The Commonwealth of Massachusetts

GENERAL LAWS
RELATING TO THE REGULATION OF
BUSINESS PRACTICES FOR
CONSUMER PROTECTION

CHAPTER 93A AND RULES AND
REGULATIONS

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To the People of Massachusetts:

As our society has become more sophisticated, so have the methods used by the unscrupulous to separate the wage-earner from his money.

In an effort to protect the consumer from deceptive business and sales practices, the General Court has enacted pioneering legislation which will bring under control a wide variety of business and advertising practices. This legislation gives your Attorney General the power to prevent unfair competition or unfair or deceptive business methods and to promulgate and enforce at the state level rules and regulations consistent with Federal Trade Commission and Federal Court rulings on the federal level.

As Attorney General, I believe the diligent application of this act will provide more and better protection to the honest businessman and Bay State wage-earner alike and help assure every one of our state’s consumers a dollar’s worth of value for every dollar he spends.

Eliot L. Richardson
CHAPTER 93A.

REGULATION OF BUSINESS PRACTICES FOR CONSUMERS

PROTECTION.

SECTION 1. The following words, as used in this chapter unless the text otherwise requires or a different meaning is specifically required, shall mean:

(a) "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(b) "Trade" and "commerce" shall include 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 shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.

(c) "Documentary material" shall include 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.

SECTION 2. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(c) The attorney general may make rules and regulations interpreting the provisions of subsection 2(a) of this chapter. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act), as from time to time amended.

SECTION 3. (1) Nothing in this chapter shall apply to

(a) transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the commonwealth or of the United States; or

(b) trade or commerce of any person of whose gross revenue at least twenty per cent is derived from transactions in interstate commerce, excepting however transactions and actions which (i) occur primarily and substantially within the commonwealth, and (ii) as to which the Federal
Trade Commission or its designated representative has failed to assert in writing within fourteen days of notice to it and to said person by the attorney general its objection to action proposed by him and set forth in said notice; or

(c) transactions or actions of any person who shows that he has had served upon him by the Federal Trade Commission a complaint pursuant to 15 U.S.C. 45(b) relating to said transactions or actions until the Federal Trade Commission has either dismissed said complaint, secured an assurance of voluntary compliance, or issued a cease and desist order relating to said complaint pursuant to 15 U.S.C. 45(b).

(2) For purposes of (b) and (c) the burden of proving exemptions from the provisions of this chapter shall be upon the person claiming the exemptions.

Section 4. Whenever the attorney general has reason to believe that any person is using or is about to use any method, act or practice declared by section two of this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice. At least ten days prior to commencement of any action under this section, the attorney general shall notify the person of his intended action, and give the person an opportunity to confer with the attorney general in person or by counsel or other representative as to the proposed action. Notice shall be given the person by mail, postage prepaid, sent to his usual place of business, or, if he has no usual place of business, to his last known address. The action may be brought in the superior court of the county in which such person resides or has his principal place of business, or, with the consent of the parties, may be brought in the superior court of Suffolk county. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter; provided, however, that no restraining order or injunction shall be issued except upon notice and an opportunity to be heard. Any district attorney or law enforcement officer receiving notice of any alleged violation of this chapter shall immediately forward written notice of the same with any other information that he may have to the office of the attorney general. Any person who violates the terms of an injunction issued under this section shall forfeit and pay to the commonwealth a civil penalty of not more than ten thousand dollars for each violation. For the purposes of this section, the court issuing such injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for recovery of such civil penalty.

Section 5. In any case where the attorney general has authority to institute an action or proceeding under section four of this chapter, in lieu thereof he may accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be en
gaged or to have been engaged in such method, act or practice. Such assurance may include a stipulation for the voluntary payment by such person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance of discontinuance shall be in writing and be filed with the superior court of Suffolk county. Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest.

Section 6. The attorney general, whenever he believes any person to be or to have been in violation of this chapter, may examine or cause to be examined for that purpose any books, records, papers and memoranda of whatever nature relevant to such alleged violation. The attorney general may require the attendance of such person or of any other person having knowledge in the premises at any place in the county where such person resides or has a place of business or in Suffolk county if such person is a nonresident or has no place of business within the state, and may take testimony and require proof material for his information, and may administer oaths or take acknowledgment in respect of any book, record, paper or memorandum. The attorney general shall serve notice of the time, place and cause of such examination or attendance at least ten days prior to the date of such examination.

(a) Service of any such notice 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.

(b) Each such notice shall:

1. State the time and place for taking the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

2. State the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation;

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

4. Prescribe a return date within which the documentary material is to be produced; and
(5) 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 notice 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 contains trade secret information, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

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 agreed upon by the person served and the attorney general. Any book, record, paper, memorandum or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same.

At any time prior to the date specified in the notice, or within twenty-one days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 7. A person upon whom a notice is served pursuant to the provisions of section six shall comply with the terms thereof unless otherwise provided by the order of a court of this state. Any person who fails to appear, or with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation 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 notice, or knowingly conceals any relevant information, shall be fined not more than five thousand dollars.

Whenever any person fails to comply with any notice 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 may file, in the superior court of the county in which such person resides or has his principal place of business or of Suffolk county if such person is a nonresident or has no principal place of business in this state, and serve upon such person, or in the same manner
as provided in section six, a petition for an order of such court for the enforcement of this section. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

SECTION 8. Upon petition by the attorney general, the court may for habitual violation of injunctions issued pursuant to section four order the dissolution, or suspension or forfeiture of franchise of any corporation or the right of any foreign corporation to do business in the commonwealth whenever said corporation violates the terms of an injunction issued under section four of this chapter.

SECTION 9. This act shall be known and designated as the “Regulation of Business Practice and Consumer Protection Act.”

Approved December 26, 1967.
RULES AND REGULATIONS

The following Rules and Regulations are promulgated pursuant to Section 2(c) of General Laws, Chapter 93A for purposes of determining whether conduct, terminology or representations involve unfair methods of competition or unfair or deceptive acts or practices, in violation of Section 2(a) of General Laws, Chapter 93A. These Rules and Regulations are not intended to be all inclusive as to the types of activities declared unlawful by Section 2(a) but are intended to be of general application.

SECTION A

DEFINITIONS:

As used in these Rules and Regulations, the following words shall have the following meanings:

"Product" includes goods, whether tangible or intangible, real, personal, or mixed, services, or franchise or distribution systems of any nature whatsoever.

"Sell" includes lease, rent, or barter.

"Buyer" includes a lessee or renter.

"Bait Advertising" is an alluring but insincere offer to sell a product which the advertiser does not intend or want to sell. Its purpose is to switch consumers from buying the advertised product in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a product of the type so advertised.

FALSE ADVERTISING:

I. A. No advertisement containing an offer to sell a product shall be made when the offer is not a bona fide effort to sell the advertised product.

B. 1. No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

2. Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.

C. No act or practice shall be engaged in by an advertiser or seller to discourage the purchase of the advertised product as part of a bait scheme to sell another product.

For example, among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:
1. The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.

2. The disparagement by acts or words of the advertised product or disparagement with respect to the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it.

3. The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.

4. The refusal to take orders for the advertised product to be delivered within a reasonable period of time.

5. The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.

6. Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product.

D. No practice shall be pursued by an advertiser or seller in the event of sale of the advertised product of obtaining or attempting to obtain a recission of the sale for the purpose of selling another product in its stead. Among acts or practices which are relevant in determining if the initial sale was in good faith, and not a strategem to sell another product are:

1. Accepting a deposit for the advertised product, then switching the buyer to a higher-priced product.

2. Failure to make delivery of the advertised product within a reasonable time or to make a refund.

3. Disparagement by acts or words of the advertised product, or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it.

4. The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. Sales of the advertised product do not preclude the existence of a bait and switch scheme if the sales are a mere incidental by-product of the fundamental plan and are intended to provide an aura of legitimacy to the over-all operation.

II. Deceptive Advertising of Guarantees

A. In determining whether terminology and direct or implied representations concerning guarantees, however made, i.e., in advertising or otherwise, in connection with the sale or offering for sale of a product, may be in violation of General Laws, Chapter 93A, Section 2(a), the following general principles will be used:
B. In general, any guarantee in advertising shall clearly and conspicuously disclose:

1. The nature and extent of the guarantee. This includes disclosure of:
   a. What product or part of the product is guaranteed.
   b. What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee.
   c. What is the duration of the guarantee.
   d. What, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

2. The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and

3. The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. For example, it should be made clear whether the manufacturer or the retailer is the guarantor.

C. 1. As to those guarantees which are adjusted by the guarantor on a pro rata basis, the advertising relating thereto should clearly disclose this fact, the basis on which they will be pro rated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.

2. If these guarantees are to be adjusted on the basis of a price other than that paid by the buyer, this price should be clearly and conspicuously disclosed.

Example: During the course of a sale, “A” sells to “B” for $20 and with a 12 month guarantee a battery that he regularly sells for $25. After 6 months the battery proves defective. If “A” adjusts on the basis of the price “B” paid, $20, “B” will only have to pay ½ of $20, or $10, for a new battery. If “A” instead adjusts on the basis of the regular selling price, “B” will owe ½ of $25, or $12.50 for a new battery. The guarantor would be required to disclose here the following: that this was a 12 month guarantee, that the regular selling price, rather than the actual sale price, would be used in the adjustment, that there would be an adjustment on the basis of the time that the battery was used and, if factual, that he would not pay the adjustment amount in cash, but would make an adjustment on a new battery.

D. 1. “Satisfaction or your money back,” “10 day free trial,” or similar representations will be construed as a guarantee that the full purchase price will be refunded promptly at the option of the buyer.
2. If such guarantee is subject to any conditions or limitations whatsoever, they shall be set forth as provided for in B.

*Example:* A rose bush is advertised under the representation “Satisfaction or your money back.” The guarantor requires return of the product within 1 year of purchase date before he will make refund. These limitations, i.e., “return” and “time” shall be clearly and conspicuously disclosed in the ad.

E. When a product is represented as “guaranteed for life” or as having a “lifetime guarantee,” the meaning of the term “life” or “lifetime” should be explained.

*Example:* “A” advertised that his transmission was guaranteed for “life”, whereas his guarantee ran for the “life of the car” in which the transmission was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the “life” referred to.

F. 1. Advertisements which contain representations of guarantees that assure prospective buyers that savings may be realized in the purchase of the advertiser’s products, such as “Guaranteed to save you 50%,” shall include a clear and conspicuous disclosure of what the guarantor will do if the savings are not realized, together with any time or other limitations that he may impose. Guarantees of this type may constitute affirmative representations of fact and, in this respect, are governed by H.

G. 1. A seller or manufacturer shall not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

2. A specific example of refusal to perform obligations under the guarantee is use of “Satisfaction or your money back” when the guarantor cannot or does not intend promptly to make full refund upon request.

H. Where guarantees are employed in such a manner as to constitute representations of material facts, the guarantor not only undertakes to perform under the terms of the guarantee, but also assumes responsibility under the law for the truth of the representations made.

*Example 1:* “Guaranteed for 36 months” applied to a battery is a representation that the battery can normally be expected to last for 36 months and should not be used in connection with a battery which can normally be expected to last for only 18 months.

*Example 2:* “Guaranteed to grow hair or money back” is a representation that the product will grow hair and should not be used when in fact such product is incapable of growing hair.

*Example 3:* “We guarantee you will earn $500 a month” is a representation that prospective employees will earn a minimum of $500 each month and should not be used unless such is the fact.

I. The term “unconditionally guaranteed” should not be used when a guarantee is restricted in any manner other than as to time and when
there is a time limit, it should be clearly disclosed (e.g., "unconditionally guaranteed for 3 years"). An "unconditional guarantee" is considered as an undertaking on the part of the guarantor either to refund the full purchase price of the product so guaranteed or to repair or replace such product should it prove defective in any respect, all at the option of the buyer.

(Note: The unqualified use of the word "guaranteed" shall be considered as a representation that an article so described is "unconditionally guaranteed").

III. Deceptive Pricing

A. No claim or representation shall be made by any means which has the capacity or tendency or effect of deceiving buyers or prospective buyers as to the value or the past, present, common or usual price of a product, or as to any reduction in price of a product, or any saving relating to a product. Savings or value claims utilized in connection with terms such as "originally," "formerly," "regularly," "usually," "comparable value," "list price" or other like terms, expressions or representations must be based on facts provable by the claimant or advertiser,

1. By his own records; or

2. By reasonably substantial competitive sales in the trading area where such claims or representations are made, under circumstances and conditions as represented or implied by the claims or representations.

IV. General Misrepresentations

A. No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

B. No advertisement shall be used which would mislead or tend to mislead buyers or prospective buyers, through pictorial representations or in any other manner, as to the product being offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith, shall clearly indicate the exact product being offered for sale at the advertised price.

V. Referral Schemes

A. No plan or scheme of inducing purchases, or entering into obligations by representations and promises such as the following, or conditioned thereon, shall be used:
1. That the seller would pay to each buyer certain money, credit or anything of value for each of any number or of a certain number of prospective buyers referred or recommended by each buyer, or for each such prospective customer so referred who becomes a buyer, and to whom the same representations and promises would be made, and

2. That the buyers' purchases may thus be free or paid off in whole or in part by such money, credit, thing of value, and/or

3. Concealing or disguising the obligation or contract involved or falsely representing that the plan does not involve any obligation or contract.