

20 (6) 'Person' means an individual, corporation, government, or governmental subdivision or agency, statutory
21 trust, business trust, estate, trust, partnership, unincorporated association, two (2) or more of any of the
22 foregoing having a joint or common interest, or any other legal or commercial entity.

23 (7) 'Sale' means any sale, offer for sale or attempt to sell any merchandise for any consideration.

24 (8) 'Unit' means the Consumer Protection Unit of the Department of Justice.

25 (9) 'Willful violation' means the person committing the violation knew or should have known that the
26 conduct was of the nature prohibited by this Chapter.

27 § 2503. Private cause of action; savings clause for private claims.

28 (a) A private cause of action shall be available to any victim of a violation of § 2522 or § 2523 of this Title.
29 Such cause of action may be brought in any court of competent jurisdiction in this State without prior
30 action by the Attorney General or Director.

31 (b) Subject to an order of the Court terminating the business affairs of any person after receivership
32 proceedings held pursuant to this Chapter, the provisions of this Chapter shall not bar any claim against
33 any person who has acquired any money or property, real or personal, by means of any acts or practices
34 declared by this Chapter to be unlawful.

35 § 2504. Private remedies; attorney fees; treble damages.

36 (a) Any person who has been harmed by consumer fraud or an unfair or deceptive trade practice may bring
37 an action for damages in any court of competent jurisdiction.

38 (b) Any person likely to be harmed by an unfair or deceptive trade practice may be granted relief in the Court
39 of Chancery, including temporary or permanent prohibition of the unfair or deceptive conduct, upon
40 terms that the Court considers reasonable. Proof of monetary damage, loss of profits, or intent to deceive
41 is not required.

42 (c) In any action brought under this Section, the Court may award reasonable attorneys' fees to the prevailing
43 party. Costs and attorneys' fees may be assessed against a defendant only if the court finds that defendant
44 has engaged in a willful violation. Costs and attorney's fees may be assessed against a plaintiff only if
45 the court finds that the plaintiff brought the action in bad faith.

46 (d) The relief provided in this Section is in addition to remedies otherwise available against the same conduct
47 under the common law or other statutes of this State. If damages are awarded to any aggrieved person
48 under this Chapter, such damages awarded shall be treble the amount of the actual damages proved
49 regardless of the availability of other remedies.

50 § 2505. Court of competent jurisdiction; administrative appeals.

51 (a) For the purposes of this Chapter, a claim brought by the Attorney General or the Director for a violation
52 of any provision of this Chapter may be brought in the Justice of the Peace Courts, the Court of Common
53 Pleas, or the Superior Court, where the amount in controversy is within the jurisdictional limit of the
54 Court.

55 (b) For the purposes of this Chapter, a claim brought by a private litigant for a violation of § 2522 or § 2523
56 of this Title may be brought in the Justice of the Peace Courts, the Court of Common Pleas, or the
57 Superior Court, where the amount in controversy is within the jurisdictional limit of the Court.

58 (c) For purposes of this Chapter, a claim brought by the Attorney General or the Director for a violation of
59 any provision of this Chapter may be brought in the Court of Chancery where any equitable remedy is
60 sought, including but not limited to the appointment of a receiver, for any violation of this Chapter or
61 accompanying claims.

62 (d) For purposes of this Chapter, a claim brought by a private litigant for a violation of § 2522 or § 2523 of
63 this Title may be brought in the Court of Chancery where any equitable remedy is sought, including but
64 not limited to the appointment of a receiver for any unlawful violation of this Chapter or accompanying
65 claims.

66 (e) For the purposes of this Chapter, any appeal from an administrative order shall be to the Superior Court.

67 § 2506. Defenses.

68 It is a defense to charges of violating a provision of this Chapter that:

69 (1) The conduct was in compliance with a controlling statute, rule or order of a federal or state agency; or

70 (2) That the alleged violators are publishers, broadcasters, printers, or other persons engaged in the
71 dissemination of information or reproduction of printed or pictorial matter who published, broadcast, or
72 reproduced an advertisement or other material without knowledge of the intent, design or purpose of the
73 advertiser or of its deceptive character.

74 § 2507. Limitation of actions.

75 No action shall be initiated after the expiration of five (5) years from the time the cause of action accrued;
76 however, §§ 8117 and 8118 of Title 10 of the Delaware Code and any applicable tolling or savings provisions created
77 under the common law shall apply.

78 § 2508. Appointment of receiver.

79 If it should appear to the Court of Chancery, after a hearing, that a receiver should be appointed in cases of
80 substantial and willful violations, the Court may appoint such receiver, who shall have the authority to perform the
81 following acts:

- 82 (1) To settle the estate and distribute the assets under the direction of the Court;
- 83 (2) To sue for, collect, receive and take possession of all the goods and chattels, rights and credits, moneys
84 and effects, lands and tenements, books, records, documents, papers, chosen in action, bills, notes and
85 property of every description, acquired by means of any practice declared to be unlawful by this
86 subchapter, including property with which such property has been mingled if it cannot be identified in
87 kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the
88 proceeds thereof under the direction of the Court; and
- 89 (3) To distribute the proceeds and assets, subject to the approval of the Court, to any person who has
90 suffered damages as a result of any such unlawful acts or practices and submits proof of damages in an
91 equitable share with general creditors having claims of out-of-pocket losses.

92 § 2509. Council on Manufactured Housing.

- 93 (a) The Council on Manufactured Housing shall advise the Consumer Protection Unit on matters relating to
94 mobile home owners and tenants, manufactured housing and mobile home parks. The Council may
95 consider matters referred to it by the Unit, and may, on its own motion, consider any issue or matter
96 within its field of expertise. The Council shall report directly and exclusively to the Unit. All funding for
97 the Council shall be determined by the Unit.
- 98 (b) The Council on Manufactured Housing shall be composed of 14 members, 12 of whom shall be
99 appointed by the Governor: Six (6) members representing the manufactured housing industry; and six (6)
100 members representing persons who live in mobile home parks, both those who own the mobile homes in
101 which they reside and those who do not own the mobile homes in which they reside (at least one (1) from
102 each county). In the event a member ceases to be an owner or employee of a mobile home park, or a
103 resident of a mobile home park, such person's membership shall cease upon the occurrence of such event.
104 In addition to the 12 voting members appointed by the Governor, a representative of the Consumer
105 Protection Unit appointed by the Director, and a representative of the Department of Justice, appointed
106 by the Attorney General, shall serve as nonvoting ex officio members.

107 (c) Each member shall serve for a term for two (2) years, and may successively serve for one (1) additional
108 term; provided, however, that where a member was initially appointed to fill a vacancy, such member
109 shall successively serve for only one (1) additional full term. Any person appointed to fill a vacancy on
110 the Council shall hold office for the remainder of the unexpired term of the former member.

111 (d) Members of the Council shall serve without compensation except that they may be reimbursed for
112 reasonable and necessary expenses incident to their duties as members of the Council. A Chairperson of
113 the Council shall be chosen by members of the Council from among its members, shall serve in that
114 capacity for a term of one (1) year, and shall be eligible for reelection.”.

115 Section 2. Amend Chapter 25, Title 6 of the Delaware Code by striking Subchapter II in its entirety and replacing
116 it as follows:

117 “Subchapter II. Consumer Protection Unit; Enforcement Authority; Administrative Process, Remedies and Appeals.

118 § 2510. Consumer Protection Unit.

119 (a) There is established within the Department of Justice a Consumer Protection Unit.

120 (b) The Consumer Protection Unit shall protect the general public against consumer fraud and unfair or
121 deceptive trade practices through enforcement of state statutes (and, where authorized and appropriate,
122 federal statutes), consumer education, and coordinated governmental action.

123 (c) The Attorney General shall appoint a Deputy Attorney General to be designated as the Director of the
124 Consumer Protection Unit, who shall be charged with the furtherance of the programs and functions
125 thereof.

126 § 2511. Enforcement authority.

127 Among other powers, the Director of Consumer Protection shall have the authority to:

128 (1) investigate matters that may reveal violations of this Chapter or other unlawful conduct;

129 (2) issue cease and desist orders, either summarily or after a hearing;

130 (3) seek administrative remedies for violations of the statutes the Consumer Protection Unit is charged to
131 enforce;

132 (4) initiate and prosecute civil or criminal actions related to the purposes of this Chapter in any court of
133 competent jurisdiction;

134 (5) seek restitution, rescission, reformation of contract, recoupment, disgorgement of profits or any monies
135 improperly obtained, or otherwise prevent unjust enrichment against violators of this Chapter and on
136 behalf of consumers;

- 137 (6) promulgate rules and regulations;
- 138 (7) under the direction of the Attorney General, maintain and supervise the deposits and expenditures into
139 and out of the Consumer Protection Fund;
- 140 (8) hold fact-finding, rulemaking or adjudicative hearings and issue opinions, orders or reports based thereon;
141 and
- 142 (9) take any other lawful action to enforce the consumer protection statutes and to carry out their purposes.
- 143 § 2512. Rules and regulations.
- 144 (a) The Director shall have the authority to promulgate rules and regulations as deemed necessary or
145 appropriate to interpret the statutes that the Consumer Protection Unit is charged to enforce or otherwise
146 to carry out the purposes of those statutes.
- 147 (b) The rules and regulations of the Consumer Protection Unit shall be entitled to substantial deference in
148 connection with any judicial review or case determination.
- 149 § 2513. Proceedings; judicial remedies.
- 150 (a) The Attorney General and the Director shall have standing to seek, on behalf of the State, any remedy in
151 this Chapter whenever it appears that a person has violated or is about to violate any provision of this
152 Chapter, or any provision of Chapter 35 of Title 6 of the Delaware Code, Chapters 51 through 67 of Title
153 25 of the Delaware Code, and Chapter 70 of Title 25 of the Delaware Code, § 914 and § 915 of Title 11
154 of the Delaware Code, § 915A of Title 11 of the Delaware Code, or any other law or regulation that the
155 Consumer Protection Unit is charged to enforce. The Attorney General or the Director may initiate an
156 investigation, administrative proceeding, or court proceeding to swiftly enjoin or sanction the unlawful
157 conduct.
- 158 (b) If, in any court proceeding brought under subsection (a) above, any person is found to have committed a
159 willful violation, the Court shall order the violator to pay to the State a civil penalty of not more than
160 \$10,000 for each violation.
- 161 (c) Where a willful violation is found, any Court entertaining the action may additionally order the violator to
162 cease and desist the unlawful conduct prospectively, return any monies obtained unlawfully, and when
163 appropriate freeze designated assets of the violator, order restitution, rescission, recoupment, reformation
164 of any contract or disgorgement of profits or any monies that would constitute unjust enrichment.
- 165 (d) In any action brought by the Director under the provisions of this Chapter in which any person is found to
166 have violated any provision of this Chapter, the Court shall award attorney's fees and costs to the State.

167 § 2514. Investigative demands; Attorney General's subpoena.

168 (a) Whenever the Director has reason to believe that a person has engaged in, is engaging in, or is about to

169 engage in any practice declared by this Chapter to be unlawful, the Director may issue and cause to be

170 served upon such person an investigative demand requiring such person to:

171 (1) File a statement or report in writing under oath on such forms as the Attorney General may

172 prescribe as to all the facts and circumstances concerning the sale, lease or advertisement of

173 merchandise by such person;

174 (2) Answer oral interrogatories under oath at such places and times as the Director may reasonably

175 specify as to all facts and circumstances concerning the sale, lease or advertisement of

176 merchandise by such person; and

177 (3) Produce for examination the original or copy of any advertisement, merchandise or sample

178 thereof, record, book, document, tabulation, map, chart, photograph, report, memorandum,

179 communication, mechanical transcription, account, paper or computer record as the Director

180 may specify in the demand.

181 (b) Each investigative demand shall be in writing and shall: (1) state the nature of the conduct constituting

182 the alleged violation under investigation and the provision of law applicable thereto; (2) sufficiently

183 describe the material to be produced in order to fairly identify the materials demanded; (3) include a

184 return date that reasonably permits time to assemble the materials for inspection and copying or

185 reproduction; and (4) identify the official to whom the material shall be made available or the official

186 before whom such oral examination shall take place or with whom such written reports shall be filed.

187 (c) The investigative demand shall not make or require: (1) unreasonable demands, or (2) production of

188 evidence which would be protected from disclosure as privileged.

189 (d) In his or her discretion, the Director may apply to any court of competent jurisdiction for an order

190 judicially authorizing the issuance and service of an investigative demand.

191 (e) Upon motion promptly made, any person seeking relief from an investigative demand may, upon motion

192 and good cause shown, file in Superior Court for a protective order. If the Director determines that it

193 would not be in the best interests of the investigation to disclose the evidence relied upon to establish the

194 belief that unlawful conduct has occurred, is occurring or is about to occur, the Director may request, and

195 the Court shall examine, *in camera*, the evidence upon which the Director relied.

196 (f) Nothing in this Chapter may be construed to limit the Director's authority to issue an Attorney General's
197 subpoena as an alternative to an investigative demand.

198 § 2515. Service of demand.

199 Service of any demand by the Attorney General or the Director under this Chapter shall be made personally within
200 this State, if the person can be found therein; but if such service cannot be made, substituted service may be made in the
201 following manner:

202 (1) personal service outside this State;

203 (2) service by registered mail to the last known place of business, residence or abode within or outside this
204 State of the person to whom such demand is directed;

205 (3) as to any person other than a natural person, in the manner provided in § 321 or §§ 371 to 385 of Title 8
206 of the Delaware Code; or

207 (4) such service as the court may direct, if the demand was issued pursuant to court order, in lieu of personal
208 service within this State.

209 § 2516. Failure to comply; penalties.

210 (a) If any person fails to comply with any investigative demand or Attorney General's subpoena issued by
211 the Director, the Director may, after due notice, apply to the Superior Court, and the Court, after a
212 hearing on said application, may enter an order:

213 (1) Requiring said person to comply with the demand;

214 (2) Adjudging such person in contempt of Court; and

215 (3) Granting such other relief or imposing any other penalty or fine as may be determined by the
216 Court in its discretion to be appropriate to obtain compliance with the investigative demand or
217 Attorney General's subpoena.

218 (b) In addition to the remedies listed in subsection (a) above, the Director may apply to the Court of
219 Chancery, and the Court, after a hearing on said application, may enter an order:

220 (1) Granting injunctive relief restraining any practice or act declared by this Chapter to be unlawful;
221 and

222 (2) Vacating, annulling or suspending the corporate charter of a corporation created by or under the
223 laws of this State or revoking or suspending the certificate of authority to do business in this
224 State of a foreign corporation, or revoking or suspending any other charters, licenses, permits or

225 certificates issued pursuant to law to such person which are used to further the allegedly
226 unlawful practice.

227 § 2517. Administrative process and appeals.

228 (a) The Director of the Consumer Protection Unit may initiate administrative charges against any person who
229 appears to have violated or about to violate any provision of this Chapter, or any provision of Chapter 35
230 of Title 6 of the Delaware Code, Chapters 51 through 67 of Title 25 of the Delaware Code, and Chapter
231 70 of Title 25 of the Delaware Code, § 914 and § 915 of Title 11 of the Delaware Code, § 915A of Title
232 11 of the Delaware Code, or any other law or regulation that the Consumer Protection Unit is charged to
233 enforce. Such charges shall provide notice as to the nature of the violation and state the remedies that are
234 sought.

235 (b) The Attorney General shall appoint a Deputy Attorney General to act as the administrative hearing officer
236 to adjudicate charges brought by the Director of the Consumer Protection Unit against any person. Such
237 hearing officer shall be a Deputy Attorney General who is not assigned to the Consumer Protection Unit.

238 (c) Upon finding a violation, the hearing officer may order any of the administrative remedies authorized in §
239 2518 below. Upon finding a violation or a threat of a violation, the hearing officer may issue or affirm
240 the issuance of a cease and desist order authorized by subsection (a) of § 2518 below.

241 (d) Any party, including the Director, who is aggrieved by the hearing officer's final order may appeal the
242 order to Superior Court within 30 days after the date the order is issued. The hearing officer shall file the
243 administrative record with the Court within 30 days after receipt of the notice of appeal. The
244 administrative order shall be affirmed by the Court if its findings are supported by substantial evidence.

245 (e) Any monies that are received by the State after an administrative hearing and order, other than for
246 consumer victims, shall be deposited in the General Fund. Any monies received pursuant to a written
247 agreement in settlement of administrative charges, at any stage of the proceeding, shall be deposited in
248 the Consumer Protection Fund.

249 § 2518. Administrative remedies.

250 (a) After due notice and an administrative hearing, any violation or apparent threat of violation of any
251 provision of this Chapter, or of any law or regulation the Consumer Protection Unit is charged to enforce,
252 may be sanctioned by the issuance of a cease and desist order.

253 (b) After due notice and an administrative hearing, any willful violation of § 2522 or § 2523 of this Title, or
254 of a lawful cease and desist order of the Director or the hearing officer, may be sanctioned by a civil

255 penalty up to \$5000 per violation, a cease and desist order, and an order of restitution, rescission,
256 recoupment, reformation of contract, or disgorgement of monies obtained by unlawful conduct or other
257 monies that would constitute unjust enrichment.

258 (c) After the expiration of the 30-day appeal period in which no appeal has been filed, if the violator fails to
259 pay all penalties and restitution or other amounts administratively determined, the Director may file a
260 complaint in any court of competent jurisdiction and obtain a judgment for the amounts that have not
261 been paid. The amounts shall be treated by the Court as an unpaid debt, and the merits of the
262 administrative findings may not be relitigated.

263 §2519. Cease and desist orders.

264 (a) By agreement.

265 At any time after it appears to the Director that a person has engaged in, is engaging in or is about to
266 engage in any practice declared by this Chapter to be unlawful, as well as by Chapter 35 of Title 6 of the Delaware
267 Code, Chapters 51 through 67 of Title 25 of the Delaware Code, and Chapter 70 of Title 25 of the Delaware
268 Code, § 914 and § 915 of Title 11 of the Delaware Code, § 915A of Title 11 of the Delaware Code, and all other
269 laws and regulations which the Consumer Protection Unit is charged to enforce, the Director may issue a cease
270 and desist order pursuant to an agreement with the person who is alleged to have engaged in, is engaged in, or is
271 about to engage in an activity declared by this Chapter to be unlawful. Each such agreement may provide for:

- 272 (1) The immediate discontinuance of each practice set forth in the agreement;
273 (2) Any such relief, remedies, penalties, fines or recoveries authorized by this Chapter; and
274 (3) Any other action deemed by the Director to be necessary to remedy such practice or practices.

275 (b) By administrative order.

276 Upon the finding of a violation of any provision of this Chapter, or of any law or regulation the Consumer
277 Protection Unit is charged to enforce, after due notice and a hearing, the Director or the designated hearing officer
278 may issue a cease and desist order against the violator. Such cease and desist order may provide for any relief as
279 indicated in subsection (a) above.

280 (c) By summary administrative order.

281 (1) Where the Director in his or her discretion perceives a threat to the public interest as a result of a
282 violation of any provision of this Chapter, or of any law or regulation the Consumer Protection

283 Unit is charged to enforce, the Director may issue a summary cease and desist order ordering an
284 immediate discontinuance of the unlawful practice identified in the order.

285 (2) A complaint detailing the specific allegations against the alleged violator shall accompany any
286 summary cease and desist order served upon the alleged violator. The Consumer Protection Unit
287 shall provide a hearing on the charges in the complaint within 14 days after the issuance of the
288 complaint and the cease and desist order. A written opinion and order, containing findings of
289 fact and conclusions of law, shall issue within 14 days after the close of the hearing. The order
290 issued after the hearing may provide for any administrative remedy contained in § 2518 of this
291 Chapter. Any person aggrieved by the order shall have 30 days to appeal the order to the
292 Superior Court, as provided in § 2517(d) of this Chapter.

293 (3) Any person who willfully violates a cease and desist order may be punished as provided in §
294 2518(b) or § 2520 of this Chapter.

295 § 2520. Violation of order or injunction; penalty.

296 (a) The Director may petition any court of competent jurisdiction to obtain recovery of a civil penalty as
297 provided pursuant to this Section. Such petition may be made whenever it appears to the Director that a
298 person subject to any order, issued pursuant to any provision of this Chapter or any other law or
299 regulation which the Consumer Protection Unit is charged to enforce, has willfully violated such order or
300 breached a material term of an agreement forming the basis for a cease and desist order.

301 (b) A person who willfully violates any such order or any such agreement shall forfeit and pay to the State a
302 civil penalty of not less than \$1000 per violation nor more than \$25,000 per violation.

303 (c) Any court in which the petition is brought may order the offender, if a violation is found, to cease and
304 desist the unlawful practice. Any subsequent violation of the court's order may be punished by a sanction
305 for contempt in addition to enhanced civil penalties.

306 (d) Nothing in this Section shall prevent the Attorney General or the Director from initiating any additional
307 or alternative enforcement action under their lawful powers.

308 § 2521. Consumer Protection Fund.

309 (a) All money received by the State as a result of actions brought by the Attorney General or Director
310 pursuant to this Chapter or state or federal antitrust laws shall be credited by the State Treasurer to a fund
311 to be known as the 'Consumer Protection Fund'.

312 (b) The Consumer Protection Fund will be a revolving fund and shall consist of funds transferred to the
313 revolving fund pursuant to actions brought by the Attorney General or Director pursuant to this Chapter
314 or state or federal antitrust laws gifts or grants made to the revolving fund; provided, however, that to the
315 extent that such funds constitute reimbursement for expenses directly paid from constitutionally
316 dedicated funds, such recoveries shall be transferred to the constitutionally dedicated fund. Moreover,
317 any funds obtained pursuant to an administrative order shall be deposited as directed by § 2517(e) of this
318 Title.

319 (c) The Attorney General and the Director are authorized to expend from the Consumer Protection Fund
320 such monies as are necessary for the payment of salaries, costs, expenses and charges incurred in
321 connection with the activities under the statutes that it is charged to enforce under this Chapter, or under
322 other state or federal laws.

323 (d) When any person has a legal right to a portion of funds in the Consumer Protection Fund, the Attorney
324 General and the Director are authorized to approve release of such funds to that person.”.

325 Section 3. Amend Chapter 25, Title 6 of the Delaware Code by striking Subchapter III in its entirety and replacing
326 it as follows:

327 “Subchapter III. Consumer Fraud and Deceptive Trade Practices Prohibited.

328 § 2522. Consumer fraud.

329 (a) The act, use or employment by any person of any deception, fraud, false pretense, false promise,
330 misrepresentation, or the concealment, suppression, or omission of any material fact with intent that
331 others rely upon such concealment, suppression or omission, in connection with the sale, lease or
332 advertisement of any merchandise, whether or not any person has in fact been misled, deceived or
333 damaged thereby, is an unlawful practice.

334 (b) Any failure to disclose information that is required to be disclosed under federal or state law in
335 connection with the sale, lease or advertisement of any merchandise constitutes a violation of this
336 Section. Also, any violation of the Federal Trade Commission Act or the Truth In Lending Act or
337 regulations there under constitutes a violation of this Section.

338 (c) Any failure to disclose the absence of a license by a person who is required to have a license in
339 connection with the sale, lease or advertisement of any merchandise constitutes a violation of this
340 Section.

341 (d) This Section shall not apply to matters subject to the jurisdiction of the Public Service Commission, or of
342 the Insurance Commissioner of this State.

343 § 2523. Unfair or deceptive trade practices.

344 (a) A person engages in an unfair or deceptive trade practice when, in the course of a business, vocation, or
345 occupation, that person:

346 (1) Passes off goods or services as those of another;

347 (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval,
348 or certification of goods or services;

349 (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or
350 association with, or certification by, another;

351 (4) Uses deceptive representations or designations of geographic origin in connection with goods or
352 services;

353 (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses,
354 benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status,
355 affiliation, or connection that the person does not have;

356 (6) Represents that goods are original or new if they are deteriorated, altered, reconditioned,
357 reclaimed, used, or secondhand;

358 (7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are
359 of a particular style or model, if they are of another;

360 (8) Disparages the goods, services, or business of another by false or misleading representation of
361 fact;

362 (9) Advertises goods or services with intent not to sell them as advertised;

363 (10) Advertises goods or services with intent not to supply reasonably expectable public demand,
364 unless the advertisement discloses a limitation of quantity;

365 (11) Makes false or misleading statements of fact concerning the reasons for, existence of, or
366 amounts of, price reductions; or

367 (12) Engages in any other conduct which similarly creates a likelihood of confusion or of
368 misunderstanding.

369 (b) In order to prevail in an action under this Chapter, a complainant need not prove competition between the
370 parties or actual confusion or misunderstanding.

371 (c) This Section does not affect unfair trade practices otherwise actionable at common law or under other
372 statutes of this State.

373 § 2524. Falsely advertising goods as property of an insolvent or as damaged.

374 No person engaged in the sale of any goods, wares or merchandise within the State shall publicly and falsely, and
375 with intent to deceive the general buying public, advertise or otherwise represent that the goods, wares or merchandise are
376 or were either in whole or in part the property of any insolvent or bankrupt or the assignee of any insolvent or bankrupt, or
377 that such goods, wares or merchandise were either in whole or in part damaged by fire or accident of any kind.

378 § 2525. Price discrimination; penalty.

379 Whoever, doing business in this State and engaged in the production, manufacture or distribution of any
380 commodity in general use, intentionally, for the purpose of destroying the competition of any regular, established dealer in
381 such commodity or to prevent competition of any person who in good faith intends or attempts to become such dealer,
382 discriminates between different sections, communities, or cities of this State, by selling the commodity at a lower rate in
383 one (1) section, community, or city, or any portion thereof, than in another, after making due allowance for any difference
384 in the grade or quality and in the cost of transportation from the point of production, if a raw product, or from the point of
385 manufacture, if a manufactured product, shall be fined not less than \$200, nor more than \$10,000 or imprisoned not more
386 than one (1) year, or both.

387 § 2526. Delivery of unsolicited merchandise.

388 Where unsolicited merchandise is delivered to a person for whom it is intended, such person has a right to refuse
389 to accept delivery of this merchandise or such person may deem it to be a gift and use it or dispose of it in any manner
390 without any obligation to the sender.

391 § 2527. Advertising of tobacco products on or in school properties prohibited.

392 (a) No person, firm, corporation, partnership or other organization shall advertise or cause to be advertised
393 any tobacco products within 200 feet of any public or private school, excluding institutions of higher
394 education. This Section shall not apply to advertisements inside of a commercial establishment, except
395 outward-facing advertisements placed in windows.

396 (b) This Section shall not be construed to prohibit the display of any message or advertisement opposing the
397 use of tobacco products. Any message or advertisement opposing the use of tobacco products that is

398 placed within 200 feet of a school may not contain the brand name of any tobacco product or the name of
399 any tobacco company.

400 (c) This Section shall not be construed to prohibit an advertisement stating that a commercial establishment
401 sells tobacco products, provided that the advertisement is on the premises or property of the commercial
402 establishment and does not identify any tobacco product brand or any tobacco product manufacturer by
403 name.

404 (d) The Attorney General may file a complaint administratively or in the Court of Chancery or Superior
405 Court for the county in which the alleged unlawful practice has been or is to be partially or completely
406 performed. The Court of Chancery may enjoin any person, firm, corporation, partnership or other
407 organization from the commission of any such act, and may award damages and costs. Whoever is found
408 to be in violation of this Section by the Superior Court shall be fined not more than \$1,000 for the first
409 offense and not more than \$5,000 for each subsequent offense.”.

410 Section 4. Amend Chapter 25, Title 6 of the Delaware Code by striking Subchapter XI in its entirety.

411 Section 5. Amend Chapter 25, Title 29 of the Delaware Code by striking §§ 2517, 2518 and 2519 in their entirety.

412 Section 6. Amend Title 6 of the Delaware Code by striking all references to “§ 2513” of Title 6 of the Delaware
413 Code, contained in §§ 2562, 2590(b), 2506A(d), 2507A(a), 2505B(b), 2506B(b), and § 5009 of Title 6 of the Delaware
414 Code, and adding in lieu thereof “§ 2522”.

415 Section 7. Amend Chapter 25 of Title 6 of the Delaware Code by striking the term “§ 2527” within subsection (b)
416 of § 2581 of this Title and adding in lieu thereof “§ 2521”.

417 Section 8. Amend Chapter 25, Title 6 of the Delaware Code by striking subsection (a) of § 2590 and adding in
418 lieu thereof the following:

419 “(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out
420 the provisions of this subchapter as is provided by Subchapter II of Chapter 25 of this Title.”.

421 Section 9. Amend Chapter 25, Title 6 of the Delaware Code by striking subsection (a) of § 2597 and adding in
422 lieu thereof the following:

423 “(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out
424 the provisions of this subchapter as is provided by Subchapter II of this Title.”.

425 Section 10. Amend Chapter 25, Title 6 of the Delaware Code by striking subsection (b) of § 2597 and adding in
426 lieu thereof the following:

427 “(b) Any violation of § 2595 of this Title shall be deemed an unlawful practice in violation of § 2522 of this
428 Title and willful violations of § 2595 of this Title shall be punishable in accordance with § 2522 and/or §
429 2581 of this Title.”.

430 Section 11. Amend Chapter 25A, Title 6 of the Delaware Code by striking “§ 2511” in each instance where it
431 appears in § 2502A of this Title and by adding in lieu thereof “§ 2502”.

432 Section 12. Amend Chapter 25A, Title 6 of the Delaware Code by striking the term “§ 2532” in subsection (e) of
433 § 2506A and adding in lieu thereof the term “§ 2523”.

434 Section 13. Amend Chapter 25A, Title 6 of the Delaware Code by striking the text of § 2509A and adding in lieu
435 thereof the following: “All enforcement actions under this Chapter by the Attorney General shall be undertaken in
436 accordance with Subchapter II of Chapter 25 of this Title.”.

437 Section 14. Amend Chapter 25B, Title 6 of the Delaware Code by striking this clause within § 2504B: “§
438 2513(b)(2) of this Title notwithstanding, in connection with any door-to-door sale of a residential water treatment system,
439 it is an unlawful practice within the meaning of § 2513 of this Title for any seller to:” and adding in lieu thereof the
440 following: “In connection with any door-to-door sale of a residential water treatment system, it is an unlawful practice
441 within the meaning of § 2522 of this Title for any seller to:”.

442 Section 15. Amend Chapter 25B, Title 6 of the Delaware Code by striking the text of subsection (a) of § 2506B
443 and adding in lieu thereof the following:

444 “(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out
445 the provisions of this subchapter as is provided by Subchapter II of this Title.”.

446 Section 16. Amend Chapter 28, Title 6 of the Delaware Code by striking the text of § 2829 and adding in lieu
447 thereof the following: “Violations of this subchapter shall be within the scope of the enforcement duties and powers of the
448 Department of Justice Consumer Protection Unit, as provided by Subchapter II of Chapter 25 of this Title.”.

449 Section 17. Amend Chapter 36, Title 6 of the Delaware Code by striking subsection (b) of § 3603 and adding in
450 lieu thereof the following:

451 “(b) Failure to comply with a buyer’s valid request to escrow under § 3602 of this Title shall constitute an
452 unlawful practice in violation of § 2522 of this Title and willful violations of § 3602 of this Title shall be
453 punishable in accordance with § 2522 and/or § 2581 of this Title. The Attorney General shall have the
454 same authority to enforce, remedy, and carry out this subchapter as is provided by Subchapter II of
455 Chapter 25 of this Title.”.

456 Section 18. Amend Chapter 42, Title 6 of the Delaware Code by striking the term “§ 2517 of Title 29” in
457 subsection (c) of § 4203 and adding in lieu thereof the following: “Subchapter II of Chapter 25 of this Title”.

458 Section 19. Amend Chapter 42, Title 6 of the Delaware Code by striking the text of § 4222 and adding in lieu
459 thereof the following: “A violation of this Chapter shall be within the scope of the enforcement duties and powers of the
460 Department of Justice Consumer Protection Unit, as provided by Subchapter II of Chapter 25 of this Title.”.

461 Section 20. Amend Chapter 44, Title 6 of the Delaware Code by striking this clause within § 4404: “§ 2513(b)(2)
462 of this Title notwithstanding, in connection with any door-to-door sale, it is an unlawful practice within the meaning of §
463 2513 of this Title for any seller to:” and adding in lieu thereof the following: “In connection with any door-to-door sale, it
464 is an unlawful practice within the meaning of § 2522 of this Title for any seller to:”.

465 Section 21. Amend Chapter 44, Title 6 of the Delaware Code by striking the text of § 4405 and adding in lieu
466 thereof the following: “A violation of this Chapter shall be within the scope of the enforcement duties and powers of the
467 Department of Justice Consumer Protection Unit, as provided by Subchapter II of Chapter 25 of this Title.”.

468 Section 22. Amend Chapter 49A, Title 6 of the Delaware Code by striking subsection (a) of § 4909A and adding
469 in lieu thereof the following:

470 “(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out
471 the provisions of this Chapter as is provided by Subchapter II of Chapter 25 of this Title.”.

472 Section 23. Amend Chapter 49A, Title 6 of the Delaware Code by striking the text of subsection (b) of § 4909A
473 and adding in lieu thereof the following:

474 “(b) Any violation of § 4903A of this Title shall be deemed an unlawful practice in violation of § 2522 of this
475 Title and willful violations of § 4903A of this Title shall be punishable in accordance with § 2522 and/or
476 § 2581 of this Title.”.

477 Section 24. Amend Chapter 76, Title 6 of the Delaware Code by striking the text of § 7616 and adding in lieu
478 thereof the following: “A violation of this Chapter shall be within the scope of the enforcement duties and powers of the
479 Department of Justice Consumer Protection Unit, as provided by Subchapter II of Chapter 25 of this Title.”.

480 Section 25. Amend Chapter 53 of Title 25 of the Delaware Code by striking the phrase “§ 2517 of Title 29” in
481 subsection (b) of § 5310 and adding in lieu thereof “§ 2519 of Title 6 of the Delaware Code”.

SYNOPSIS

This Bill presents extensive revisions to Chapter 25 of Title 6 of the Delaware Code, and to Chapter 25 of Title 29 of the Delaware Code, pertaining to consumer protection, in order to bring greater clarity and consistency to the statute and to strengthen and increase the enforcement authority of the Department of Justice. Specifically, the Bill adds new administrative powers to give the Director of the Consumer Protection Unit of the Department of Justice similar authority to what is provided to the Securities Commissioner in Chapter 73 of Title 6 of the Delaware Code. Several sections contained in Chapter 25 of Title 29 of the Delaware Code have been revised and transferred to Chapter 25 of Title 6 of the

Delaware Code, so that the consumer protection statutes are all in one location in the Code.

Section 1 contains a new Subchapter I that has been amended to place general provisions pertaining to purpose, definitions, private causes of action and remedies, courts of competent jurisdiction, defenses, and a statute of limitations at the beginning of the Chapter. Previously, Subchapter I was a collection of miscellaneous provisions.

Section 2 contains a new Subchapter II that clarifies the rulemaking authority of the Director of the Consumer Protection Unit and adds new administrative powers. The Director shall have the authority to issue cease and desist orders for any violation of the Chapter. For consumer fraud and deceptive trade practice violations, the Director is authorized to initiate an administrative proceeding in which civil penalties up to \$5,000 per violation are authorized. Section 2 also authorizes the Attorney General to appoint a hearing officer, who shall be a Deputy Attorney General not assigned to the Consumer Protection Unit, to adjudicate such proceedings. Additionally, in court proceedings where a violation has been shown by the Consumer Protection Unit, it shall be entitled to attorney's fees.

Section 3 contains a new Subchapter III that prohibits consumer fraud and unfair or deceptive trade practices. These Sections closely match the language previously contained in former §§ 2513 and 2532. However, the new consumer fraud Section (§ 2522) contains two new provisions, which (1) make a violation of the Federal Trade Commission Act or the Truth In Lending Act a *per se* consumer fraud violation, and (2) make a failure to disclose the absence of a required license a consumer fraud violation. The new deceptive trade practice Section (§ 2523) adds the term "unfair" to prohibit unfair as well as deceptive trade practices.

Section 4 repeals Subchapter XI of Title 6 of the Delaware Code, which consists of one (1) section pertaining to enforcement. The substance of this provision has been moved to Subchapter II, which contains enforcement-related sections.

Section 5 repeals the Sections in Chapter 25 of Title 29 of the Delaware Code pertaining to consumer protection, so that the consumer protection statutes are all located in Title 6 of the Delaware Code.

Sections 6 through 25 amend various references throughout Title 6 of the Delaware Code (as well as one change in Title 25 of the Delaware Code) to the old consumer protection statutory provisions to update those references for consistency with the new Section numbers.

All Sections of this Act become effective upon enactment.