any such material
28 which contains trade secrets or other highly confidential matter
29 shall not be presented except with the approval of the court in
30 which the action is pending after adequate notice to the person

1 furnishing such material.

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

8 (h) A person upon whom a demand is served pursuant to the
9 provisions of this section shall comply with the terms thereof
10 unless otherwise provided by order of court. Any person who,
11 with intent to avoid, evade or prevent compliance, in whole or
12 in part, with any civil investigative demand under this section,
13 removes from any place, conceals, withholds or destroys,
14 mutilates, alters or by any other means falsifies any
15 documentary material in the possession, custody or control of
16 any person subject of any such demand shall be guilty of an
17 offense against the Commonwealth of Pennsylvania, and shall be
18 subject, upon conviction thereof, to a fine not to exceed five
19 thousand dollars (\$5,000), or to imprisonment for a term of not
20 more than one year, or both.

21 (i) Whenever any person fails to comply with any civil
22 investigative demand duly served upon him under this section or
23 whenever satisfactory copying or reproduction of any such
24 material cannot be done and such person refuses to surrender
25 such material, the Attorney General, through such officers or
26 attorneys as he may designate, may file, in the court of common
27 pleas of the county in which such person resides, is found, or
28 transacts business, and serve upon such person a petition for an
29 order of such court for the enforcement of this section, except
30 that if such person transacts business in more than one county,

1 such petition shall be filed in the county in which such person
2 maintains his principal place of business, or in the
3 Commonwealth Court. Whenever any petition is filed in the court
4 of common pleas as authorized under this section, such court
5 shall have jurisdiction to hear and determine the matter so
6 presented, and to enter such order or orders as may be required
7 to carry into effect the provisions of this section. [Any final
8 order so entered shall be subject to appeal to the Pennsylvania
9 Supreme Court.]

10 Section 7. [Avoidance of Contract or Sale.--Where
11 merchandise having a sale price of twenty-five dollars (\$25) or
12 more is sold or contracted to be sold to a consumer, as a result
13 of, or in connection with, a direct contract with or call on the
14 consumer, at his residence, that consumer may avoid the contract
15 or sale by notifying, in writing, the seller within two full
16 business days following the day on which the contract or sale
17 was made and by returning or holding available for return to the
18 seller, in its original condition, any merchandise received
19 under the contract or sale. The time period provided for in this
20 section does not begin to run unless and until the consumer is
21 furnished the address at which notice to the seller can be
22 given. If these conditions are met, the seller must return to
23 the consumer the full amount of any payment made or
24 consideration given under the contract. As used in this section,
25 merchandise shall not be construed to mean real property.]

26 Contracts; Effect of Rescission.--(a) Where goods or services
27 having a sale price of twenty-five dollars (\$25) or more are
28 sold or contracted to be sold to a buyer, as a result of, or in
29 connection with, a contact with or call on the buyer at his
30 residence, that consumer may avoid the contract or sale by

1 notifying, in writing, the seller within three full business
2 days following the day on which the contract or sale was made
3 and by returning or holding available for return to the seller,
4 in its original condition, any merchandise received under the
5 contract or sale. Such notice of rescission shall be effective
6 upon depositing the same in the United States mail or upon other
7 service which gives the seller notice of rescission.

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

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

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

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

29 Notice of Cancellation

30 _____ (Enter Date of Transaction)

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

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

10 ~~If you do make the goods available to the seller and~~
11 ~~the seller does not pick them up within twenty days of~~
12 ~~the date of your notice of cancellation, you may retain~~
13 ~~or dispose of the goods without any further obligation.~~
14 ~~If you fail to make the goods available to the seller,~~
15 ~~or if you agree to return the goods to the seller and~~
16 ~~fail to do so, then you remain liable for performance~~
17 ~~of all obligations under the contract.~~

18 ~~If you do not agree to return the goods to the~~
19 ~~seller or if the seller does not pick them up within~~
20 ~~twenty days of the date of your notice of cancellation,~~
21 ~~you may retain or dispose of the goods without any~~
22 ~~further obligation.~~

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

28 ~~IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS~~ <—
29 ~~MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY~~
30 ~~NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED~~

1 WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER
2 OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST
3 ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

4 IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER
5 AT YOUR RESIDENCE IN SUBSTANTIALLY AS GOOD CONDITION AS
6 WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS
7 CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH
8 THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN
9 SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

10 IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND
11 THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF
12 THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN
13 OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

14 IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER,
15 OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND
16 FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF
17 ALL OBLIGATIONS UNDER THE CONTRACT.

18 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED
19 AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
20 WRITTEN NOTICE, OR SEND A TELEGRAM, TO (NAME OF SELLER),
21 AT (ADDRESS OF SELLER'S PLACE OF BUSINESS) NOT LATER
22 THAN MIDNIGHT OF (DATE). AS USED IN THIS SECTION,
23 MERCHANDISE SHALL NOT BE CONSTRUED TO MEAN REAL PROPERTY.

24 I hereby cancel this transaction.

25

26 _____ (Date)

27 _____

28 _____ Buyer's Signature

29 (c) Before furnishing copies of the "Notice of Cancellation"
30 to the buyer, both copies shall be completed by entering the

1 name of the seller, the address of the seller's place of
2 business, the date of the transaction, and the date, not earlier
3 than the third business day following the date of the
4 transaction, by which the buyer may give notice of cancellation.

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

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

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

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

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

28 (i) Seller shall, within ten business days of receipt of the
29 buyer's notice of cancellation, notify him whether the seller
30 intends to repossess or to abandon any shipped or delivered

1 goods. If seller elects to repossess, he must do so within
2 twenty days of the date of buyer's notice of cancellation or
3 forfeit all rights to the delivered goods.

4 (j) Rights afforded under this section may be waived only in
5 circumstances where the goods or services are needed to meet a
6 bona fide immediate personal emergency of the buyer and the
7 buyer furnishes the seller with a separate dated and signed
8 personal statement in the buyer's handwriting describing the
9 situation requiring immediate remedy and expressly acknowledging
10 and waiving the right to cancel the sale within three business
11 days.

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

26 (b) In any action brought under section 4 of this act, if
27 the court finds that a person, firm or corporation is wilfully
28 using or has wilfully used a method, act or practice declared
29 unlawful by section 3 of this act, the Attorney General or the
30 appropriate District Attorney, acting in the name of the

1 Commonwealth of Pennsylvania, may recover, on behalf of the
2 Commonwealth of Pennsylvania, a civil penalty of not exceeding
3 five thousand dollars (\$5,000) per violation, which civil
4 penalty shall be in addition to other relief which may be
5 granted under sections 4 and 4.1 of this act.

6 Section 9. Forfeiture of [Corporate] Franchise or Right to
7 Do Business; Appointment of Receiver.-- Upon petition by the
8 Attorney General, District Attorney, or solicitor, the court [of
9 common pleas of the county] having jurisdiction, [as
10 hereinbefore authorized,] may, in its discretion, order the
11 dissolution, [or] suspension or forfeiture of the franchise of
12 any person, firm or corporation which violates the terms [of an
13 injunction issued under section 4] of this act. In addition, the
14 court may appoint a receiver of the assets of the company.

15 Section 9.1. Powers of Receiver.--When a receiver is
16 appointed by the court pursuant to this act, he shall have the
17 power to sue for, collect, receive and take into his possession
18 all the goods and chattels, rights and credits, moneys, and
19 effects, lands and tenements, books, records, documents, papers,
20 choses in action, bills, notes and property of every description
21 of the person or persons for whom the receiver is appointed,
22 received by means of any practice declared to be illegal and
23 prohibited by this act, including property with which such
24 property has been mingled if it cannot be identified in kind
25 because of such commingling, and to sell, convey, and assign the
26 same and hold and dispose of the proceeds thereof under the
27 direction of the court. Any person who has suffered damages as a
28 result of the use or employment of any unlawful practices and
29 submits proof to the satisfaction of the court that he has in
30 fact been damaged, may participate with general creditors in the

1 distribution of the assets to the extent he has sustained
2 provable losses. The court shall have jurisdiction of all
3 questions arising in such proceedings and may make such orders
4 and judgments therein as may be required.

5 Section 9.2. Private and Class Actions.--(a) Any person who
6 purchases or leases goods or services primarily for personal,
7 family or household purposes and thereby suffers any
8 ascertainable loss of money or property, real or personal, as a
9 result of the use or employment by any person of a method, act
10 or practice declared unlawful by section 3 of this act, may
11 bring a private or class action in the court of common pleas of
12 the county or judicial district in which the seller resides or
13 has his principal place of business or is doing business or in
14 which the transaction took place or where the buyer resides, to
15 recover actual damages or five hundred dollars (\$500), whichever
16 is greater. The court may, in its discretion, award up to three
17 times the actual damages sustained, but not less than five <—
18 hundred dollars (\$500), ONE HUNDRED DOLLARS (\$100), and may <—
19 provide such additional relief as it deems necessary or proper.

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

25 ~~(c)~~ (B) Any permanent injunction, judgment or order of the <—
26 court made under section 4 of this act shall be prima facie
27 evidence in an action brought under section 9.2 of this act that
28 the defendant used or employed acts or practices declared
29 unlawful by section 3 of this act.

30 Section 9.3. Contract Evidence.--Any contract which is

1 entered into, in whole or in part, as the result of an unfair
2 method of competition or unfair, deceptive act or practice as
3 defined in this act, or which is entered into in whole or in
4 part as a result of a violation or in violation of any statute
5 of the Commonwealth of Pennsylvania or the United States of
6 America designed to protect persons who purchase consumer goods
7 or services for cash or for credit shall be voidable at the
8 option of the consumer; and in the event of such avoidance all
9 consideration given by such consumer shall be returned to him
10 and he shall be entitled to such other relief as would be
11 available to him under this act or otherwise.

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

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

22 Section 2. This amendatory act shall take effect
23 immediately.