

LOCAL LAW NO. 6 OF 1988

A LOCAL LAW ESTABLISHING CERTAIN CONSUMER PROTECTION PRACTICES IN ORANGE COUNTY AND PENALTIES FOR VIOLATING SUCH.

SECTION 1. Unfair trade practices prohibited.

No person shall engage in any deceptive or unconscionable trade practices in the sale, lease, rental or loan, or in the offering for sale, lease, rental or loan of any consumer goods or services.

SECTION 2. Definitions.

A. "Person" shall mean any individual, corporation, unincorporated association, firm, partnership, organization or other entity.

B. "Deceptive trade practices" shall mean any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind, which has the capacity, tendency or effect of deceiving or misleading consumers and is made in connection with the sale, lease, rental or loan of consumer goods or services; the offering for sale, lease, rental or loan of consumer goods or services; or the extension of consumer credit. Deceptive trade practices include but are not limited to:

- (1) representations that:
 - (a) goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
 - (b) the seller has a sponsorship, approval, status, affiliation, or connection that he does not have;
 - (c) goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, or second-hand;
 - (d) goods or services are of a particular standard, design, quality, grade, style, value, or model, if they are of another.
- (2) A false representation as to a material fact;
- (3) failure to state a material fact if such use or failure deceived or tends to deceive;
- (4) offering goods or services without intent to sell them;

(5) advertising goods or services without intent to supply reasonably expectable public demand, unless the offer disclosed the limitation; Vendor must show dated proof he has ordered, in time to arrive by the beginning of sale more than normal everyday supply.

(6) making false or misleading representations of fact concerning; the reason for, existence of, or amounts of price reductions; or the price in comparison to prices of competitors or one's own price at a past or future time;

(7) falsely stating that a consumer transaction involves consumer rights, remedies or obligations;

(8) falsely stating that services, replacements or repairs are needed; and

(9) falsely stating the reasons for offering or supplying goods or services at sale or discount prices.

(10) abandonment or willful failure to perform any home improvement contract or project engaged in or willful deviation from or disregard of plans or specifications in any material respect without the consent of the owner.

(11) failure to complete contract, service, or project in a workmanlike manner or failure to return and perform repairs under warranty.

C. "Unconscionable trade practice" shall mean any act or practice which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of the consumer of which results in a gross disparity between the value received by a consumer and the price paid by the consumer.

D. "Consumer goods, services, credit and debts" shall mean those which are primarily for personal, household, property improvements or family purposes.

E. "Consumer" shall mean an individual who buys or leases or agrees to buy or lease consumer goods or services or credit including a co-guarantor or surety.

F. "Seller" shall mean a manufacturer, supplier, merchant, contractor, lessor or creditor or other person who makes consumer goods or services available to consumers, either directly or indirectly.

G. "Director" shall mean the director of consumer affairs and weights and measures.

SECTION 3. Regulations.

The director may, after a public hearing, adopt such rules and regulations as may be necessary to effectuate the purposes of this act, including regulations defining specific deceptive or unconscionable trade practices. At least seven business days prior notice of such public hearing shall be published in the official newspapers of the county. A copy of all rules and regulations, promulgated hereunder and any amendments thereto shall be filed in the office of the Clerk of the County Legislature.

No such regulation shall become effective unless approved by Resolution of the Orange County Legislature.

SECTION 4. Enforcement.

The Orange County Director of Consumer Affairs and Weights and Measures shall have the responsibility of enforcing this local law.

SECTION 5. Settlements.

A. A violation of any provision of this local law or any rule or regulation promulgated hereunder shall be punishable upon proof thereof, by the payment of civil penalty in the sum of not less than fifty (\$50.00) dollars nor more than two thousand (\$2,000.00) dollars per day for each such violation, to be recovered in a civil action.

B. Upon finding a violation of this local law or any rules and regulations promulgated pursuant thereto the director shall expeditiously cause the same to be corrected or where there is evidence of intent to defraud refer evidence of such violation to the District Attorney of the County for prosecution or in the absence of intent to defraud refer to the County Attorney for commencement of a civil action in the name of the county to recover a civil penalty in the amounts prescribed. A cause of action for recovery of such penalty may be released, settled or compromised by the director before the matter is referred to the County Attorney or thereafter by such attorney.

C. Whenever any person has engaged in any acts or practices which constitute repeated or persistent violations of any provision of this act or any rule or regulation promulgated hereunder, the County Attorney, upon the request of the director may commence an action in the name of the county for a restraining order, temporary or permanent injunction or other equitable relief.

D. in lieu of instituting or continuing action pursuant to this act, the director may accept written assurance of discontinuance of any act or practice in violation of this act. Such assurance may include a stipulation for the voluntary payment by the alleged violator for the costs of investigation and the restitution, by the alleged violator, to consumers of money, property, or other things received from such consumers in connection with a violation of this act.

E. an assurance entered into pursuant to this section shall not be deemed to admit the violation unless it does so by its terms.

F. a violation of an assurance entered into pursuant to this section shall be treated as a violation of this act and shall be subject to all the penalties provided thereof.

SECTION 6. Exclusion.

Nothing in this act shall apply to any television, or radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form or printed advertising, who broadcasts, publishes or prints the advertisement.

SECTION 7. Severability.

If any provision of this act or the application thereof to any person or circumstances is held unconstitutional the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 8. Reports

The Director shall render to the Orange County Legislature and the County Executive an annual report of his activities under this law no later than June 1st of each year.

SECTION 9. Effective Date

This Local Law shall take effect in the manner provided for in the Municipal Home Rule Law.

STATE OF NEW YORK
COUNTY OF ORANGE
OFFICE OF THE CLERK OF
THE COUNTY LEGISLATURE }

THIS IS TO CERTIFY THAT I, M. RONALD PHILLIPS

Clerk of the County Legislature of said County of Orange, have compared the foregoing copy of Local Law with the original thereof now on file in my office and which was passed by the County Legislature of said County of Orange on the 13th day of May, 1988, 19 votes being in favor of said Local Law and no votes being against the same, and which was approved by the County Executive of the County of Orange on the 27th day of May, 1988, and that the same is a correct and true transcript of such original Local Law and the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of said County Legislature this 17th day of June, 1988.

M. Ronald Phillips