

Legislation Text

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Amending Title 9 (“Regulation of Businesses, Trades and Professions”) of The Philadelphia Code to add a new chapter concerning protections for consumers against unfair methods of competition and unfair or deceptive acts or practices, and providing remedies, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-6200. CONSUMER PROTECTION ORDINANCE.

§ 9-6201. *Definitions.*

(1) For purposes of this Chapter the following terms shall have the following meanings:

- (a) Person. Natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities.*
- (b) Statement. Any oral, written, digital, or electronic statement, visual description or other representation or omission of any kind made in connection with trade or commerce.*
- (c) Trade or Commerce. The advertising, offering for sale, lease, rental, or distribution, or the sale, lease, rental, 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 situated.*
- (d) Unfair Methods of Competition or Unfair or Deceptive Acts or Practices. Any one or more of the following:*
 - (i) Passing off goods or services as those of another;*
 - (ii) Causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;*
 - (iii) Causing likelihood of confusion or 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 the person does not have;*
- (vi) *Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second hand;*
- (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, including by failing to disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications, or conditions on such offer;*
- (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 prior to the time of sale to pay, credit or allow to any buyer, any compensation or reward for the procurement of a contract for purchase of goods or services with another or others, or for the referral of the name or names of another or others for the purpose of attempting to procure or procuring such a contract of purchase with such other person or persons when such payment, credit, compensation or reward is contingent upon the occurrence of an event subsequent to the time of the signing of a contract to purchase;*
- (xiii) *Promoting or engaging in any plan by which goods or services are sold to a person for a consideration and upon the further consideration that the purchaser secure or attempt to secure one or more persons likewise to join the said plan, each purchaser to be given the right to secure money, goods or services depending upon the number of persons joining the plan. In addition, promoting or engaging in any plan, commonly known as or similar to the so-called "Chain-Letter Plan," "Pyramid Club" or "Pyramid Promotional Scheme" as those terms are defined in 73 P.S. § 201-2, but shall not include a plan or operation that does not cause "inventory loading" and that implements a "bona fide inventory repurchase plan" consistent with the requirements of 73 P.S. § 201-3;*
- (xiv) *Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;*
- (xv) *Knowingly misrepresenting that services, replacements or repairs are needed or not needed;*

- (xvi) *Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;*
- (xvii) *Making solicitations for sales of goods or services over the telephone without first clearly, affirmatively and expressly stating:*
 - (A) *the identity of the seller;*
 - (B) *that the purpose of the call is to sell goods or services;*
 - (C) *the nature of the goods or services; and*
 - (D) *that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion;*
- (xviii) *Using a contract, form or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;*
- (xix) *Soliciting any order for the sale of goods to be ordered by the buyer unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:*
 - (A) *within that time clearly and conspicuously stated in any such solicitation; or*
 - (B) *if no time is clearly and conspicuously stated, within thirty days after receipt of a properly completed order from the buyer, provided, however, where, at the time the merchandise is ordered, the buyer applies to the seller for credit to pay for the merchandise in whole or in part, the seller shall have fifty days, rather than thirty days, to perform the actions required by this subclause;*
- (xx) *The use, in any statement, of exaggeration, innuendo, or ambiguity as to a material fact, or the failure to state a material fact, if such use of, or failure to state, a material fact deceives or tends to deceive;*
- (xxi) *Ignoring, obstructing, or failing to promptly grant a consumer's request to cancel a service or product subscription, when such cancelation was expressly or impliedly advertised as a feature of the service or subscription or where the service or subscription is subject to recurring charges or automatic renewal;*
- (xxii.) *Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.*

§ 9-6202. *Prohibited Conduct.*

- (1) *It is unlawful for any person to engage in unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce directly or indirectly impacting one or more individuals in the City.*
- (2) *This provision shall not apply to the extent that the conduct of any provider or user of interactive computer services is exempt from liability pursuant to Section 230 of the Communications Decency Act, codified as 47 U.S.C. § 230. This provision also shall not apply to any publisher of radio, television, or print medium 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 an advertisement for another.*
- (3) *Each individual statement, description, or other representation or omission that constitutes an unfair method of competition or unfair or deceptive act or practice shall give rise to a distinct and independent violation of this Chapter. Violations shall be further multiplied by one of the following, whichever is greater: (.1) the number of days on which an individual statement, description or other representation or omission that constitutes an unfair method of competition or unfair or deceptive act or practice is distributed, broadcast, posted, published, or otherwise exposed to the public, or (.2) the number of Philadelphia consumers reached by such statement, description or other representation or omission.*

§ 9-6203. *Enforcement.*

- (1) *The Law Department and any other agency as may be designated by the Mayor shall have the authority to investigate violations of this Chapter, including through the issuance of subpoenas and testing to identify potential violations.*
- (2) *The City, through the Law Department, may file an action in the name of the City in any court of competent jurisdiction against any person or persons alleged to have violated this Chapter, seeking relief under this Chapter, including restitution for persons aggrieved by the violation.*

§ 9-6204. *Remedies.*

In any action filed pursuant to this Chapter, a court may order the following:

- (1) *Injunctive relief and such other equitable relief, as appropriate.*
- (2) *Civil penalties. Each violation of this Chapter shall be punishable by a civil penalty of \$2,000.*
- (3) *Compensatory damages and restitution. In any action filed by the City, a violator of this Chapter shall be liable to any person aggrieved by the violation for actual damages caused and restitution of all monies, property, or other things of value, or proceeds thereof, received directly or indirectly as a result of such violation.*
- (4) *Attorney's fees and costs. In any action filed under this Chapter in which the City prevails, the City shall be entitled to reimbursement for attorney's fees and costs, including the cost of an investigation. In the event that such fees and costs are not recovered from a defendant, the City is*

entitled to deduct such amounts from the grand recovery prior to distribution to other persons aggrieved.

§ 9-6205. Regulations. The Law Department may adopt such rules and regulations as may be necessary to effectuate the purposes of this Chapter, including regulations defining certain specific unfair methods of competition or unfair or deceptive acts or practices.

SECTION 2. This Ordinance shall become effective immediately.

Explanation:

Italics indicate new matter added.