

## CHAPTER 2 of Title 39

### **CONSUMER PROTECTION**

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39 PC 2-101. Short title.

This chapter may be cited as the “Consumer Protection Act.”

Source: 33 TTC §351 (1970); 33 TTC §351 (1980)

39 PC 2-102. Definitions.

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

(2) “Trade” and “commerce” mean the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the state of Pohnpei.

Source: 33 TTC §352 (1970); 33 TTC §352 (1980)

### 39 PC 2-103. Unlawful acts or practices.

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:

- (1) Passing off goods or services as those of another.
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.
- (3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another.
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services.
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have.
- (6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another.
- (8) Disparaging the goods, services or business of another by false or misleading representation of fact.
- (9) Advertising goods or services with intent not to sell them as advertised.
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (11) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions.
- (12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.
- (13) Engaging in any act or practice that is unfair or deceptive to the consumer.

Source: 33 TTC §353 (1970); 33 TTC §353 (1980)

#### 39 PC 2-104. Exemptions.

Nothing in this chapter shall apply to:

(1) Actions or transactions carried out by the Pohnpei Government, any branch thereof or any other governmental agency; or

(2) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised product or service.

Source: 33 TTC §354 (1970); 33 TTC §354 (1980)

#### 39 PC 2-105. Restraint of prohibited acts.

(1) 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 39 PC 2-103 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 Pohnpei against such person to restrain by temporary or permanent injunction the use of such method, act or practice. 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 Pohnpei Supreme Court. The said 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.

(2) The court may make such additional orders or judgments as 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 chapter declared to be unlawful.

Source: 33 TTC §355 (1970); 33 TTC §355 (1980)

#### 39 PC 2-106. Private and class actions.

(1) 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 39 PC 2-103, may bring an action under the Rules of Civil Procedure in the Trial Division of the Pohnpei Supreme Court to recover actual damages or \$100, whichever is greater. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(2) Any person entitled to bring an action under Subsection (1) 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 (1) 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.

(3) Upon commencement of any action brought under Subsection (1) 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.

(4) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(5) Any permanent injunction, judgment or order of the court made under 39 PC 2-105 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 39 PC 2-103.

Source: 33 TTC §356 (1970); 33 TTC §356 (1980)

#### 39 PC 2-107. Non-negotiability of consumer paper.

(1) If any contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, such note, instrument or evidence of indebtedness shall have printed on the face thereof the words "consumer paper," and such note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument.

(2) Notwithstanding the absence of such notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Failure to imprint the words "consumer paper" on such note, instrument or evidence of indebtedness shall subject the seller or other responsible person to appropriate civil and criminal sanctions as provided in this chapter.

Source: 33 TTC §357 (1970); 33 TTC §357 (1980)

#### 39 PC 2-108. 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 Pohnpei Supreme 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 39 PC 2-105.

Source: 33 TTC §358 (1970); 33 TTC §358 (1980)

39 PC 2-109. Investigation authorized.

(1) When it appears to the Attorney General that a person has engaged in, is engaging in or is about to engage in any 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 act or practice, he may execute in writing and cause to be served upon 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.

(2) 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 the Trial Division of the Pohnpei Supreme Court.

Source: 33 TTC §359 (1970); 33 TTC §359 (1980)

39 PC 2-110. 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, upon approval of the Governor, 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: 33 TTC §360 (1970); 33 TTC §360 (1980)

39 PC 2-111. Service of notices, demands or subpoenas.

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

- (1) Personal service thereof without the state of Pohnpei; or
- (2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without the state of Pohnpei of such person for whom the same is intended; or
- (3) 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, or
- (4) Such service as the Pohnpei Supreme Court may direct in lieu of personal service within the state of Pohnpei.

Source: 33 TTC §361 (1970); 33 TTC §361 (1980)

39 PC 2-112. Orders for enforcement of subpoenas or investigative demands.

- (1) If any person fails or refuses to file any statement or report or to obey any subpoena or investigative demand issued by the Attorney General, the Attorney General may, after notice, apply to the Trial Division of the Pohnpei Supreme Court, and after hearing thereon, request an order:
  - (a) 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;
  - (b) Vacating, annulling or suspending the corporate charter of a corporation created by or under the laws of the state of Pohnpei or revoking or suspending the business permit in the state of Pohnpei 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; and
  - (c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.
- (2) Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Source: 33 TTC §362 (1970); 33 TTC §362 (1980)

39 PC 2-113. Civil and criminal penalties.

(1) Any person who violates the terms of an injunction issued under 39 PC 2-105 shall forfeit and pay to the state of Pohnpei a civil penalty of not more than \$10,000 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 Pohnpei, may petition for recovery of civil penalties.

(2) In any action brought under 39 PC 2-105, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by 39 PC 2-103, the Attorney General, upon petition to the court, may recover, on behalf of the state of Pohnpei, a civil penalty of not exceeding \$1,000 per violation.

(3) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 39 PC 2-103.

Source: 33 TTC §363 (1970); 33 TTC §363 (1980)

39 PC 2-114. Forfeiture of corporate franchise.

Upon petition by the Attorney General, the Trial Division of the Pohnpei Supreme Court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation that violates the terms of any injunction issued under 39 PC 2-105.

Source: 33 TTC §364 (1970); 33 TTC §364 (1980)