
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 485

Session of
1975

INTRODUCED BY MESSRS. MANDERINO, SCHMITT, MRS. GILLETTE, MESSRS.
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DOMBROWSKI, TAYLOR, O'DONNELL, BELLOMINI, M. M. MULLEN,
COHEN, GREEN AND MRS. TOLL, FEBRUARY 18, 1975

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 28, 1976

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

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

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

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

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

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

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

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

30 (vi) Representing that goods are original or new if they are

1 deteriorated, altered, reconditioned, reclaimed, used or
2 secondhand;

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

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

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

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

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

16 (xii) Promising or offering to pay, credit or allow to any
17 buyer, any compensation or reward for the procurement of a
18 contract [of purchase with others;] for purchase of goods or
19 services with another or others, or for the referral of the name
20 or names of another or others for the purpose of attempting to
21 procure or procuring such a contract of purchase with such other
22 person or persons when such payment, credit, compensation or
23 reward is contingent upon the occurrence of an event subsequent
24 to the time of the signing of a contract to purchase;

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. As
13 used in this subclause the term "consideration" means an
14 investment of cash or the purchase of goods, other property,
15 training or services, but does not include payments made for
16 sales demonstration equipment and materials for use in making
17 sales and not for resale furnished at no profit to any person in
18 the program or to the company or corporation, nor does the term
19 apply to a minimal initial payment of twenty-five dollars (\$25)
20 or less;

21 ~~(xiv) Failing to comply with any of the provisions of the~~ <—
22 ~~act of October 28, 1966 (P.L.55, No.7), known as the "Goods and~~
23 ~~Services Installment Sales Act"; the act of August 14, 1963~~
24 ~~(P.L.1082, No.464), known as the "Home Improvement Finance Act";~~
25 ~~the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor~~
26 ~~Vehicle Sales Finance Act";~~

27 ~~(xv) (XIV) Failing to comply with the terms of any written~~ <—
28 ~~guarantee or warranty given to the buyer at, prior to or after a~~
29 ~~contract for the purchase of goods or services is made;~~

30 ~~(xvi) (XV) Knowingly misrepresenting that services,~~ <—

1 replacements or repairs are needed if they are not needed. <—

2 ~~(xvii) (XVI) Engaging in any trade or commerce as defined in~~ <—
3 ~~this act without first obtaining a license or other permit to~~
4 ~~engage in the same when said license or other permit is required~~
5 ~~by any applicable law; or representing that such a license has~~
6 ~~been obtained when it has not;~~

7 ~~(xviii) (XVII) Making repairs, improvements or replacements~~ <—
8 ~~on tangible, real or personal property, of a nature or quality~~
9 ~~inferior to or below the standard of that promised;~~

10 ~~(xix) (XVIII) Engaging in any other fraudulent conduct which~~ <—
11 ~~creates a likelihood of confusion or of misunderstanding.~~

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

25 ~~Section 3.1. Regulations. The Attorney General may adopt~~ <—
26 ~~such rules and regulations as may be necessary for the~~
27 ~~enforcement and administration of this act. Such rules and~~
28 ~~regulations when promulgated pursuant to the act of July 31,~~
29 ~~1968 (P.L.769, No.240), known as the "Commonwealth Documents~~
30 ~~Law," shall have the force and effect of law.~~

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

16 Section 4.1. Payment of Costs and Restitution.--Whenever any
17 court issues a permanent injunction to restrain and prevent
18 violations of this act as authorized in section 4 above, the
19 court may in its discretion provide for payment by defendant or
20 defendants to the Commonwealth of the court costs of the action.
21 In addition, the court may in its discretion direct that the
22 defendant or defendants restore to any person in interest any
23 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 providing for the
3 restitution by the alleged violator to consumers, of money,
4 property or other things received from them in connection with a
5 violation of this act. Any such assurance shall be in writing
6 and be filed with the court of common pleas in which the alleged
7 violator resides, has his principal place of business, or is
8 doing business, or the Commonwealth Court. Such assurance of
9 voluntary compliance shall not be considered an admission of
10 violation for any purpose. Matters thus closed may at any time
11 be reopened by the Attorney General for further proceedings in
12 the public interest, pursuant to section 4.

13 Section 6. Civil Investigative Demand.--(a) Whenever the
14 Attorney General ~~or district attorney~~ believes that any person <—
15 may be in possession, custody, or control of the original or a
16 copy of any documentary material relevant to the subject matter
17 of an investigation of a possible violation of this act, he may
18 [execute in writing] ~~APPLY, IN THE CASE OF THE ATTORNEY GENERAL,~~ <—
19 ~~TO THE COMMONWEALTH COURT AND, IN THE CASE OF A DISTRICT~~ <—
20 ~~ATTORNEY, TO THE APPROPRIATE COURT OF COMMON PLEAS, FOR THE~~
21 ISSUANCE OF A WRIT OF CIVIL INVESTIGATIVE DEMAND and cause to be
22 served upon such a person a civil investigative demand requiring
23 such person to produce such documentary material and permit
24 inspection and copying; providing that this section shall not be
25 applicable to criminal prosecutions.

26 (b) Each such APPLICATION AND demand shall: <—

27 (1) State the statute ~~or regulation~~ and section thereof, the <—
28 alleged violation of which is under investigation, and the
29 general subject matter of the investigation;

30 (2) Describe the class or classes of documentary material to

1 be produced thereunder with reasonable specificity so as fairly
2 to indicate the material demanded;

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

5 (4) Identify the members of the Attorney General's ~~or the~~ <—
6 ~~district attorney's~~ staff to whom such documentary material is
7 to be made available for inspection and copying.

8 (c) No such APPLICATION AND demand shall: <—

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

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

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

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

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

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

28 (e) Documentary material demanded pursuant to the provisions
29 of this section shall be produced for inspection and copying
30 during normal business hours at the principal office or place of

1 business of the person served, or at such other times and places
2 as may be designated by the Attorney General ~~or the district~~ <—
3 ~~attorney.~~

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

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

30 (h) A person upon whom a demand is served pursuant to the

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

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

1 entered shall be subject to appeal to the Pennsylvania Supreme
2 Court.]

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

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

1 of your cancellation notice, and any security interest
2 arising out of the transaction will be cancelled.

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

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

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

22 I hereby cancel this transaction.

23

24 _____ (Date)

25
26 _____

Buyer's Signature

27 (c) Before furnishing copies of the "Notice of Cancellation"
28 to the buyer, both copies shall be completed by entering the
29 name of the seller, the address of the seller's place of
30 business, the date of the transaction, and the date, not earlier

1 than the third business day following the date of the
2 transaction, by which the buyer may give notice of cancellation.

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

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

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

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

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

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

1 forfeit all rights to the delivered goods.

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

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

12 (L) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE <—
13 SALE OR CONTRACT FOR THE SALE OF GOODS OR SERVICES HAVING A SALE
14 PRICE OF LESS THAN TWENTY-FIVE DOLLARS (\$25).

15 (M) A "NOTICE OF CANCELLATION" WHICH CONTAINS THE FORM AND
16 CONTENT REQUIRED BY RULE OR REGULATION OF THE FEDERAL TRADE
17 COMMISSION SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE
18 REQUIREMENTS OF THIS SECTION.

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

1 any other equitable relief deemed needed or proper.

2 (b) In any action brought under section 4 of this act, if
3 the court finds that a person, firm or corporation is wilfully
4 using or has wilfully used a method, act or practice declared
5 unlawful by section 3 of this act, the Attorney General ~~or the~~ <—
6 ~~appropriate District Attorney,~~ acting in the name of the
7 Commonwealth of Pennsylvania, may recover, on behalf of the
8 Commonwealth of Pennsylvania, a civil penalty of not exceeding
9 one thousand dollars (\$1,000) per violation, which civil penalty
10 shall be in addition to other relief which may be granted under
11 sections 4 and 4.1 of this act.

12 Section 9. Forfeiture of [Corporate] Franchise or Right to
13 Do Business; Appointment of Receiver.-- Upon petition by the
14 Attorney General ~~or District Attorney,~~ the court [of common <—
15 pleas of the county] having jurisdiction, [as hereinbefore
16 authorized,] may, in its discretion, order the dissolution, [or]
17 suspension or forfeiture of the franchise or right to do
18 business of any person, firm or corporation which violates the
19 terms of an injunction issued under section 4 of this act. In
20 addition, the court may appoint a receiver of the assets of the
21 company.

22 Section 9.1. Powers of Receiver.--When a receiver is
23 appointed by the court pursuant to this act, he shall have the
24 power to sue for, collect, receive and take into his possession
25 all the goods and chattels, rights and credits, moneys, and
26 effects, lands and tenements, books, records, documents, papers,
27 choses in action, bills, notes and property of every description
28 of the person or persons for whom the receiver is appointed,
29 received by means of any practice declared to be illegal and
30 prohibited by this act, including property with which such

1 property has been mingled if it cannot be identified in kind
2 because of such commingling, and to sell, convey, and assign the
3 same and hold and dispose of the proceeds thereof under the
4 direction of the court. Any person who has suffered damages as a
5 result of the use or employment of any unlawful practices and
6 submits proof to the satisfaction of the court that he has in
7 fact been damaged, may participate with general creditors in the
8 distribution of the assets to the extent he has sustained
9 provable losses. The court shall have jurisdiction of all
10 questions arising in such proceedings and may make such orders
11 and judgments therein as may be required.

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

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

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

3 Section 2. This amendatory act shall take effect
4 immediately.