



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

**COPY**

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ATTORNEY GENERAL

June 1, 2005

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*Via Hand Delivery*

Honorable Robert J. Flick  
Pennsylvania House of Representatives  
315 Main Capitol Building  
Harrisburg, PA 17120-2020

RE: House Bill 920 and House Bill 1042

Dear Representative Flick:

I am writing to comment on two bills presently before the House Consumer Affairs Committee which are the subject of an upcoming informational hearing. House Bill 920 and House Bill 1042 would amend Pennsylvania's Unfair Trade Practices and Consumer Protection Law to establish two additional unfair or deceptive acts and practices, each of which would constitute violations of the law. House Bill 920 addresses matters relating to the solicitation of magazine subscriptions and House Bill 1042 concerns maintenance service contracts.

As you know, Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 - 201-9.3 ("Consumer Protection Law") prohibits "unfair or deceptive acts or practices" and then proceeds to list twenty-one instances of such conduct, concluding with what is commonly called the "catch-all" provision. Pennsylvania's Supreme Court has held that the Consumer Protection Law is predicated on a recognition of the often unequal bargaining power between consumers and businesses in the marketplace. Therefore, the Court has held that the statute should be construed liberally to prevent unfair or deceptive practices and protect the public. Courts have further held that the Consumer Protection Law was designed to promote the full disclosure of information to consumers.

Under House Bill 920, it would be a violation of the Consumer Protection Law for a business to fail to disclose key terms of a magazine subscription to consumers, including: the conditions of the subscription, including any automatic renewals; the period during which a consumer may accept or reject magazines received as a result of an automatic renewal; and the manner in which a consumer can cancel a subscription in order to avoid an automatic renewal.

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Our position is that the Consumer Protection Law already requires the disclosure of such information to consumers in solicitations and offers they receive, whether for magazine subscriptions, book club memberships, CD or DVD clubs or other similar services. For the reasons noted previously in this letter, the Consumer Protection Law has been held to require the disclosure of all material terms of an offer. Such disclosures must be clear and conspicuous. Should the General Assembly decide to mandate specific disclosures in magazine offers or other solicitations, our office would have the authority under the Consumer Protection Law to bring legal action against any business that fails to provide the requisite disclosures.

In the case of House Bill 1042, our office would maintain that consumers may not be billed for "renewals" of any contracts, including a maintenance service contract, unless the prospect of renewal was clearly and conspicuously disclosed to the consumer at the time the contract was entered. The terms of any renewal would also need to be disclosed. Again, however, if the Pennsylvania legislature feels that additional protections are necessary in this area, our office would serve as the enforcement authority for any such changes.

In view of the purposes for which Pennsylvania's Consumer Protection Law was established, the law has been read to require affirmative disclosures by a seller to prevent misrepresentation and deception. We firmly believe that the situations contemplated by House Bills 920 and 1042 are appropriate cases for these disclosures and therefore they are already required under the law. Additionally, many members of the Committee will recall the 1996 amendment to the statute which changed the "catch-all" provision to prohibit "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." This language provides added protections for consumers and additional authority for our office to act to halt unfair and deceptive acts and practices.

While we believe the Consumer Protection Law provides sufficient protections for Pennsylvania's consumers from the conduct addressed by these bills, we would be happy to work with the Committee on any issues prompted by, or relating to, these subjects or other consumer-related matters. Please feel to contact me or Annmarie Kaiser with any questions or if you require additional information.

Sincerely,



Frank T. Donaghue  
Chief Deputy Attorney General  
Director, Bureau of Consumer Protection

cc: Annmarie Kaiser, Director, Legislative Affairs

THOMAS A. TANGRETTI, MEMBER

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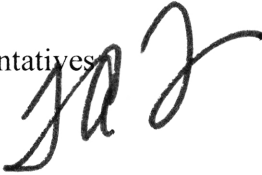
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**MEMORANDUM**

**TO:** All Members of the House of Representatives

**FROM:** Representative Thomas A. Tangretti 

**DATE:** March 2, 2005

**SUBJECT:** Re-introduction of Legislation:  
**PROHIBITING NEGATIVE OPTION BILLING FOR RENEWAL OF  
MAINTENANCE SERVICE CONTRACTS**

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In the coming weeks, I plan to reintroduce legislation aimed protecting consumers from unfair billing practices.

Specifically, my proposal, previously House Bill 459, would amend the Unfair Trade Practices and Consumer Protection Law by prohibiting the practice of negative option billing on service contracts. This practice allows businesses to renew service and maintenance contracts automatically once they lapse unless a customer specifically request that the contract be terminated. Under my proposal, a consumer would have to specifically order a renewal on a service and maintenance contract before a business could charge them.

Previous co-sponsors of this legislation include: Laughlin, Tigue, Readshaw, Manderino, Belardi, Belfanti, Bishop, Cappelli, Cawley, Corrigan, Cruz, Curry, Daley, Deluca, DeWeese, Freeman, Gabig, George, Grucela, Harhai, Hennessey, Horsey, James, Keller, Lederer, Levdansky, Maher, Melio, Micozzie, Mundy, Myers, Pallone, Petrarca, Pistella, Santoni, Saylor, Scrimenti, Shaner, Solobay, Staback, Surra, Thomas, Travaglio, Walko, Wansacz, Washington and Reichley.

If you are interested in co-sponsoring this consumer protection legislation, please contact Cynthia Clory at 3-5963 or [cclory@pahouse.net](mailto:cclory@pahouse.net).