

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 97 Session of 2017

INTRODUCED BY GREENLEAF, TARTAGLIONE, RAFFERTY, FARNESE AND
BREWSTER, JANUARY 13, 2017

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JANUARY 13, 2017

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 and for
7 unlawful acts or practices and exclusions.

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

10 Section 1. Sections 2(4) and 3 of the act of December 17,
11 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
12 Consumer Protection Law, are amended to read:

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

14 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (xiv) Failing to comply with the terms of any written

1 guarantee or warranty given to the buyer at, prior to or after a
2 contract for the purchase of goods or services is made;

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

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

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

11 (A) the identity of the seller;

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

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

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

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

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

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

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

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

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

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

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

28 (xxi) Selling a good that fails to conspicuously state on
29 the label or packaging of the good an indication of the
30 manufacturer's estimated useful life for the good. This clause

1 shall not apply to a drug or food item required by law to
2 contain a label specifying an expiration date, sell-by date,
3 use-by date or other similar information relating to the time
4 period for safe consumption or best use of the drug or food
5 item.

6 [(xxi)] (xxii) Engaging in any other fraudulent or deceptive
7 conduct which creates a likelihood of confusion or of
8 misunderstanding.

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

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