

YSC, Title 15. Health & Welfare

Chapter 11. Consumer Protection

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§1101. Short title.

This chapter shall be known and may be cited as the "Consumer Protection Act of 1990".

Source: YSL 2-85 §1, modified.

§1102. Findings and purpose.

The public health, welfare and interest require a consumer protection program to safeguard the public from abuses in commerce and to foster a healthy climate for economic growth in the State of Yap.

Source: YSL 2-85 §2, modified.

§1103. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(a) "Commerce" and "trade" mean the sale, advertising, offering for sale, contract for sale, distribution, or solicitation for purchase, of any goods or other property, real or personal, tangible or intangible, or any service, including any lottery, game of chance, or entertainment or any other article, commodity or thing of value, wherever situated, conducted or performed.

(b) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.

(c) "Unfair competition" means any unlawful, unfair or fraudulent business practice and any act prescribed by section 1104 of this chapter.

Source: YSL 2-85 §3, modified.

§1104. Unlawful acts.

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (a) Passing off goods or services as those of another;
- (b) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- (c) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another;
- (d) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (f) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand;
- (g) Representing that goods are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;
- (h) Disparaging the goods, services or business of another by false or misleading representations of fact;
- (i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (j) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
- (k) Consciously engaging in any act or practice which is purposefully unfair to the consumer;
- (l) Representing that any food, food product, beverage, drug, or any other substance is fit for human consumption, if it is not fit for human consumption;
- (m) Introducing into commerce any food, drink or drug product which is marked by the manufacturer with an expiration date, after the date of expiration, unless such food, drink or drug products are clearly identified with a notice in English and the indigenous language that the expiration date is past and that such products are not recommended for human consumption but are offered for sale only for animal consumption or purposes other than human consumption;
- (n) Introducing into commerce any food, drink or drug product unless each saleable unit of such product is clearly labeled indicating the nature of its contents;
- (o) Representing that goods or services are fit for any particular purpose, if they are not fit for such purpose;
- (p) Failing to reveal any known defect in or damage to any item entered in commerce, unless the item is stated to be so entered on an "as is" or similar basis;
- (q) Representing that a service is provided by a person qualified to perform the service, if the merchant knows or should know that the person is not so qualified;
- (r) Introducing into commerce any goods or services which the merchant knows or should know

are unsafe or which may cause an unsafe condition in normal use, including performing a service which may cause an unsafe condition; and

(s) Failing to make reasonably clear all material terms and conditions included in those contracts which initiate commerce and trade in goods and services.

Source: YSL 2-85 §4, as amended by YSL 3-4 §1, modified.

§1105. Exemptions.

Nothing in this chapter shall apply to any actions or transactions carried out by the government of the State of Yap, any branch thereof or any other governmental agency, board, commission or office.

Source: YSL 2-85 §5, modified.

§1106. Restraint of prohibited acts.

(a) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared in section 1104 of this chapter to be unlawful, and that proceedings would be in the public interest, he may bring a civil action in the name of the State of Yap against such person to restrain by temporary or permanent injunction the use of such method, act or practice. In addition, the Attorney General is specifically authorized to seek a temporary restraining order to restrain the use of such method, act or practice pending the hearing on the temporary or permanent injunction. Such a hearing must be held at least within five days of the issuance of the temporary restraining order and notice thereof must be served at least three days before such hearing. The notice must state generally the relief sought and must be served at least three days before the hearing of the action. The action may be brought in the trial division of the Yap State Court. This court is authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

(b) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

(c) The Department of Health Services and the Division of Public Safety are jointly responsible and are herein authorized to make periodic checks of the stores and business establishments in the State to ensure that no expired food and drug products are being sold in violation of this chapter and to inform the Attorney General of such violations as are discovered.

Source: YSL 2-85 §6, as amended by YSL 3-4 §2, modified.

Cross-reference: The statutory provisions on the Attorney General, the Department of Health Services, and the Division of Public Safety are found in Title 3 on the Executive of this Code. The statutory provisions on the Judiciary are found in Title 4 of this Code.

§1107. Private and class actions.

(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 1104 of this chapter, may bring an action under the rules of civil procedure in the trial division of Yap State Court to recover actual damages or \$100.00, whichever is greater. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(b) Any person entitled to bring an action under subsection (a) of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons similarly

situated and if they adequately represent such similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in subsection (a) of this section. In any action brought under this section, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of any action brought under subsection (a) or (b) of this section, the clerk of courts shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(d) In any action brought under subsection (a) or (b) of this section, the court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(e) Any permanent injunction, judgment or order of the court made under section 1106 of this chapter shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by section 1104 of this chapter.

Source: YSL 2-85 §7, modified.

§1108. Assurances of voluntary compliance.

In the administration of this chapter, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the chapter from any person who has engaged in or is about to engage in such method, act or practice. Any such assurance shall be in writing and shall be filed with and subject to the approval of the trial division of the Yap State Court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to section 1106 of this chapter.

Source: YSL 2-85 §8, modified.

Cross-reference: The statutory provisions on the Yap State Court are found in Title 4 of this Code.

§1109. Investigation authorized.

(a) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act or practice declared to be unlawful by this chapter, or 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 such method, act or practice, he may execute in writing and cause to be served on any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand.

(b) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in State Court.

(c) The investigatory authority of the Attorney General is not intended to limit in any way the primary jurisdiction of the State Court under this chapter.

(d) The investigatory authority granted under this section does not limit in any way the authority granted to the Department of Health Services and the Division of Public Safety under subsection (c) of section 1106 of this chapter.

Source: YSL 2-85 §9, as amended by YSL 3-4 §3, modified.

Cross-reference: The statutory provisions on the Attorney General, the Department of Health Services, and the Division of Public Safety are found in Title 3 on the Executive of this Code. The statutory provisions on the Judiciary are found in Title 4 of this Code.

§1110. Authority of Attorney General to issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations.

To accomplish the objectives and to carry out the duties prescribed by this chapter, the Attorney General, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force of law; provided, that none of the powers conferred by this chapter shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further, that information obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest.

Source: YSL 2-85 §10, modified.

Cross-reference: The statutory provisions on the Attorney General are found in Title 3 on the Executive of this Code.

§1111. Service of notices, demands or subpoenas.

Service of any notice, demand or subpoena under this chapter shall be made personally within the State of Yap, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(a) Personal service thereof outside the State of Yap;

(b) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without the State of Yap of such person for whom the same is intended; or

(c) As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding had been filed.

Source: YSL 2-85 §11, modified.

§1112. Orders for enforcement of subpoenas or investigative demands.

(a) If any person fails or refuses to file any statement or report, to or obey any subpoena or investigative demand issued by the Attorney General, the Attorney General may, after notice, apply to the trial division of the Yap State Court, and, after hearing thereon, request an order:

(1) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; or

(2) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of the State of Yap or revoking or suspending the business permit in the State of Yap of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; or

(3) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(b) Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Source: YSL 2-85 §12, modified.

§1113. Civil and criminal penalties.

(a) Any person who violates the terms of an injunction issued under section 1106 of this chapter shall forfeit and pay to the State of Yap a civil penalty of not more than \$100.00 per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, acting in the name of the State of Yap, may petition for recovery of civil penalties.

(b) In any action brought under section 1106 of this chapter, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 1104 of this chapter, the Attorney General, upon petition to the court, may recover, on behalf of the State of Yap, a civil penalty not exceeding \$1,000.00 dollars per violation.

(c) For the purposes of this chapter, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 1104 of this chapter.

Source: YSL 2-85 §13, modified.

§1114. Forfeiture of corporate franchise.

Upon petition by the Attorney General, the trial division of the Yap State Court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 1106 of this chapter.

Source: YSL 2-85 §14, modified.

Cross-reference: The statutory provisions on the Yap State Court are found in Title 4 of this Code.

§1115. Supersession.

Sections 351 through 364 of Title 33 of the Trust Territory Code are hereby superseded in their entirety.

Source: YSL 2-85 §15, modified.

§1116. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity thereof shall not effect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

Source: YSL 2-85 §16, modified.