

LAWS OF ARIZONA

CHAPTER 49

Senate Bill 1286

AN ACT

RELATING TO TRADE AND COMMERCE; PRESCRIBING PROCEDURES AND PENALTIES FOR REGULATION OF CONSUMER FRAUD; AMENDING SECTIONS 44-1521, 44-1524, 44-1527 AND 44-1530, ARIZONA REVISED STATUTES; REPEALING SECTION 44-1531, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 10, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 44-1531, AND AMENDING SECTION 44-1532, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1521, Arizona Revised Statutes, is amended to read:

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.

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- ~~3-~~ 5. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, or services.
- ~~4-~~ 6. "Person" means any natural person or his legal representative, partnership, domestic or foreign corporation, any company, trust, business entity, or association, any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.
- ~~5-~~ 7. "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

Sec. 2. Section 44-1524, Arizona Revised Statutes, is amended to read:

44-1524. Powers of attorney general

Upon receipt of a ~~verified~~ written complaint signed by the complainant to the attorney general setting forth facts that a person has engaged in, or is engaging in, OR IS ABOUT TO ENGAGE IN, any practice declared to be unlawful by this article, OR WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT SUCH IS THE CASE, and when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice, 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.

Sec. 3. Section 44-1527, Arizona Revised Statutes, is amended to read:

44-1527. Failure to supply information or obey subpoena

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If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a superior court and, after hearing thereon, request the following order until the person files the statement or obeys the subpoena:

1. ADJUDGING SUCH PERSON IN CONTEMPT OF COURT.

~~1-~~ 2. Granting injunctive relief, restraining the sale or advertisement of merchandise by such person which is subject to the charge of being an unlawful practice as defined in this article.

~~2-~~ 3. Granting such other relief as the court may deem proper.

Sec. 4. Section 44-1530, Arizona Revised Statutes, is amended to read:

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.

Sec. 5. **Repeal**

Section 44-1531, Arizona Revised Statutes, is repealed.

Sec. 6. Title 44, chapter 10, article 7, Arizona Revised Statutes, is amended by adding a new section 44-1531, to read:

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 SECTION 44-1522 OF THIS ARTICLE, THE

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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 SECTION 44-1522 OF THIS ARTICLE.

Sec. 7. Section 44-1532, Arizona Revised Statutes, is amended to read:

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.

Sec. 8. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor - April 10, 1972

Filed in the Office of the Secretary of State - April 10, 1972