

UNIFORM LAWS ANNOTATED

Business and Financial Laws

With
Annotations From State and Federal Courts

ST. PAUL, MINN.
WEST PUBLISHING CO.

COPYRIGHT © 1978
By
WEST PUBLISHING CO.

EXPLANATION

New Volumes 7 and 7A of the Master Edition of Uniform Laws Annotated contain the text of the following Uniform Acts:

Volume 7

Arbitration Act
Common Trust Fund Act
Condominium Act
Consumer Credit Code (1968 Act)
Consumer Credit Code (1974 Act)

Volume 7A

Consumer Sales Practices Act
Deceptive Trade Practices Act (1966 Act)
Deceptive Trade Practices Act (1964 Act)
Division of Income for Tax Purposes Act
Federal Tax Lien Registration Act
Fiduciaries Act
Fraudulent Conveyance Act
Land Sales Practices Act
Management of Institutional Funds Act
Principal and Income Act (1962 Act)
Principal and Income Act (1931 Act)
Residential Landlord and Tenant Act
Securities Act
Simplification of Fiduciary Security Transfers, Act for
State Antitrust Act
Supervision of Trustees for Charitable Purposes Act
Trustees' Powers Act

These acts were drafted by the National Conference of Commissioners on Uniform State Laws and recommended for adoption in all states. These new volumes combine the Uniform Acts relating to business and financial topics for convenient reference to the text of such statutes and the up-to-date judicial constructions thereof in all of the adopting jurisdictions.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners from each of the states, the

EXPLANATION

District of Columbia and Puerto Rico. In thirty-three of these jurisdictions the Commissioners are appointed by the chief executive acting under express legislative authority. In the other jurisdictions the appointments are made by general executive authority. There are usually three representatives from each jurisdiction. The term of appointment varies, but three years is the usual period. The Commissioners are chosen from the legal profession, being lawyers and judges of standing and experience, and teachers of law in some of the leading law schools. They are united in a permanent organization, under a constitution and by-laws, and meet in Annual Conference in the same vicinity as the American Bar Association, usually for five or six days immediately preceding the meeting of that Association. The record of the activities of the National Conference, the reports of its committees, and its approved acts are printed in the Annual Proceedings.

The object of the National Conference, as stated in its constitution, is "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable." The National Conference works through standing and special committees. In recent years all proposals of subjects for legislation are referred to a standing Committee on Scope and Program. After due investigation, and sometimes a hearing of parties interested, this committee reports whether the subject is one upon which it is desirable and feasible to draft a uniform law. If the National Conference decides to take up the subject, it refers the same to a special committee with instructions to report a draft of an act. With respect to some of the more important acts, it has been customary to employ an expert draftsman. Tentative drafts of acts are submitted from year to year and are discussed section by section. Each uniform act is thus the result of one or more tentative drafts subjected to the criticism, correction, and emendation of the Commissioners, who represent the experience and judgment of a select body of lawyers chosen from every part of the United States. When finally approved by the National Conference, the uniform acts are recommended for general adoption throughout the jurisdiction of the United States and are submitted to the American Bar Association for its approval.

OFFICIAL COMMENTS

The notes or comments prepared by the Commissioners on Uniform State Laws in explanation of a particular Act appear under the Commissioners' Prefatory Note preceding the text of

EXPLANATION

such Act while the notes and comments prepared in explanation of specific sections of an Act are carried under the relevant sections thereof.

ACTION IN ADOPTING JURISDICTIONS

Variations that occur between an Official Uniform Act text section and the corresponding text section of an adopting jurisdiction are carried under the heading "Action in Adopting Jurisdictions". Under this heading in the sections affected will be found an alphabetical listing of the relevant jurisdictions with an explanatory note pointing out the differences between the texts.

In many jurisdictions, additional provisions that are not contained in the Official Text have been enacted. These provisions are reflected in the general statutory notes preceding the text of the particular Act.

ANNOTATIONS OR NOTES OF DECISIONS

The annotations or constructions by the courts of the Uniform Acts herein are complete from earliest times to date. They cover all decisions of courts of record in the adopting jurisdictions, as well as those of the Supreme Court of the United States and other Federal Courts construing such Uniform Acts in the following reports:

<i>Reports</i>	<i>Abbreviations</i>
Atlantic Reporter	A.
Atlantic Reporter, Second Series	A.2d
California Reporter	Cal.Rptr.
New York Supplement	N.Y.S.
New York Supplement, Second Series	N.Y.S.2d
North Eastern Reporter	N.E.
North Eastern Reporter, Second Series	N.E.2d
North Western Reporter	N.W.
North Western Reporter, Second Series	N.W.2d
Pacific Reporter	P.
Pacific Reporter, Second Series	P.2d
South Eastern Reporter	S.E.
South Eastern Reporter, Second Series	S.E.2d
South Western Reporter	S.W.
South Western Reporter, Second Series	S.W.2d
Southern Reporter	So.
Southern Reporter, Second Series	So.2d
Federal Reporter	F.
Federal Reporter, Second Series	F.2d
Federal Supplement	F.Supp.

EXPLANATION

<i>Reports</i>	<i>Abbreviations</i>
Federal Rules Decisions	F.R.D.
Supreme Court Reporter	S.Ct.
United States Reports	U.S.
Lawyers' Edition	L.Ed.
Lawyers' Edition, Second Series	L.Ed.2d
Other Standard Reports	

The annotations appear under numbered notes so that the user, by referring to the same numbered note in the Pocket Part, can readily locate the most recent decisions on the same point.

An alphabetical index to the annotations or constructions by the courts will be found preceding the annotations under each section.

LAW REVIEW COMMENTARIES

Copious references to informative articles and discussions in Law Reviews and other legal periodicals, relating to various aspects of the Uniform Acts herein, appear under the sections to which they are pertinent.

LIBRARY REFERENCES

Another helpful feature of this edition consists of the references keyed to topics in the American Digest System, wherein cases from all jurisdictions on related material are annotated, and to sections of Corpus Juris Secundum which discuss the prevailing authority on related subject matter.

INDEX TO TEXT

Separate alphabetical descriptive-word indices to the text of the individual Uniform Acts will be found at the end of the volume in which each Act is included, following the divider.

THE PUBLISHER

August, 1978

Acknowledgment

Official Text and Comments

Acknowledgment is gratefully made to The American Law Institute and to the National Conference of Commissioners on Uniform State Laws for permission to reproduce the official Text and Comments for the Acts included herein.

THE PUBLISHER

CITE THIS BOOK

Uniform _____ Act (U.L.A.) § ____.

Uniform Act for Simplification of Fiduciary
Security Transfers (U.L.A.) § ____.

†

TABLE OF CONTENTS

Explanation	Page III
Acknowledgment	IX
Cite this Book	X

Business and Financial Laws

Complete Section analysis of each Act, see beginning of Act.

Consumer Sales Practices Act	1
Index	777
Deceptive Trade Practices Act (1966 Act)	35
Index	778
Deceptive Trade Practices Act (1964 Act)	65
Index	778
Division of Income for Tax Purposes Act	91
Index	778
Federal Tax Lien Registration Act	109
Index	780
Fiduciaries' Act	127
Index	780
Fraudulent Conveyance Act	161
Index	781
Land Sales Practices Act	367
Index	781
Management of Institutional Funds Act	405
Index	782
Principal and Income Act (1962 Act)	429
Index	782
Principal and Income Act (1931 Act)	461
Index	784
Residential Landlord and Tenant Act	499
Index	786

TABLE OF CONTENTS

	Page
Securities Act	561
Index	797
Simplification of Fiduciary Security Transfers, Act for	709
Index	799
State Antitrust Act	733
Index	799
Supervision of Trustees for Charitable Purposes Act	745
Index	800
Trustees' Powers Act	761
Index	800

UNIFORM CONSUMER SALES PRACTICES ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Kansas	1973, c. 217	1-1-1974	K.S.A. §§ 50-623 to 50-643.
Ohio	1972, p. —	7-14-1972	R.C. §§ 1345.01 to 1345.13.
Utah	1973, c. 188	5-7-1973	U.C.A.1953, 13-11-1 to 13-11-23.

Historical Note

The Uniform Consumer Sales Practices Act was approved by the National Conference of Commissioners on Uniform State Laws, and the

American Bar Association, in 1970. The Act was subsequently amended in 1971 and similarly approved.

Commissioners' Prefatory Note

Uniform legislation concerning consumer sales practices is desirable from the standpoint of both consumers and businessmen. Consumers are entitled to protection from deceptive and unconscionable sales practices no matter where they live, and businessmen are entitled to predictable standards of conduct no matter where they sell.

Since 1960, state consumer protection legislation has been enacted at a rapid, even a dizzy pace. Massachusetts and Vermont, for example, enacted consumer protection laws in 1967 and substantially amended them in 1969. Mass.Gen.Laws Ann. ch. 93A (Supp.1970); Vt.Stat. Ann. tit. 9, ch. 63 (1970). By 1968, Federal Trade Commission Chairman Dixon could point to three main types of state consumer sales practice legislation and still add, "several other states have consumer protection laws of various kinds. . . ." Dixon, "Section 5 of the FTC Act and State Legislation Dealing with Deceptive Acts—Is There a Conflict?", 1968 CCH N.Y. Antitrust Law Symp. 76, 83.

Enough disparate consumer sales practices legislation is now on the books to make it profitable and desirable to establish optimum state standards for the regulation of consumer sales practices. This approach complements, rather than conflicts with, the regulation of consumer sales practices of national scope by such federal agencies as the Federal Trade Commission. As an American Bar Association Commission which evaluated the Federal Trade Commission has concluded:

The FTC should continue its efforts to support adoption by the states of uniform state laws dealing with consumer frauds and deception, and should conduct seminars with state legislators or administrators to make available to the states relevant experience on the national level and in other states. *Report of the ABA Commission to Study The Federal Trade Commission* 58 (1969).

CONSUMER SALES PRACTICES ACT

The Uniform Consumer Sales Practices Act represents an effort to crystallize the best elements of contemporary federal and state regulation of consumer sales practices in order to effectuate harmonization and coordination of federal and state regulation.

General Statutory Notes

Kansas. The Kansas Act, entitled the Kansas Consumer Protection Act, is a substantial adoption of the Uniform Act, but contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Ohio. The Ohio act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and

additional matter which cannot be clearly indicated by statutory notes.

Texas. Adopted an act entitled Deceptive Trade Practices—Consumer Protection Act which is not a substantial adoption of the Uniform Act but which has the same general purposes and some similar provisions. See V.T.C.A.Bus. & C. §§ 17.41 to 17.63.

UNIFORM CONSUMER SALES PRACTICES ACT

Sec.

1. Purposes, Rules of Construction.
2. Definitions.
3. Deceptive Consumer Sales Practices.
4. Unconscionable Consumer Sales Practices.
- 4A. Jurisdiction and Service of Process.
5. Duties of the Enforcing Authority.
6. General Powers of the Enforcing Authority.
7. Rule-making Requirements.
- 7A. Rule-making Procedure.
- 7B. Filing and Taking Effect of Rules.
- 7C. Publication of Rules.
- 7D. Petition for Adoption of Rules.
- 7E. Declaratory Judgment on Validity or Applicability of Rules.
- 7F. Validity of Rules.
8. Investigatory Powers of the Enforcing Authority.
9. Remedies of the Enforcing Authority.
10. Coordination with Other Supervision.
11. Private Remedies.
12. Class Actions.
13. Special Provisions Relating to Class Actions.
14. Application.
15. Effect on Other Remedies.
16. Short Title.
17. Severability.
18. Specific Repealer and Amendments.
19. Time of Taking Effect.

§ 1. [Purposes, Rules of Construction]

This Act shall be construed liberally to promote the following policies:

- (1) to simplify, clarify, and modernize the law governing consumer sales practices;
- (2) to protect consumers from suppliers who commit deceptive and unconscionable sales practices;
- (3) to encourage the development of fair consumer sales practices;
- (4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection; and
- (5) to make uniform the law, including the administrative rules, with respect to the subject of this Act among those states which enact it.

§ 1

CONSUMER SALES PRACTICES ACT

Commissioners' Comment

This section provides general Commission decisions, rules, and interpretative guidelines. As guides are germane to the interpretation of the Act.

Action in Adopting Jurisdictions

Variations from Official Text:

Utah. Adds paragraph as follows: who in good faith comply with the provisions of this act.

Law Review Commentaries

Utah Consumer Sales Practices Act: Memo. Larry G. Reed. 2 Utah B.J. 59 (1974).

Library References

Trade Regulation §861.

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

Notes of Decisions

Generally 1
Civil remedies 2

2. Civil remedies

Ohio Consumer Sales Practices Act is intended to prohibit and provide civil remedies to enforce prohibition of deceptive and unconscionable acts and practices by Ohio suppliers in connection with consumer transactions irrespective of location of consumer, whether within or without Ohio. Brown v. Market Development, Inc., 1974, 322 N.E.2d 367, 41 Ohio Misc. 57.

1. Generally

Consumer Sales Practices Act is concerned with practices used by supplier and not completed sales. Brown v. Market Development Inc., 1974, 322 N.E.2d 367, 41 Ohio Misc. 57.

§ 2. [Definitions]

As used in this Act:

(1) "consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of goods, a service, or an intangible [except securities] to an individual for purposes that are primarily personal, family, or household, or that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation by a supplier with respect to any of these dispositions;

(2) "Enforcing Authority" means [appropriate official or officials];

(3) "final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired;

(4) "person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity;

(5) "supplier" means a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

Commissioners' Comment

[Subsec. (1)]. A consumer transaction typically involves a natural person who obtains or is solicited to obtain an item of goods, a service, or an intangible primarily for personal, family, or household purposes. Also included are certain analogous transactions in which a natural person obtains or is solicited to obtain a business opportunity in which he has not been previously engaged. In view of the extensive state regulation of securities transactions, their inclusion is left optional. On the assumption that land transactions frequently are, and should be, regulated by specialized legislation, they are excluded altogether.

[Subsec. (2)]. In order to obtain effective administration, the National Conference recommends centralizing all powers granted by the Uniform Consumer Sales Practices Act in a single official. In some states a single official, typically the Attorney General, already has been granted substantial power with respect to consumer sales practices. In these states, the Attorney General is the logical choice for designation as Enforcing Authority. Because

the Enforcing Authority may frequently find it necessary to engage in litigation, the Attorney General also is a likely choice for Enforcing Authority in states which have not previously subjected consumer sales practices to extensive regulation. Moreover, if an enacting state creates a new agency to administer the Act, that state should carefully review each provision of the Act and provide a statutory framework which will ensure an effective working relationship between the new agency and the Attorney General.

[Subsec. (3)]. This definition pertains to one of the preconditions of class action damage liability in §§ 9(b)(1) and 11(d)(1). The Enforcing Authority is required to maintain a public file of these judgments and to make them available for public dissemination, § 5(a)(3), (5).

[Subsec. (4)]. This definition is derived from the Uniform Statutory Construction Act § 26(4) (1965).

[Subsec. (5)]. In addition to manufacturers, wholesalers, and dealers, debt collection agencies

§ 2 CONSUMER SALES PRACTICES ACT

and advertising agencies fall within this definition. Section 14 should be consulted in order to ascertain the conduct by suppliers which is exempt from the Act.

Action in Adopting Jurisdictions

Variations from Official Text:

Utah. In subsec. (1), inserts "and insurance" following "except securities".

In subsec. (2), adds sentence as follows: "The enforcing authority shall

be supplied with legal assistance and advice concerning administration and enforcement of this act by the attorney general of the state of Utah."

Library References

Trade Regulation Ⓒ861.

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

Notes of Decisions

Consumer transaction 1 Supplier 2

1. Consumer transaction

Collection of, or attempt to collect on, claim which arose from consumer transaction and is owed by consumer to supplier constitutes a "consumer transaction" within purview of Consumer Practices Act definitional provision. *Liggins v. May Co.*, 337 N.E. 2d 816, 1975, 44 Ohio Misc. 81, 730 O.2d 306.

Assignment of collection of debt owed original supplier by consumer was part of consumer transaction, and any conduct in violation of practices prohibited by Consumer Practices Act was not permissible either by supplier or its designated assignee with relation to collection of debt until such time as relationship was fully terminated by payment thereof. *Id.*

2. Supplier

Assignee, which was engaged in business of enforcing or attempting to enforce payment of claim or debt, and to which debt owed original supplier by consumer as result of consumer transaction had been assigned, was engaged in business of effecting consumer transaction and was therefore a "supplier" within purview of Consumer Practices Act definitional provision. *Liggins v. May Co.*, 1975, 337 N.E.2d 816, 44 Ohio Misc. 81, 730 O.2d 306.

Assignee, which was engaged in business of enforcing or attempting to enforce claim or debt, and which in attempting to enforce debt owed original supplier by consumer was itself a "supplier" under Consumer Practices Act, was subject to Consumer Practices Act prohibitions against deceptive and unconscionable acts or practices whether acts occurred before, during or after original transaction. *Id.*

§ 3. [Deceptive Consumer Sales Practices]

(a) A deceptive act or practice by a supplier in connection with a consumer transaction violates this Act whether it occurs before, during, or after the transaction.

(b) Without limiting the scope of subsection (a), the act or practice of a supplier in indicating any of the following is deceptive:

(1) that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits it does not have;