

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2181 Session of
2005

INTRODUCED BY HASAY, TIGUE, MUNDY, THOMAS, BELFANTI, BLACKWELL,
BOYD, BUNT, CALTAGIRONE, CASORIO, COSTA, DeLUCA, FORCIER,
GOODMAN, HENNESSEY, HERMAN, HESS, LEVDANSKY, McILHINNEY,
MUSTIO, O'NEILL, PETRARCA, PETRONE, PHILLIPS, RAYMOND,
REICHLEY, SATHER, B. SMITH, SOLOBAY, E. Z. TAYLOR, WILT AND
YOUNGBLOOD, NOVEMBER 1, 2005

REFERRED TO COMMITTEE ON COMMERCE, NOVEMBER 1, 2005

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," providing for the definition of "excessive
7 pricing"; further providing for the definitions of "unfair
8 methods of competition" and "unfair or deceptive acts or
9 practices"; prohibiting excessive pricing; and providing for
10 penalties.

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

13 Section 1. Section 2(4) of the act of December 17, 1968
14 (P.L.1224, No.387), known as the Unfair Trade Practices and
15 Consumer Protection Law, reenacted and amended November 24, 1976
16 (P.L.1166, No.260) and amended December 4, 1996 (P.L.906,
17 No.146), is amended and the section is amended by adding a
18 clause to read:

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

20 * * *

1 (1.1) "Excessive pricing" means pricing which is unwarranted
2 by market conditions current at the time of the pricing
3 practice. The term includes practices where either the price
4 being charged for goods or services has been increased at a
5 higher percentage for the ultimate consumer than the percentage
6 increase to the seller during the same period of time or where
7 the overall price of the goods or services has been increased in
8 order to take advantage of a perceived shortage in the goods or
9 services.

10 * * *

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

13 (i) Passing off goods or services as those of another[;]_.

14 (ii) Causing likelihood of confusion or of misunderstanding
15 as to the source, sponsorship, approval or certification of
16 goods or services[;]_.

17 (iii) Causing likelihood of confusion or of misunderstanding
18 as to affiliation, connection or association with, or
19 certification by, another[;]_.

20 (iv) Using deceptive representations or designations of
21 geographic origin in connection with goods or services[;]_.

22 (v) Representing that goods or services have sponsorship,
23 approval, characteristics, ingredients, uses, benefits or
24 quantities that they do not have or that a person has a
25 sponsorship, approval, status, affiliation or connection that he
26 does not have[;]_.

27 (vi) Representing that goods are original or new if they are
28 deteriorated, altered, reconditioned, reclaimed, used or
29 secondhand[;]_.

30 (vii) Representing that goods or services are of a

1 particular standard, quality or grade, or that goods are of a
2 particular style or model, if they are of another[;]_.

3 (viii) Disparaging the goods, services or business of
4 another by false or misleading representation of fact[;]_.

5 (ix) Advertising goods or services with intent not to sell
6 them as advertised[;]_.

7 (x) Advertising goods or services with intent not to supply
8 reasonably expectable public demand, unless the advertisement
9 discloses a limitation of quantity[;]_.

10 (xi) Making false or misleading statements of fact
11 concerning the reasons for, existence of, or amounts of price
12 reductions[;]_.

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

22 (xiii) Promoting or engaging in any plan by which goods or
23 services are sold to a person for a consideration and upon the
24 further consideration that the purchaser secure or attempt to
25 secure one or more persons likewise to join the said plan; each
26 purchaser to be given the right to secure money, goods or
27 services depending upon the number of persons joining the plan.

28 In addition, promoting or engaging in any plan, commonly known
29 as or similar to the so-called "Chain-Letter Plan" or "Pyramid
30 Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any

1 scheme for the disposal or distribution of property, services or
2 anything of value whereby a participant pays valuable
3 consideration, in whole or in part, for an opportunity to
4 receive compensation for introducing or attempting to introduce
5 one or more additional persons to participate in the scheme or
6 for the opportunity to receive compensation when a person
7 introduced by the participant introduces a new participant. As
8 used in this subclause the term "consideration" means an
9 investment of cash or the purchase of goods, other property,
10 training or services, but does not include payments made for
11 sales demonstration equipment and materials for use in making
12 sales and not for resale furnished at no profit to any person in
13 the program or to the company or corporation, nor does the term
14 apply to a minimal initial payment of twenty-five dollars (\$25)
15 or less[;]_.

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

19 (xv) Knowingly misrepresenting that services, replacements
20 or repairs are needed if they are not needed[;]_.

21 (xvi) Making repairs, improvements or replacements on
22 tangible, real or personal property, of a nature or quality
23 inferior to or below the standard of that agreed to in
24 writing[;]_.

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

28 (A) the identity of the seller;

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

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

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

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

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

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

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

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

30 (A) that any rustproofing of the new motor vehicle offered

1 by the motor vehicle dealer is optional;

2 (B) that the new motor vehicle has been rustproofed by the
3 manufacturer and the nature and extent, if any, of the
4 manufacturer's warranty which is applicable to that
5 rustproofing[;].

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

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

17 (xxii) Engaging in conduct which disadvantages a consumer by
18 charging an excessive price for goods or services.

19 Section 2. The act is amended by adding a section to read:

20 Section 9.4. Excessive Pricing.--(a) No seller shall charge
21 excessive prices to any consumer for any goods or services.

22 (b) It shall be a rebuttable presumption that a seller has
23 engaged in excessive pricing if the seller has increased prices
24 to the consumer for goods or services by more than twenty per
25 cent of his price for those same goods or services within seven
26 days prior to the instance of alleged excessive pricing. If a
27 seller's price to the original consumer results in a margin of
28 twenty per cent or more between the prices paid for by the
29 seller for the goods or services and the price the seller paid
30 to acquire the goods or services, the seller shall not be

1 entitled to rebut the presumption.

2 (c) The seller may rebut any presumption of excessive
3 pricing if he can show that the increase in the price he charges
4 was a direct result of increases in his acquisition costs for
5 those same goods and services.

6 (d) (1) Whenever the Attorney General has reason to believe
7 that any person is using any method, act or practice declared by
8 this section to be unlawful and that proceedings would be in the
9 public interest, he may bring an action in the name of the
10 Commonwealth against such person to restrain by temporary or
11 permanent injunction the use of such method, act or practice.

12 (2) Purchasers who believe they have been the victims of
13 excessive pricing may file a complaint with the Bureau of
14 Consumer Protection in the Office of Attorney General. The
15 bureau shall investigate any complaints filed by purchasers
16 pursuant to this clause. If the Attorney General finds, after
17 investigating a complaint, that there has been a violation of
18 this section, he may bring an action to impose a civil penalty
19 of up to ten thousand dollars (\$10,000) for each violation and
20 to seek restitution for the purchaser as provided for in this
21 act.

22 (e) Prior to the initiation of a civil action, the Attorney
23 General is authorized to require the attendance and testimony of
24 witnesses and the production of documents. For this purpose the
25 Attorney General may issue subpoenas, examine witnesses and
26 receive evidence. If a person objects to or otherwise fails to
27 comply with a subpoena or request for testimony, the Attorney
28 General may file in Commonwealth Court or any court of record of
29 the Commonwealth an action to enforce the subpoenas or request.
30 Notice of hearing of the action and a copy of all pleadings

1 shall be served upon the person who may appear in opposition.

2 (f) Any testimony taken or material produced shall be kept
3 confidential by the Attorney General except to the extent that
4 such information may be used in a judicial proceeding or if the
5 disclosure is authorized by the court for good cause shown or if
6 confidentiality is waived by the person being investigated and
7 by the person who has testified, answered interrogatories or
8 produced materials.

9 Section 3. This act shall take effect immediately.