

CHAPTER 282
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 247
AS AMENDED BY
HOUSE AMENDMENT NOS. 1,2 & 4

AN ACT TO AMEND TITLE 6, TITLE 25 AND TITLE 29 OF THE DELAWARE CODE RELATING TO CONSUMER PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 25, Title 29 of the Delaware Code by striking existing § 2517 in its entirety and substituting in lieu thereof the following:

“§ 2517. Division of Consumer Protection.

(a) There is established within the Department of Justice a Division of Consumer Protection.

(b) The Division of Consumer Protection shall protect the public against consumer fraud and deceptive trade practices through enforcement of statutes, consumer education, consumer advocacy, and coordinated governmental action.

(c) The Attorney General may appoint a Deputy Attorney General to be designated as the Director of Consumer Protection, who will be charged with the furtherance of the programs and functions thereof.

(d) The term “Director” as used in this chapter refers to the Director of the Division of Consumer Protection and includes any designee.”.

Section 2. Amend Chapter 25, Title 29 of the Delaware Code by adding the following new §§ 2525 through 2531:

“§ 2525. Enforcement authority.

(a) Among other powers, the Director shall have the authority to:

(1) Investigate matters that may reveal violations of Chapter 25 of Title 6 or other unlawful conduct;

(2) Issue cease and desist orders, either summarily or after a hearing;

(3) Seek administrative remedies for violations of the statutes the Division of Consumer Protection is charged to enforce;

(4) Initiate and prosecute civil or criminal actions related to the purposes of this chapter in any court of competent jurisdiction;

(5) Seek restitution, rescission, reformation of contract, recoupment, disgorgement of profits or any monies improperly obtained, or otherwise prevent unjust enrichment against violators of this chapter and on behalf of consumers;

(6) Promulgate rules and regulations;

(7) Under the direction of the Attorney General, maintain and supervise the deposits and expenditures into and out of the Consumer Protection Fund;

(8) Hold fact-finding, rulemaking or adjudicative hearings and issue opinions, orders or reports based thereon; and

(9) Take any other lawful action to enforce the consumer protection statutes and to carry out their purposes.

(b) The scope of the authority of the Director to initiate administrative proceedings or take civil enforcement action does not extend to matters within the jurisdiction of the Public Service Commission or of the Insurance Commissioner of this State.

§ 2526. Rules and regulations.

(a) The Director shall have the authority to promulgate rules and regulations as deemed necessary or appropriate to implement or clarify the statutes that the Division of Consumer Protection is charged to enforce or otherwise to carry out the purposes of those statutes.

(b) The rules and regulations of the Division of Consumer Protection shall be entitled to substantial deference in connection with any judicial review or case determination.

§ 2527. Proceedings; judicial remedies.

(a) The Attorney General and the Director shall have standing to seek, on behalf of the State, any remedy in this chapter whenever it appears that a person has violated or is about to violate any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, § 841, § 914, and § 915 of Title 11, § 915A of Title 11, or any other law or regulation that the Division of Consumer Protection is authorized to enforce. The Attorney General or the Director may initiate an investigation, administrative proceeding, or court proceeding to enjoin or sanction the unlawful conduct.

(b) If, in any court proceeding brought under subsection (a) above, any person is found to have committed a willful violation, the Court shall order the violator to pay to the State a civil penalty of not more than \$10,000 for each violation.

(c) Where a willful violation is found, any court entertaining the action may additionally order the violator to cease and desist the unlawful conduct prospectively, return any monies obtained unlawfully, and when appropriate freeze designated assets of the violator, order restitution, rescission, recoupment, or to seek other relief appropriate to prevent violators from being unjustly enriched.

(d) In any action brought by the Director under the provisions of this chapter in which any person is found to have violated any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, § 841, § 914, and § 915 of Title 11, § 915A of Title 11, or any other law or regulation that the Division of Consumer Protection is authorized to enforce, the Court may award attorney's fees and investigative costs to the State.

§ 2528. Administrative process and appeals.

(a) The Director of Consumer Protection may initiate administrative charges against any person who appears to have violated or about to violate any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, or any other law or regulation that the Division of Consumer Protection is authorized to enforce. Such charges shall provide notice as to the nature of the violation and state the remedies that are sought.

(b) The Attorney General shall appoint a Deputy Attorney General to act as the administrative hearing officer to adjudicate charges brought by the Director of Consumer Protection against any person. Such hearing officer shall be a Deputy Attorney General who is not assigned to the Fraud and Consumer Protection Division.

(c) Upon finding a violation, the hearing officer may order any of the administrative remedies authorized in § 2529 below. Upon finding a violation or a threat of a violation, the hearing officer may issue or affirm the issuance of a cease and desist order authorized by § 2529(a) below.

(d) Any party, including the Director, who is aggrieved by the hearing officer's final administrative order may appeal the order to Superior Court within thirty (30) days after the date the final order is issued. The administrative record shall be filed with the Court in accordance with Superior Court Civil Rule 72. The final administrative order shall be affirmed by the Court if the findings in the order are supported by substantial evidence.

(e) Any monies that are received by the State after an administrative hearing and order, other than for consumer victims, shall be credited to the General Fund. Any monies received pursuant to a written agreement in settlement of administrative charges, at any stage of the proceeding, shall be credited to the Consumer Protection Fund.

§ 2529. Administrative remedies.

(a) After notice and an administrative hearing, any violation or apparent threat of violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, may be sanctioned by the issuance of a cease and desist order.

(b) After notice and an administrative hearing, any willful violation of § 2513 or § 2532 of Title 6, or of a lawful cease and desist order of the Director or the hearing officer, may be sanctioned by an administrative

penalty up to \$5000 per violation, a cease and desist order, and an order of restitution, rescission, recoupment, or other relief appropriate to prevent violators from being unjustly enriched.

(c) After the expiration of the 30-day appeal period in which no appeal has been filed, if the violator fails to pay all penalties and restitution or other amounts administratively determined, the Director may file a complaint in any court of competent jurisdiction and obtain a judgment for the amounts that have not been paid. The amounts shall be treated by the Court as an unpaid debt, and the merits of the administrative findings may not be contested.

§2530. Cease and desist orders.

(a) By agreement.

At any time after it appears to the Director that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by Chapter 25 of Title 6, Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, or any other laws and regulations which the Division of Consumer Protection is authorized to enforce, the Director may issue a cease and desist order pursuant to an agreement with such person. Each such agreement may provide for:

- (1) The immediate discontinuance of each practice set forth in the agreement;
- (2) Any such relief, remedies, penalties, fines or recoveries authorized by this chapter; and
- (3) Any other action deemed by the Director to be necessary to remedy such practice or practices.

(b) By administrative order.

Upon the finding of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, after notice and a hearing, the designated hearing officer may issue a cease and desist order against the violator. Such cease and desist order may provide for any relief as indicated in subsection (a) above.

(c) By summary administrative order.

(1) Where the Director in his or her discretion perceives an immediate threat to the public interest as a result of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order. A complaint detailing the specific allegations against the alleged violator shall accompany any summary cease and desist order served upon the alleged violator. Before issuing the summary order, the Director or his or her designee shall attempt to obtain voluntary compliance from the alleged violator by letter or telephone call.

(2) The complaint and summary cease and desist order shall be served upon the alleged violator by first class and certified mail to his or her last known address. Service shall be deemed effective upon mailing. Within ten days after the mailing of the complaint and order, the alleged violator may request, in writing, a hearing on the charges. An order that was not the subject a hearing may not be appealed to the Superior Court.

(3) The Division of Consumer Protection shall provide a hearing on the charges in the complaint within 10 days after the issuance of the complaint and the cease and desist order. A written opinion and order, containing findings of fact and conclusions of law, shall issue within 10 days after the close of the hearing.

(4) If the alleged violator makes a written request for a hearing but none is provided within 10 days after the issuance of the order, the order shall expire at the end of the 10th day after it was issued unless the alleged violator waives his or her right to a prompt hearing. If the alleged violator makes a written request for a hearing and one is provided within 10 days, but no decision is issued within 10 days after the close of the hearing, the order shall expire at the end of the 10th day after the close of the hearing. An order that has expired in accordance with the restrictions of this subparagraph may not be reissued as a summary order.

(5) The order issued after the hearing may provide for any administrative remedy contained in § 2529 of this chapter. Any person aggrieved by the order issued after the hearing shall have 30 days to appeal the order to the Superior Court, as provided in § 2528(d) of this chapter.

(6) Any person who willfully violates a cease and desist order may be sanctioned as provided in § 2529(b) or § 2531 of this chapter.

§ 2531. Violation of order or injunction; penalty.

(a) The Attorney General or the Director may petition any court of competent jurisdiction to obtain recovery of a civil penalty as provided pursuant to this section. Such petition may be made whenever it appears to the Attorney General or the Director that a person subject to any order or injunction, issued pursuant to any provision of this chapter or any other law or regulation which the Division of Consumer Protection is charged to enforce, has willfully violated such order or injunction, or breached a material term of an agreement forming the basis for a cease and desist order.

(b) A person who willfully violates any such order or any such agreement shall forfeit and pay to the State an enhanced civil penalty of not more than \$25,000 per violation.

(c) Any court in which the petition is brought may order the offender, if a violation is found, to cease and desist the unlawful practice. Any subsequent violation of the court's order may be sanctioned for contempt in addition to an enhanced civil penalty.

(d) Nothing in this section shall prevent the Attorney General or the Director from initiating any additional or alternative enforcement action under their lawful powers.”.

Section 3. Amend Chapter 25 of Title 6 of the Delaware Code by deleting § 2521 in its entirety.

Section 4. Amend Chapter 25 of Title 6 of the Delaware Code by deleting Subchapter XI, § 2598, in its entirety.

Section 5. Amend § 2590, Title 6 of the Delaware Code by deleting subsection (a) in its entirety and substituting in lieu thereof the following:

“(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.”.

Section 6. Amend § 2597, Title 6 of the Delaware Code by deleting subsection (a) and substituting in lieu thereof the following:

“(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.”.

Section 7. Amend § 2506B, Title 6 of the Delaware Code by deleting subsection (a) and substituting in lieu thereof the following:

“(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.”.

Section 8. Amend § 2829, Title 6 of the Delaware Code by deleting the language currently existing therein in its entirety and substituting in lieu thereof the following:

“§ 2829. Enforcement.

Violations of this subchapter shall be within the scope of the enforcement duties and powers of the State Division of Consumer Protection as described in Chapter 25 of Title 29.”.

Section 9. Amend § 3603(b), Title 6 of the Delaware Code by deleting the second sentence of subsection (b) and substituting in lieu thereof the following:

“The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.”.

Section 10. Amend § 4203, Title 6 of the Delaware Code by deleting the last sentence of subsection (c) and substituting in lieu thereof the following:

“Unless the health spa has been cited for a violation of this chapter pursuant to the authority granted to the Attorney General or the Director by Chapter 25 of Title 29 or to the Attorney General by § 4220 of this title, the Director shall give consent to terminate the bond or letter of credit within thirty (30) days after receiving the health spa’s application.”.

Section 11. Amend § 4222, Title 6 of the Delaware Code by deleting § 4222 in its entirety and substituting in lieu thereof the following:

“4222. Enforcement.

A violation of this chapter shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection, as described in Chapter 25 of Title 29.”.

Section 12. Amend § 4405, Title 6 of the Delaware Code by deleting § 4405 in its entirety and substituting in lieu thereof the following:

“§ 4405. Enforcement.

In addition to any remedies the buyer may have at law or in equity, the authority of the Attorney General under Chapter 25 of Title 29 shall apply to violations of this chapter.”.

Section 13. Amend Section § 4909A, Title 6 of the Delaware Code by deleting subsections (a) and (b), and substituting in lieu thereof the following:

“(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this chapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.

(b) Any violation of § 4903A of this title shall be deemed an unlawful practice in violation of § 2513 of this title.”.

Section 14. Amend § 7616, Title 6 of the Delaware Code by deleting § 7616 in its entirety and substituting in lieu thereof the following:

“§ 7616. Enforcement.

A violation of this chapter shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection, as described in Chapter 25 of Title 29.”.

Section 15. Amend § 5310(b), Title 25 of the Delaware Code by deleting the phrase “in accordance with § 2517 of Title 29 as are required to remedy the violation” in the last sentence of § 5310(b) and substituting in lieu thereof the following:

“in accordance with Chapter 25 of Title 29 as are required to remedy the violation.”.

Section 16. Amend § 12B-104, Title 6 of the Delaware Code by deleting the first sentence of § 12B-104 in its entirety, and substituting in lieu thereof the following:

“Pursuant to the enforcement duties and powers of the Consumer Protection Division of the Department of Justice under Chapter 25 of Title 29, the Attorney General may bring an action in law or equity to address the violations of this chapter and for other relief that may be appropriate to ensure proper compliance with this chapter or to recover direct economic damages resulting from a violation, or both.”.

Section 17. Amend § 2427B, Title 6 of the Delaware Code by deleting subsection (a) and substituting in lieu thereof the following:

“(a) The Attorney General shall have the same authority to enforce and carry out this chapter as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.”.

Section 18. Amend § 2736, Title 6 of the Delaware Code by deleting “§ 2517 of Title 29” and inserting in lieu thereof “Chapter 25 of Title 29”.

Section 19. Amend § 2534(a)(1), Title 6 of the Delaware Code by deleting subsection (a)(1) and inserting in lieu thereof:

“(1) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency, or a board or commission organized under Professions and Occupations in Title 24 of the Delaware Code, and shall not be the subject of a private cause of action thereunder; provided that said conduct has been addressed by the applicable statute, order, or rule of a board or commission organized under

Title 24 and said order or rule does not clearly conflict with a specific provision of the consumer protection laws the Attorney General is charged to enforce;"

Approved June 10, 2010