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THE ARIZONA CONSUMER FRAUD ACT



FINANCIAL FRAUD DIVISION
OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

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FINANCIAL FRAUD DIVISION
OFFICE OF THE ATTORNEY GENERAL
1275 WEST WASHINGTON
PHOENIX, ARIZONA 85007

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SUMMARY OF THE ARIZONA CONSUMER FRAUD ACT

The Act Generally

The Arizona Consumer Fraud Act was enacted by the Arizona Legislature in 1967 and is set forth in Arizona Revised Statutes §§ 44-1521 through 44-1534. The full text of the Act appears later in this brochure.

The Consumer Fraud Act is enforced by the Attorney General and by County Attorneys who have been delegated enforcement authority by the Attorney General. Enforcement of the Act is accomplished through the investigation of complaints filed by consumers, by the filing of enforcement actions against persons who have violated the Act and through public education designed to educate consumers on how to avoid becoming the victim of fraud. In an enforcement action brought by the Attorney General, the State may obtain from a person found in violation of the Act civil penalties, restitution payments to the victims and court orders preventing the fraud from continuing.

Transactions Covered By The Act

The Arizona Consumer Fraud Act applies to almost every kind of consumer transaction. The Act is applicable to the sale or advertisement of any "merchandise." Merchandise is broadly defined to include any objects, wares, goods, commodities, intangibles, real estate or services. As can be seen from this definition, the Act covers everything from the sale and advertisement of cars and refrigerators to the services of a plumber or a lawyer.

What is Consumer Fraud

Any deception, false statement, false pretense, false promise or misrepresentation made by the seller or advertiser of merchandise constitutes fraud under the Act. In addition, if a merchant conceals, suppresses or fails to disclose a material fact with the intent that others rely on such concealment, suppression or nondisclosure, the merchant has also engaged in fraud under

the Act. For example, if a car dealer sold a used car which he knew could not be safely driven, it would not only be a violation of the Act for him to state that the car was in good shape, but it would also be a violation if he failed to disclose the fact that the car could not be safely driven.

Remedies Available Under the Act

In an enforcement action brought by the State the State may be awarded up to \$5,000.00 in civil penalties for each violation of the Act. In a state action, the court may also award restitution to victims and may enter orders preventing the violator from engaging in similar conduct in the future. A private citizen may also bring an action under the Consumer Fraud Act and, if he prevails, obtain full restitution and attorneys' fees. A private citizen's lawsuit, however, must be brought within one year from the date the claim arises.

Reporting Consumer Fraud

If you believe you have been the victim of consumer fraud, you should first contact the company in writing and specifically request the relief that you feel is appropriate. If the company does not resolve your problem you should file a complaint with the Attorney General by calling the FRAUDLINE. Even if the company resolves your complaint but you believe the company acted deliberately and may be engaging in the same conduct with other consumers, you may be able to protect others by filing a complaint with the Attorney General.

In view of the large number of complaints received by the Attorney General, not all complaints can be investigated fully. However, all complaints are reviewed by the Attorney General's staff. Many of those complaints are thoroughly investigated and result in enforcement actions against the violators of the Act. If you file a complaint with the Attorney General, you will be advised by the office as to the status of your complaint. Should you have any questions, you may call the FRAUDLINE to ascertain the current status of your complaint. Even if the Attorney General is unable to do anything with your complaint, the filing of that complaint provides the office with extremely valuable

information concerning consumer problems in the marketplace and the identity of those merchants who may be engaging in fraudulent conduct.

ARIZONA CONSUMER FRAUD ACT

Arizona Revised Statutes, Title 44, Chapter 43, Article 7
Sections 44-1521 through 44-1534

§ 44-1521. Definitions

In this article, unless the context otherwise requires:

1. "Advertisement" includes the attempt by publication, dissemination, solicitation or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

2. "Attorney general" means the attorney general of Arizona or his authorized delegate.

3. "Authorized delegate" means any attorney, investigator or administrative personnel employed by the attorney general and so designated, and, when requested by the county attorney and authorized by the attorney general may include similar personnel employed by the several county attorneys of this state.

4. "Examine" means the inspection, study or copying of any account, book, document, merchandise, paper or record.

5. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, or services.

6. "Person" means any natural person or his legal representative, partnership, domestic or foreign corporation, and company, trust, business entity, or association, any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.

7. "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration, including sales, leases and rentals of any real estate subject to any form of deed restriction imposed as part of a previous sale.

§ 44-1522. Unlawful practices; intended interpretation of provisions

A. The act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

B. It is the intent of the legislature that, in construing the provisions of subsection A of this section, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to §§ 45, 52 and 55(a) (1) Title 15, U.S.C.A. of the federal trade commission act.

44-1523. Exemptions

Nothing contained in this article shall apply to the owner or publisher of a newspaper, magazine, or other publication of printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design, or purpose of the advertiser. Further, nothing contained in this article shall apply to any advertisement which is subject to and complies with the rules and regulations of, and the statutes administered by the federal trade commission.

§ 44-1524. Powers of attorney general

A. If the attorney general has reasonable cause to believe that a person has engaged in, is engaging in or is about to engage in any practice or transaction which is in violation of this article or order or assurance of discontinuance entered under this article, he may:

1. Require such person to file on such forms as he prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning the sale or advertisement of

merchandise by such person, and such other data and information as he may deem necessary.

2. Examine under oath any person in connection with the sale or advertisement of any merchandise.

3. Examine any merchandise or sample thereof, or any record, book, document, account, or paper as he may deem necessary.

4. Pursuant to an order of the superior court, impound any record, book, document, account, paper, or sample or merchandise material to such practice and retain the same in his possession until the completion of all proceedings undertaken under this article or in the courts.

B. This section does not prohibit the attorney general from investigation of violations of this article including requesting a person to respond to a complaint filed against him. A person cannot be compelled to comply with a request to respond to a complaint except in accordance with § 44-1527.

§ 44-1525. Confidentiality of information or evidence

All information or evidence provided to the attorney general shall be confidential and shall not be made public unless in the judgment of the attorney general the ends of justice and the public interest will be served by the publication thereof, provided that the names of the interested parties shall not be made public.

§ 44-1526. Subpoena; hearing; rules and regulations

A. To accomplish the objectives and to carry out the duties prescribed in this article, the attorney general, in addition to other powers conferred upon him by this article, may:

1. Issue subpoenas to any person.
2. Administer an oath or affirmation to any person.
3. Conduct hearings in aid of any investigation or inquiry.

4. Prescribe such forms and promulgate such procedural rules and regulations as may be necessary to enforce the provisions of this article, which rules and regulations shall have the force of law. Such rules and regulations shall not be inconsistent with the provisions of this article.

B. The attorney general shall serve a demand or subpoena in accordance with one of the following:

1. Service within or without this state in the manner provided under applicable law or rules of procedure for the service of a summons and complaint in a civil action.

2. On a natural person by delivering the demand or subpoena or by mailing the demand or subpoena by registered mail to the person at his last known place of business, residence or both, within or without this state.

3. On any person other than a natural person by delivering the demand or subpoena or by mailing the demand or subpoena by registered mail to the person authorized or permitted by law to receive service of a complaint and a summons in a civil action.

4. Service as the superior court may direct.

§ 44-1527. Failure to supply information or obey subpoena; hearing

A. If any person fails or refuses to fully comply with a demand or any subpoena issued by the attorney general under § 44-1524 or 44-1526, the attorney general may file a petition with the superior court and, after notice and hearing on the petition, request the following orders until the person complies with the demand or the subpoena:

1. Adjudging such person in contempt of court.

2. Granting injunctive relief, restraining the sale or advertisement of merchandise by such person which is the subject of the investigation.

3. Granting such other relief as the court may deem proper.

B. If the court determines that the attorney general has reasonable cause to believe that the respondent has engaged in, is engaging in or is about to engage in any act, practice or transaction which is in violation of this article or order or assurance of discontinuance entered under this article, the court shall grant the appropriate relief.

C. If the attorney general determines that disclosure to the respondent of the evidence relied on to establish reasonable cause would not be in the best interests of the investigation, he may request and the court may examine the evidence in camera and thereafter make its determination.

§ 44-1528. Remedies; injunction; other reliefs; receiver

A. Following an investigation made pursuant to § 44-1524 and when it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this article, he may seek and obtain in an action in a superior court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof after appropriate notice to such person. Such notice shall state generally the relief sought and be served at least forty-eight hours prior to the hearing of such action. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice in this article declared to be unlawful, including the appointment of a receiver.

B. Following an investigation made pursuant to § 44-1524 and when it appears to the attorney general that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that such person is about to conceal his assets or his person or leave the state, the attorney general may apply to the superior court, ex parte, for an order appointing a receiver of the assets of such person. Upon a showing made by affidavit or other evidence that such person has engaged in or is engaging in a practice declared to be unlawful by this article and that such person is about to conceal his assets or his person or leave the state, the court may order the appointment of a receiver to receive the assets of such person.

§ 44-1529. Powers of receiver

When a receiver is appointed by the court pursuant to this article, he shall have the power to sue for, collect, receive, or

take into his possession all the goods, and chattels, rights and credits, monies and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practice, and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and enter such judgments therein as may be required.

§ 44-1530. Assurance of discontinuance of unlawful practice

In the enforcement of the provisions of this article, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of the provisions of this article from any person engaging in, or who has engaged in, such act or practice. Such assurance may include a stipulation for the payment by such person of reasonable expenses incurred by the attorney general or as restitution to aggrieved persons, or both. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has its principal place of business or in Maricopa county. A violation of such assurance within six years of the filing thereof shall constitute prima facie proof of a violation of the provisions of this article. Such assurance of discontinuance shall not be considered an admission of a violation for any purpose.

§ 44-1531. Violations; civil penalties

A. If a court finds that any person is wilfully using or has wilfully used any act or practice declared unlawful by § 44-1522 of this article, the attorney general upon petition to the court may recover on behalf of the state a civil penalty of not more than five thousand dollars per violation.

B. For purposes of this section, a wilful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of § 44-1522 of this article.

§ 44-1531.01. Revolving fund; use of fund

A. There is established a consumer protection-consumer fraud revolving fund to be administered by the attorney general under the conditions and for the purposes provided by this section. Monies in the fund up to the amount of twenty-five thousand dollars are exempt from the lapsing provisions of § 35-190.

B. Any investigative or court costs, attorney fees or civil penalties recovered for the state by the attorney general as a result of enforcement of either state or federal statutes pertaining to consumer protection or consumer fraud, whether by final judgment, settlement, or otherwise, shall be deposited in the fund created by this section, except that such costs, penalties or fees recovered by a county attorney shall be retained in such county and utilized for investigative operations for consumer protection in such county.

C. The monies in the fund shall be used by the attorney general for consumer fraud education and investigative and enforcement operations of the consumer protection division, except that no monies in the fund may be used to compensate or employ attorneys except where necessary to collect monies due under judgments entered pursuant to this article.

D. On or before the fifteenth day of January, April, July and October, the attorney general shall cause to be filed with the governor, with copies to the assistant director for finance, the president of the senate and the speaker of the house of representatives, a full and complete account of the receipts and disbursements from the fund in the previous calendar quarter. The auditor general shall audit the fund once each fiscal year.

E. On or before the fifteenth day of January, April, July and October, each county attorney who retains monies pursuant to subsection B of this section shall provide the county board of

supervisors with a full and complete account of the receipts and disbursements of such monies in the previous calendar quarter.

§ 44-1532. Violation of order or injunction; penalty

A person who violates any order or injunction issued pursuant to this article shall forfeit and pay to the general fund of the State of Arizona a civil penalty of not more than ten thousand dollars per violation. For the purpose of this section, the superior court issuing any order or injunction shall retain jurisdiction, and the cause shall be continued. In such cases, the attorney general acting in the name of the state may petition for the recovery of civil penalties.

§ 44-1533. Claims not barred

A. The provisions of this article are in addition to all other causes of action, remedies and penalties available to this state.

B. The provisions of this article shall not bar any claim against any person who has acquired any monies or property, real or personal, by means of any practice declared to be unlawful by this article.

§ 44-1534. Costs recoverable

In any action brought under the provisions of this article, the attorney general is entitled to recover costs, which in the discretion of the court may include a sum representing reasonable attorney's fees for the services rendered, for the use of the state.

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