

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 126

Session of
1985

INTRODUCED BY GREENLEAF, STAUFFER, MADIGAN, KRATZER, PECORA,
RHOADES, WENGER, CORMAN AND REIBMAN, JANUARY 14, 1985

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JANUARY 14, 1985

AN ACT

1 Amending the act of December 17, 1968 (P.L.1224, No.387),
2 entitled "An act prohibiting unfair methods of competition
3 and unfair or deceptive acts or practices in the conduct of
4 any trade or commerce, giving the Attorney General and
5 District Attorneys certain powers and duties and providing
6 penalties," prohibiting certain unfair or deceptive acts in
7 connection with advertisements offering prizes; and further
8 providing for the right to rescind contracts.

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

11 Section 1. Sections 2 and 3 of the act of December 17, 1968
12 (P.L.1224, No.387), known as the Unfair Trade Practices and
13 Consumer Protection Law, reenacted and amended November 24, 1976
14 (P.L.1166, No.260), are amended to read:

15 Section 2. Definitions.--As used in this act[.] :

16 "Advertisement" means any attempt directly or indirectly by
17 publication, dissemination, oral solicitation, endorsement or
18 circulation or by any other means to induce directly or
19 indirectly any person to enter into any obligation to purchase
20 goods or services or an interest in real property.

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 "Sales promotion" means an advertising scheme or plan that
9 attempts to induce a sale in part by offering prizes.

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
17 deceptive acts or practices" mean any one or more of the
18 following:

19 [(i)] (1) Passing off goods or services as those of another;

20 [(ii)] (2) Causing likelihood of confusion or of
21 misunderstanding as to the source, sponsorship, approval or
22 certification of goods or services;

23 [(iii)] (3) Causing likelihood of confusion or of
24 misunderstanding as to affiliation, connection or association
25 with, or certification by, another;

26 [(iv)] (4) Using deceptive representations or designations
27 of geographic origin in connection with goods or services;

28 [(v)] (5) Representing that goods or services have
29 sponsorship, approval, characteristics, ingredients, uses,
30 benefits or quantities that they do not have or that a person

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

3 ~~[(vi)]~~ (6) Representing that goods are original or new if
4 they are deteriorated, altered, reconditioned, reclaimed, used
5 or secondhand;

6 ~~[(vii)]~~ (7) 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)]~~ (8) Disparaging the goods, services or business of
10 another by false or misleading representation of fact;

11 ~~[(ix)]~~ (9) Advertising goods or services with intent not to
12 sell them as advertised;

13 ~~[(x)]~~ (10) Advertising goods or services with intent not to
14 supply reasonably expectable public demand, unless the
15 advertisement discloses a limitation of quantity;

16 ~~[(xi)]~~ (11) Making false or misleading statements of fact
17 concerning the reasons for, existence of, or amounts of price
18 reductions;

19 ~~[(xii)]~~ (12) Promising or offering prior to time of sale to
20 pay, credit or allow to any buyer, any compensation or reward
21 for the procurement of a contract 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)]~~ (13) Promoting or engaging in any plan by which
29 goods or services are sold to a person for a consideration and
30 upon the further consideration that the purchaser secure or

1 attempt to secure one or more persons likewise to join the said
2 plan; each purchaser to be given the right to secure money,
3 goods or services depending upon the number of persons joining
4 the plan. In addition, promoting or engaging in any plan,
5 commonly known as or similar to the so-called "Chain-Letter
6 Plan" or "Pyramid Club." The terms "Chain-Letter Plan" or
7 "Pyramid Club" mean any scheme for the disposal or distribution
8 of property, services or anything of value whereby a participant
9 pays valuable consideration, in whole or in part, for an
10 opportunity to receive compensation for introducing or
11 attempting to introduce one or more additional persons to
12 participate in the scheme or for the opportunity to receive
13 compensation when a person introduced by the participant
14 introduces a new participant. As used in this subclause the term
15 "consideration" means an investment of cash or the purchase of
16 goods, other property, training or services, but does not
17 include payments made for sales demonstration equipment and
18 materials for use in making sales and not for resale furnished
19 at no profit to any person in the program or to the company or
20 corporation, nor does the term apply to a minimal initial
21 payment of twenty-five dollars (\$25) or less;

22 [(xiv)] (14) Failing to comply with the terms of any written
23 guarantee or warranty given to the buyer at, prior to or after a
24 contract for the purchase of goods or services is made;

25 [(xv)] (15) Knowingly misrepresenting that services,
26 replacements or repairs are needed if they are not needed;

27 [(xvi)] (16) Making repairs, improvements or replacements on
28 tangible, real or personal property, of a nature or quality
29 inferior to or below the standard of that agreed to in writing;

30 (17) Failing in connection with any advertisement

1 indicating that a prize has been won:

2 (i) To indicate clearly and conspicuously the name and
3 address of the advertiser at the beginning of any advertisement.
4 If the advertisement is written, the information shall appear in
5 bold type at least two points larger than that used for the
6 major portion of the advertisement.

7 (ii) To indicate clearly in an advertisement that the
8 advertisement is a sales promotion.

9 (iii) To indicate clearly, conspicuously and proximately to
10 the prize being offered. The usual selling price or price range
11 for the identical merchandise or for comparable merchandise of
12 like grade of quality.

13 (iv) To provide a full and accurate description of any prize
14 offered. In the event the advertising premium consists of a
15 vacation or trip, the advertiser or the advertiser's agent shall
16 indicate clearly and conspicuously the name and location of
17 accommodations and whether transportation to and from the
18 vacation site or point of departure is included. No vacation or
19 trip shall be offered for which a deposit by the recipient is
20 required.

21 (v) To indicate clearly, if receipt of a prize is
22 conditional, the conditions that must be met before the prize
23 will be delivered.

24 (vi) To indicate to the recipient clearly and conspicuously
25 that a prize is no longer manufactured, damaged or less than
26 first quality.

27 (vii) To indicate at the recipient's request specifically
28 which prize will be received. To indicate clearly and
29 conspicuously the probability that the recipient will receive
30 each prize mentioned in an advertisement. The probability shall

1 be indicated proximately to the first mention of each prize and
2 shall be expressed in whole numbers, such as 1,000,000 to 1. If
3 the advertisement is written, the probability and any rules or
4 conditions, including eligibility, shall appear in bold type the
5 same size as that used for the major portion of the
6 advertisement.

7 (viii) To deliver, postage or delivery charges prepaid, an
8 unconditionally offered prize when requested by the recipient
9 within seven days of request unless the failure to deliver is
10 caused by reason beyond the control of the advertiser.

11 (18) Failing to include in a contract signed during a sales
12 promotion effort a cancellation clause in bold print which will
13 allow the consumer to cancel the contract, in writing, within
14 seventy-two hours and provide for a refund of any payment made
15 within thirty days of the cancellation. A copy of the contract
16 shall be given to the consumer at the time of signing.

17 ~~[(xvii)]~~ (19) Engaging in any other fraudulent conduct which
18 creates a likelihood of confusion or of misunderstanding.

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

1 advertisement.

2 Section 2. This act shall take effect in 60 days.