

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 941 Session of  
2015

INTRODUCED BY DINNIMAN, JULY 7, 2015

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
JULY 7, 2015

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," further providing for definitions.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 2(4) of the act of December 17, 1968  
10 (P.L.1224, No.387), known as the Unfair Trade Practices and  
11 Consumer Protection Law, reenacted and amended November 24, 1976  
12 (P.L.1166, No.260) and amended December 4, 1996 (P.L.906,  
13 No.146), is amended to read:

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

15 \* \* \*

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

1 goods or services;

2 (iii) Causing likelihood of confusion or of misunderstanding  
3 as to affiliation, connection or association with, or  
4 certification by, another;

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

7 (v) Representing that goods or services have sponsorship,  
8 approval, characteristics, ingredients, uses, benefits or  
9 quantities that they do not have or that a person has a  
10 sponsorship, approval, status, affiliation or connection that he  
11 does not have;

12 (vi) Representing that goods are original or new if they are  
13 deteriorated, altered, reconditioned, reclaimed, used or  
14 secondhand;

15 (vii) Representing that goods or services are of a  
16 particular standard, quality or grade, or that goods are of a  
17 particular style or model, if they are of another;

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

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

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

25 (xi) Making false or misleading statements of fact  
26 concerning the reasons for, existence of, or amounts of price  
27 reductions;

28 (xii) Promising or offering prior to time of sale to pay,  
29 credit or allow to any buyer, any compensation or reward for the  
30 procurement of a contract for purchase of goods or services with

1 another or others, or for the referral of the name or names of  
2 another or others for the purpose of attempting to procure or  
3 procuring such a contract of purchase with such other person or  
4 persons when such payment, credit, compensation or reward is  
5 contingent upon the occurrence of an event subsequent to the  
6 time of the signing of a contract to purchase;

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

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

4       (xv) Knowingly misrepresenting that services, replacements  
5 or repairs are needed if they are not needed;

6       (xvi) Making repairs, improvements or replacements on  
7 tangible, real or personal property, of a nature or quality  
8 inferior to or below the standard of that agreed to in writing;

9       (xvii) Making solicitations for sales of goods or services  
10 over the telephone without first clearly, affirmatively and  
11 expressly stating:

12       (A) the identity of the seller;

13       (B) that the purpose of the call is to sell goods or  
14 services;

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

16       (D) that no purchase or payment is necessary to be able to  
17 win a prize or participate in a prize promotion if a prize  
18 promotion is offered. This disclosure must be made before or in  
19 conjunction with the description of the prize to the person  
20 called. If requested by that person, the telemarketer must  
21 disclose the no-purchase/no-payment entry method for the prize  
22 promotion;

23       (xviii) Using a contract, form or any other document related  
24 to a consumer transaction which contains a confessed judgment  
25 clause that waives the consumer's right to assert a legal  
26 defense to an action;

27       (xix) Soliciting any order for the sale of goods to be  
28 ordered by the buyer through the mails or by telephone unless,  
29 at the time of the solicitation, the seller has a reasonable  
30 basis to expect that it will be able to ship any ordered

1 merchandise to the buyer:

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

4 (B) if no time is clearly and conspicuously stated, within  
5 thirty days after receipt of a properly completed order from the  
6 buyer, provided, however, where, at the time the merchandise is  
7 ordered, the buyer applies to the seller for credit to pay for  
8 the merchandise in whole or in part, the seller shall have fifty  
9 days, rather than thirty days, to perform the actions required  
10 by this subclause;

11 (xx) Failing to inform the purchaser of a new motor vehicle  
12 offered for sale at retail by a motor vehicle dealer of the  
13 following:

14 (A) that any rustproofing of the new motor vehicle offered  
15 by the motor vehicle dealer is optional;

16 (B) that the new motor vehicle has been rustproofed by the  
17 manufacturer and the nature and extent, if any, of the  
18 manufacturer's warranty which is applicable to that  
19 rustproofing;

20 The requirements of this subclause shall not be applicable and a  
21 motor vehicle dealer shall have no duty to inform if the motor  
22 vehicle dealer rustproofed a new motor vehicle before offering  
23 it for sale to that purchaser, provided that the dealer shall  
24 inform the purchaser whenever dealer rustproofing has an effect  
25 on any manufacturer's warranty applicable to the vehicle. This  
26 subclause shall not apply to any new motor vehicle which has  
27 been rustproofed by a motor vehicle dealer prior to the  
28 effective date of this subclause.

29 (xxi) Relation to a propane gas dealer:

30 (A) excluding from a written contract with a propane gas

1 customer an option to buy provision whereby the customer may  
2 purchase the leased tank and equipment for fair market value,  
3 net of depreciation, at the expiration of the contract; or

4 (B) failing to provide direct oral disclosure of the  
5 following:

6 (I) the option to buy provision in subclause (A);

7 (II) the difference in price of propane gas for a customer-  
8 owned tank versus customer-leased tank at the time of contract  
9 execution; and

10 (III) the fair market value of the propane gas tank at the  
11 time of contract execution and a statement which clearly  
12 explains that the fair market value of the tank may change over  
13 the period of the contract term and depreciate in value prior to  
14 the expiration of the contract.

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

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