

June 30, 1970

CLASS ACTION
Sections 201 and 207 of
Committee Print #2, As Revised

TITLE II -- ENFORCEMENT OF CONSUMER
INTERESTS

UNFAIR OR DECEPTIVE ACTS OR PRACTICES

SEC. 201. As used in this title --

(a) "unfair consumer practice" means any of the following acts or practices --

(1) offering goods or services intending not to sell them as offered;

(2) advertising goods or services intending not to supply reasonably expectable public demand, unless the advertisement discloses a limitation;

(3) knowingly making false or misleading statements concerning the need for, or necessity of, any goods, services, replacements, or repairs;

(4) representing that the consumer will obtain any rights, privileges, or remedies knowing that the consumer will not;

(5) representing that goods are new knowing that they are not;

(6) representing that goods are of a particular standard, grade, quality, style, or model knowing they are not;

(7) knowingly making false or misleading statements concerning (i) the reason for, existence of, or amounts of price reductions, or (ii) savings in comparison to prices of competitors or one's own price;

(8) representing that goods or services are those of another, knowing they are not;

(9) failing to return or refund a deposit or advance payment for goods not delivered or services not rendered, when no default or further obligation of the person making such deposit or advance payment exists;

(10) knowingly representing that goods or services have sponsorship, approval, origin, characteristics of safety or performance, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have except that the conduct described in this paragraph (10) shall not be an unfair consumer practice if the supplier shows that an affirmation merely of the value of the goods or services or a statement of his opinion of the goods or services, or similar statements did not take unfair advantage of the level of knowledge, ability, experience, or capacity of the consumer;

(11) taking consideration for goods or services intending not to deliver such goods or perform such services, or intending to deliver goods or provide services materially different from those ordered or sold;

(12) knowingly making false or misleading statements concerning the profitability, risk, or any other material aspect of any home-operated business opportunity or venture;

(13) offering gifts, prizes, free items, or other gratuities, intending not to provide them as offered in connection with a sale of goods or services to a consumer;

(14) knowingly making false or misleading statements concerning the existence, terms, or probability of any rebate, additional goods or services, commission, or discount offered as an inducement for any sale of goods or services in return for giving the supplier the names of prospective consumers or otherwise helping the offeror to enter into any other consumer transaction;

(15) using physical force, threat of physical force, undue harassment, intimidation, or coercion in dealing with consumers; and

(16) any other unfair or deceptive act or practice prohibited by rule or regulation promulgated by the Federal Trade Commission under section 6 (g) of the Federal Trade Commission Act, as amended by this Act.

(b) "knowing", "knowingly", and "knowledge" refers to actual knowledge, knowledge presumed where objective circumstances indicate that the supplier acted with knowledge, or knowledge presumed where circumstances indicate that the supplier acted in disregard of reasonable safeguards or care in ascertaining the truth of representations made;

(c) "consumer" means any natural person who is offered or supplied goods or services for personal, family, or household purposes;

(d) "supplier" means any person who makes goods or services available to consumers, either directly or indirectly;

(e) "goods" includes real property, but does not include securities or interest in securities;

(f) "services" includes insurance services and similar provisions of intangibles, but not the providing of credit to the extent that credit is regulated under the Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(g) "statement" means any representation in advertising, any oral or visual presentation, or any other conduct intended to communicate to consumers.

SUITS BY CONSUMERS ADVERSELY AFFECTED

SEC. 207. (a) When a supplier, (i) in any action brought by the Attorney General under section 205 of this title, has been enjoined from committing any unfair consumer practice, whether after final adjudication or by consent decree, or (ii) if any proceeding brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act with respect to acts or practices alleged to be unfair consumer practices within the meaning of section 201 of this title, has been ordered to cease and desist from that act or practice, and the order shall have become final within the meaning of section 5, either after adjudication or by consent decree; any consumer claiming to have been adversely affected by the act or practice giving rise to such injunction may bring suit against said supplier.

(b)(1) Notwithstanding subsection (a), a consumer who has been injured by an unfair consumer practice as defined in Section 201 of this title may sue as a representative party on behalf of all for redress of such injury ninety days after the date on which the Federal Trade Commission has been notified of such act or practice if such action may be maintained as a class action under the Federal Rules of Civil Procedure, except that no consumer shall be a member of such class unless he shall have paid or become obligated for an amount greater than \$10 as a result of such act or practice.

(2) Any action under this subsection may be brought in the district courts of the United States and shall be governed by the Federal Rules of Civil Procedure.

(c) Whenever a consumer shall prevail in an action brought pursuant to this section, he shall be allowed to recover in addition to damages the costs of suit, including attorneys' fees. Such costs may be awarded from money damages -- which the defendant owes to members of the class who cannot be located with due diligence. Upon termination of a class action under this section, whether by judgment, settlement or compromise, the court shall inquire into the reasonableness of attorneys' fees charged and revise such fees where necessary to assure a reasonable relationship, taking into consideration the contingency of compensation, between such fees and the actual time spent by attorneys in preparation and prosecution of the action. If the court determines that any class action brought pursuant to this section has been brought frivolously, with knowledge that the claim lacks probable cause and with intent to harass or intimidate the defendant, the court may in its discretion award the defendant the cost of defending the suit, including a reasonable attorney's fee.

(d) An action to enforce any claim under this section shall be forever barred unless commenced within three years after the claim arose.