

pleasure. The committees shall be under the direction of the Attorney General and their recommendations shall not be binding on the bureau. Members of the committees shall serve without compensation other than reimbursement for actual and necessary expenses incurred in the performance of their duties.

Section 2. This act shall take effect immediately.

APPROVED—The 17th day of December, A. D. 1968.

RAYMOND P. SHAFER.

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No. 387

AN ACT

HB 2431

Prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, giving the Attorney General and District Attorneys certain powers and duties and providing penalties.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Unfair Trade Practices and Consumer Protection Law.”

Section 2. Definitions.—As used in this act.

(1) “Documentary material” means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xii) Promising or offering to pay, credit or allow to any buyer, any compensation or reward for the procurement of a contract of purchase with others;

(xiii) Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

Section 3. Unlawful Acts or Practices; Exclusions.—Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. The provisions of this act shall not apply to any owner, agent or employe of any radio or television station, or to any owner, publisher, printer, agent or employe of a newspaper or other publication, periodical or circular, who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement.

Section 4. Restraining Prohibited Acts.—Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method, act or practice declared by section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The action may be brought in the court of common pleas of the county in which such person resides, has his principal place of business, or is doing business, or may be brought in the Commonwealth Court. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctions shall be issued without bond.

Section 5. Assurances of Voluntary Compliance.—In the administration of this act, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in such method, act or practice. Any such assurance shall be in writing and be filed with the court of common pleas in which the alleged violator resides, has his principal place of business, or is doing business, or the Commonwealth Court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to section 4.

Section 6. Civil Investigative Demand.—(a) Whenever the Attorney General believes that any person may be in possession, custody, or control of the original or a copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this act, he may execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying; providing that this section shall not be applicable to criminal prosecutions.

(b) Each such demand shall:

(1) State the statute and section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

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

(4) Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying.

(c) No such demand shall:

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

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

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

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

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

(3) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of

business in this State, or, if said person has no place of business in this State, to his principal office or place of business.

(e) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be designated by the Attorney General.

(f) No documentary material produced pursuant to a demand under this section shall, unless otherwise ordered by a court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, any person other than the authorized employe of the Attorney General, without the consent of the person who produced such material: Provided, That under such reasonable terms and conditions as the Attorney General shall prescribe, such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The Attorney General or any attorney designated by him may use such documentary material or copies thereof as he determines necessary in the enforcement of this act, including presentation before any court: Provided, That any such material which contains trade secrets or other highly confidential matter shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing such material.

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

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

(i) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file, in the court of common pleas of the county in which such person resides, is found, or transacts business, and serve upon such

person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county, such petition shall be filed in the county in which such person maintains his principal place of business, or in the Commonwealth Court. Whenever any petition is filed in the court of common pleas as authorized under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal to the Pennsylvania Supreme Court.

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

Section 8. Civil Penalties.—Any person who violates the terms of an injunction issued under section 4 of this act shall forfeit and pay to the Commonwealth a civil penalty of not more than five thousand dollars (\$5,000) for each violation. For the purposes of this section the court of common pleas issuing an injunction shall retain jurisdiction, and the cause shall be continued; and, in such cases, the Attorney General, acting in the name of the Commonwealth of Pennsylvania, may petition for recovery of civil penalties.

Section 9. Forfeiture of Corporate Franchise.—Upon petition by the Attorney General, the court of common pleas of the county having jurisdiction, as hereinbefore authorized, may, in its discretion, order the dissolution or suspension or forfeiture of the franchise of any corporation which violates the terms of an injunction issued under section 4 of this act.

Section 10. Effective Date.—This act shall take effect immediately.

APPROVED—The 17th day of December, A. D. 1968.

RAYMOND P. SHAFER.