

## No. 2004-196

## AN ACT

## HB 2090

Amending the act of December 17, 1968 (P.L.1224, No.387), entitled "An act 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," further providing for rescission of contracts.

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

Section 1. Section 7(j) of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, reenacted and amended November 24, 1976 (P.L.1166, No.260), is amended and the section is amended by adding subsections to read:

Section 7. Contracts; Effect of Rescission.—\* \* \*

**(j) Rights afforded under this section may be waived only in circumstances where the goods or services are needed to meet a bona fide immediate personal emergency of the buyer and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.]**

**(j.1) (1) Rights afforded under this section may be waived only through the execution of an emergency authorization form:**

**(i) where goods or services have a sale price of twenty-five dollars (\$25) or more;**

**(ii) are contracted to be sold to a buyer as a result of or in connection with a contact made by the buyer to the seller; and**

**(iii) the goods or services contracted for are needed to remedy a bona fide emergency on the buyer's residential real property. Nothing in this subsection shall prohibit a seller contacted by a buyer as a result of a bona fide emergency from taking any immediate preliminary steps necessary to remedy a clear and immediate danger that may cause death or serious bodily injury to the buyer, the seller or other persons without having to obtain the emergency authorization form.**

**(2) To obtain a waiver under this section, the seller must furnish the buyer with an emergency work authorization form as well as a written estimate of the goods or the performance of services. This authorization will allow the seller to immediately proceed with the delivery of the goods or the performance of the services necessary to remedy the bona fide emergency.**

**(3) The emergency work authorization form provided for in this section shall be:**

- (i) on a preprinted card at least four inches by six inches in size; and
- (ii) the writing thereon must be in at least ten-point bold face type in the following form:

**Emergency Work Authorization**

(Enter Date of Transaction)

*You, the buyer, having initiated the contract for the goods and services of (enter the name of the seller), the seller, for the remediation of a bona fide emergency hereby authorize the seller to immediately proceed with the delivery of goods or the performance of services necessary to remedy the bona fide emergency. By providing the seller with this authorization, you agree to make full payment for the goods or services provided. You agree not to exercise the rights afforded you by the Unfair Trade Practices and Consumer Protection Law to cancel the contract within three business days from the above date.*

*You, the buyer, attest that the attached estimate is an accurate description of the goods and services which will be provided by the seller for the correction of the bona fide emergency:*

.....

(Date)

.....

(Buyer's Signature)

*(j.2) Prior to the buyer signing the emergency authorization form, the seller shall provide the buyer with a written estimate of the total cost of the goods or services, including any fee for the service call. The estimate shall be provided prior to the delivery of the goods or the performance of the services necessary to remedy a bona fide emergency. If the cost of the goods or services actually provided exceeds the estimate provided, the seller must obtain further written authorization from the buyer to perform the additional work or service. Nothing in this subsection shall be construed to prohibit the seller from charging the buyer a fee for a service call for the purpose of determining the cause of and the appropriate remedy of the bona fide emergency, regardless of whether further goods or services are provided. The seller shall immediately disclose to the buyer whether a service call fee shall be charged upon initiation by the buyer of a contract for goods or services for the remediation of a bona fide emergency. The seller may also charge a fee for immediate preliminary steps without having to obtain a written emergency authorization.*

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*(n) As used in this section, "bona fide emergency" means any condition existing on the buyer's residential real property which renders or has the capability to render the residential real property uninhabitable. The term includes, but shall not be limited to, conditions significantly affecting the heating system, electrical system, plumbing system, ventilation system, roof or outer walls of the residential real property.*

*(o) As used in this section, "immediate preliminary steps" means only those steps necessary to eliminate a clear and immediate danger that may cause death or serious bodily injury to the buyer, the seller or other persons. The term includes, but shall not be limited to, termination of the carrying of gas, oil or oil product, sewage or water through an underground pipe or the carrying of electric or communication service through an underground conductor, pipe or structure. The term shall not be construed as including any other steps necessary to repair and remedy the bona fide emergency.*

Section 2. The amendment or addition of section 7(j), (j.1), (j.2), (n) and (o) of the act shall apply to contracts entered into on or after the effective date of this act.

Section 3. This act shall take effect in 60 days.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL