

Conference Report on House Bill 485 (PN 3821)

Following is a summary of the highlights of this bill which amends the "Unfair Trade Practices Act and Consumer Protection Law" of 1968.

Section 2 - Definition of "Unfair Methods of Competition" and "Unfair or Deceptive Acts or Practices".

Subsection xii, a prohibition against promising or offering prior to the time of sale to pay any kind of compensation or reward for the procurement of a contract for purchase of goods or services with another or others for the referral 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.

The present subsection xiii which is a catch-all of "engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding" is changed from subsection xiii to subsection xvii. In regard to the catch-all, this catch-all is necessary to give the Attorney General flexibility in enforcement.

Subsection xii -outlaws two types of transactions. The first involves the sale of goods or services to a person for consideration and upon further consideration that the purchaser secures or attempts to secure one or more persons likewise to join the said plan; as purchaser he is then given the right to secure moneys, goods or services depending on the number or persons joining the plan.

The second type of transaction outlaws the "chain letter plan" or "pyramid club". This means any plan in which a participant pays valuable consideration, in whole or part for an opportunity to receive compensation for introducing or attempting to introduce one or more additional persons to participate in this scheme or for the opportunity to receive compensation when a person introduced by the participant, introduces a new participant ("consideration" means an investment of cash or the purchase of goods or other property, training or service), and does not apply to a minimum initial payment of \$25 or less. Also does not include payments made for sale demonstration equipment and materials for use in making sales and not for resale furnished at no profit to any person in the program or to the company or corporation.

Subsection xiv fails to comply with the terms of a written guarantee or warranty.

Section 15 - Knowingly misrepresents that services, replacements or repairs are needed if they are not needed.

Subsection svi - Making repairs, improvements or replacements of a nature or quality inferior to or below the standards of that agreed to in writing.

Section 3 - Unlawful Acts

Acts are unlawful if they are defined by subclauses i-xvii and regulations promulgated under Section 3.1 of this act.

Section 3.1 - Regulations

The Attorney General may adopt after public hearing on rules and regulations as may be necessary for the enforcement and administration of this act.

Section 4.1 - Provides that whenever any court issues a permanent injunction to restrain violations of this act, the court may in its discretion order a defendant to pay: (1) the court costs of the action and (2) restitution, that is, restoring to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violations of this act.

Section 5 - Assurances of voluntary compliance may include a stipulation for voluntary payment by the alleged violator providing for restitution.

Section 6 - Deals with civil investigative demands - is repealed entirely.

Section 7 - Provides for a three day cooling-off period for avoiding the contract for goods or services having a sale price of \$25 or more. This notice must be given in boldface type. The seller may not misrepresent in any way the buyer's right to cancel. Any valid notice of a cancellation by a buyer shall be honored by the seller. This bill adopts the FTC standards for notice of cancellation forms; rights afforded under this section may be waived only where the goods and services are needed to meet a bona fide immediate personal emergency of the buyer and the buyer furnishes the seller with a 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.

Section 8 - Civil Penalties

Civil penalties may be levied for violating the terms of an injunction or assurance of voluntary compliance filed under Section 5 (no more than \$5,000 for each violation). Civil penalties may be sought by the Attorney General or the District Attorney. For willful violations, there are civil penalties not exceeding \$1,000 per violation and these penalties are in addition to any other penalties.

Section 9 - In addition to ordering forfeiture of franchise or right to do business, the court may appoint a receiver of the assets of the company under Section 9.1. The receiver has the power to sue for, collect, receive and take into his possession all goods or personal property or books, etc. of the company.

Section 9.2 - Private actions are permitted for violations of this act to recover actual damages or \$100, whichever is greater. However, the court may in its discretion award three times the actual damages but not less than \$100.

Effective Date - This act shall take effect immediately upon enactment.