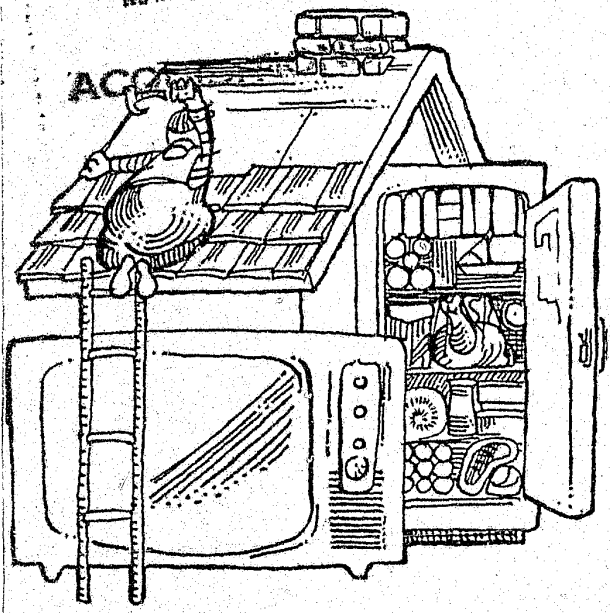


Consumer Fraud Act

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MAR 19 1979



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Consumer Fraud Act

AN ACT to protect consumers and borrowers and businessmen against fraud, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce and to give the Attorney General certain powers and duties for the enforcement thereof.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1.

(a) The term "advertisement" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise and includes every work device to disguise any form of business solicitation by using such terms as "renewal", "invoice", "bill", "statement", or "reminder", to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought after commercial transaction;

(b) The term "merchandise" includes any objects, wares, goods, commodities, intangibles, real estate situated outside the State of Illinois, or services;

(c) The term "person" includes any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

(d) The term "sale" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

(e) The term "consumer" means any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household: or in connection with the operation of his household.

(f) The terms "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 this State.

Section 2.

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

Section 2A.

The use or employment of any chain referral sales technique, plan, arrangement or agreement whereby the buyer is induced to purchase merchandise upon the seller's promise or representation that if buyer will furnish seller names of other prospective buyers of like or identical merchandise that seller will contact the named prospective buyers and buyer will receive a reduction in the purchase price by means of a cash rebate, commission, credit toward balance due or any other consideration, which rebate, commission, credit or other consideration is contingent upon seller's ability to sell like or identical merchandise to the named prospective buyers, is declared to be an unlawful practice within the meaning of this Act.

Section 2B.

Where merchandise having a cash sales price of \$25 or more is sold or contracted to be sold whether under a single contract or under multiple

contracts, to a consumer as a result of or in connection with a salesman's direct contact with or call on the consumer at his residence without the consumer's soliciting the contact or call, that consumer may avoid the contract or sale by notifying the seller within 3 full business days following that day on which the contract was signed or the sale was made and by returning to the seller, in its original condition, any merchandise delivered to him under the contract or sale. *At the time the sale is made or the contract signed, the salesman shall furnish the buyer with a written receipt or contract containing a "Notice of Cancellation" informing the buyer that he may cancel the sale at any time within such 3 days. Such written "Notice of Cancellation" may be sent by the buyer to the seller to cancel the contract.* The 3 day period provided for in this Section does not commence until the Notice of Cancellation and the consumer is furnished the address or phone number at which such notice to the seller can be given. If those conditions are met, the seller must return to the consumer the full amount of any payment made or consideration given under the contract or for the merchandise. It is an unlawful practice within the meaning of this Act for a seller to refuse to make full refund as required by this Section or for a seller to use any undue influence, coercion, intentional misrepresentation or any other wilful act or representation to interfere with the consumer's exercise of his rights under this Section.

Section 2C.

If the furnishing of merchandise, whether under purchase order or a contract of sale, is conditioned on the consumer's providing credit references or having a credit rating acceptable to the seller and the seller rejects the credit application of that consumer, the seller must return to the consumer any down payment, whether such down payment is in the form of money, goods, chattels or otherwise, made under that purchase order or contract and may not retain any part thereof. The retention by the seller of part or all of the down payment, whether such down payment is in the form of money, goods, chattels or otherwise, under those circumstances as a fee for investigating the credit of the consumer or as liquidated damages to cover depreciation of the merchandise which was the subject of the purchase order or contract or for any other purpose is an unlawful practice within the meaning of this Act, whether that fee or those charges are claimed from the down payment, whether such down payment is in the form of money, goods, chattels or otherwise, or made as a separate charge to the consumer.

Section 2D.

If a consumer in a retail installment sales transaction gives the seller a negotiable instrument in part of full payment for the merchandise which is the subject of a purchase order, retail charge agreement or retail installment sales contract before that merchandise is delivered or furnished to him, the assignment of that agreement or contract or the transfer of that negotiable instrument does not bar that consumer from asserting against the assignee or transferee any defense or right of action he may have against the seller unless (1) the contract or agreement contains, in at least 10-point bold type, the following notice:

"NOTICE TO BUYER

You have the right to give the assignee named (or if no assignee is named, to give the seller) written notice of any defense or right of action which you may have against the seller within 5 days of delivery of the merchandise described herein. If a notice is not received within that time, you may not assert such defense or right of action against the assignee."; and (2) such a notice is not given within the time period stated. Notice is received within the meaning of this Section if the seller or assignee has refused to accept delivery by certified or registered mail of such a notice. It is an unlawful practice within the meaning of this Act for a seller to transfer, assign or negotiate a negotiable instrument made by and received from a consumer in connection with an order for or a contract involving merchandise to be furnished by that seller to that consumer with the intent of not furnishing or delivering merchandise of the quantity, quality and specifications and at the time and place called for by that order or contract.

This Section does not apply where the merchandise which is the subject of the purchase order, retail charge agreement or retail installment sales contract is a motor vehicle, or where the negotiable instrument is made in accordance with the provisions of Subchapter 1 of the National Housing Act, as heretofore and hereafter amended.

Section 2E.

Any person who is regularly engaged in the business of providing or furnishing merchandise to consumers or in making loans to consumers and who has committed in any calendar year 3 or more violations, as determined in any civil or criminal proceeding, of the "Consumer Finance Act"; the "Consumer Installment Loan Act"; the "Retail Installment Sales Act"; the "Motor Vehicle Retail Installment Act"; "An Act to revise the law in relation to the rate of interest and to repeal certain acts therein named", approved May 24, 1879, as

amended; "An Act to promote the welfare of wage-earners by regulating the assignment of wages, and prescribing a penalty for the violation thereof", approved July 1, 1935, as amended; or "An Act relating to wage deductions for the benefit of creditors and regulating the issuance of deduction orders", approved June 19, 1961, as amended, or of any 2 or more of those acts, is guilty of an unlawful practice within the meaning of this Act. Nothing in this Section prohibits the prosecution of a person under the Acts specified herein as well as under this Act.

Section 2F.

Any person who is held in any civil or criminal proceeding to have willfully and materially violated any Illinois statutory provision regulating the extension of credit to borrowers or designed to protect the consumer purchasing merchandise in a credit, as contrasted from a cash, transaction is guilty of an unlawful practice within the meaning of this Act. Nothing in this Section prohibits the prosecution of a person under the statute violated as well as under this Act.

Section 2G.

If an installment seller willfully and materially resells goods he has repossessed from a buyer in default to a person who is not a good faith purchaser for value or with whom the seller is in collusion or if the seller resells those goods at a price intended to increase the amount of the deficiency recoverable from the defaulting buyer, that seller is guilty of an unlawful practice within the meaning of this Act.

Section 2H.

No person may make any attempt, whether by mail, telephone, personal contact, court action or by any other means, to collect an obligation from the spouse of the obligor unless the spouse cosigned the instrument evidencing the obligation or unless the obligation is in default at least 30 days or unless the goods or services furnished to the obligor and giving rise to the obligation were necessities for which the spouse would be liable to pay under statute or common law. A person who violates this Section commits an unlawful practice within the meaning of this Act and is guilty of a misdemeanor.

Section 2I.

No person may attempt to collect an obligation by communicating in any way with an employer with regard to the obligation owing by one of his employees unless there has been a default of the payment of the obligation for at least 30 days and at least 5 days prior notice of the intention to communicate with the employer has been given to

the employee. Any person violating this Section commits an unlawful practice within the meaning of this Act and, in addition, is liable in a civil action for damages resulting to the employee about whom such a communication is wrongfully made.

Section 2J.

No seller may include or cause to be included in any advertisement, price tag, display or other device used to describe the goods to be sold or to induce the purchase of those goods a statement that the goods may be purchased by weekly, monthly or other periodic payments unless that statement clearly sets forth the cash sale price of the goods in immediate conjunction with the amount of such periodic payment payable; the downpayment, if any; the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; and the rate of charge for credit expressed as an annual percentage rate.

A seller who violates this Section is guilty of an unlawful practice within the meaning of this Act.

Section 2K.

No person engaged in the making of loans to consumers or furnishing goods or services to consumers in a credit transaction may advertise using the terms "bank rates", "bank financing" or words of like import unless it is a bank, banking association or trust company authorized to do business under the laws of this State or of the United States. A person who violates this Section commits an unlawful practice within the meaning of this Act.

Section 2L.

Any retail sale of a motor vehicle made after January 1, 1968, to a consumer by a new motor vehicle dealer or used motor vehicle dealer within the meaning of Chapter 5 of the Illinois Motor Vehicle Law is made subject to this Section.

(a) The dealer is liable to the purchasing consumer for the following share of the cost of the repair of Power Train components for a period of 30 days from the date of delivery, unless such repairs have become necessary by abuse, negligence, or collision. The burden of establishing that a claim for repairs is not within this Section shall be on the selling dealer. The dealer's share of such repair cost is:

(1) in the case of a motor vehicle which is not more than 2 years old, 50%;

(2) in the case of a motor vehicle which is 2 or more, but less than 3 years old, 25%;

(3) in the case of a motor vehicle which is 3 or more, but less than 4 years old, 10%; and

(4) in the case of a motor vehicle which is 4 or more years old, none.

(b) Notwithstanding the foregoing, such a dealer and a purchasing consumer may negotiate a sale and purchase that is not subject to this Section if there is stamped on any purchase order, contract, agreement, or other instrument to be signed by the consumer as a part of that transaction, in at least 10-point bold type immediately above the signature line, the following:

"THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY AS TO MECHANICAL CONDITION"

(c) As used in this Section, "Power Train components" means the engine block, head, all internal engine parts, oil pan and gaskets, water pump, intake manifold, transmission, and all internal transmission parts, torque converter, drive shaft, universal joints, rear axle and all rear axle internal parts, and rear wheel bearings.

(d) The repair liability means that the dealer will make necessary Power Train component repairs in his shop, or in the shop of his service affiliate, on the basis of his regular list price charge for parts and labor, where the flat rate list price does not exceed 50% of the selling price of the vehicle at the time repairs are requested.

(e) The age of the vehicle shall be measured according to the manufacturer's model year designation as shown on the Certificate of Title or Registration Certificate. Vehicles shall be designated as current year models, 1 year old, 2 year old, and so forth according to the time that has elapsed since January 1 of the appropriate model year so designated.

(f) This Section does not preclude the issuance of a warranty or guarantee by a motor vehicle dealer or motor car manufacturer that meets or exceeds the basic provisions of paragraph (a).

Any person who violates this Section commits an unlawful practice within the meaning of this Act.

Section 2M.

No person engaged in the business of performing services on merchandise shall advertise such services as factory authorized services unless such services are performed by factory authorized personnel. Any person so advertising shall, upon request, supply proof of such authorization through manufacturer certification. Any person who violates this Section commits an unlawful practice within the meaning of this Act, and in addition to relief available under Section 7 of this Act, may be prosecuted for the commission of a Class C misdemeanor.

Section 3.

When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this Act; when he receives a written complaint from a consumer or borrower of the commission of a practice declared to be unlawful under this Act; 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, any practice declared to be unlawful by this Act, he may:

(a) Require that person to file on such terms as he prescribes a statement or report in writing under oath or otherwise, as to all information as he may consider necessary;

(b) Examine under oath any person in connection with the conduct of any trade or commerce;

(c) Examine any merchandise or sample thereof, record, book, document, account or paper as he may consider necessary; and

(d) Pursuant to an order of a Circuit Court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this Act, and retain it in his possession until the completion of all proceedings in connection with which it is produced.

Section 4.

To accomplish the objectives and to carry out the duties prescribed by this Act, the Attorney General, in addition to other powers conferred upon him by this Act, 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.

Section 5.

Service by the Attorney General of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made

(a) personally by delivery of a duly executed copy thereof to the person to be served, or if a person is not a natural person, in the manner provided in the Civil Practice Act as if a complaint had been filed, or

(b) by mailing by certified mail a duly executed copy thereof to the person to be served at his last known abode or principal place of business within this State.

Section 6.

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 apply to a Circuit Court and, after hearing thereon, request an order:

(a) Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons, or the conduct of any trade or commerce that is involved;

(b) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this State or revoking or suspending the certificate of authority to do business in this State 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.

Section 7.

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 by Section 2 of this Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all equitable powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

In addition to the remedies provided herein, the Attorney General may request and this Court has authority to impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under Section 2 of this Act.

Section 8.

When a receiver is appointed by the court pursuant to this Act, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records,

documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this Act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

Section 9.

Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this Act, the provisions of this Act shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

Section 10.

In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.

Section 10A.

(a) Any person who suffers damage as a result of a violation of Section 2 of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual damages or any other relief which the court deems proper.

(b) Such action may be commenced in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction of any substantial portion thereof occurred.

(c) 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 to the prevailing party.

(d) Upon commencement of any action brought under this Section the plaintiff may 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, may mail a copy of such judgment or decree to the Attorney General.

(e) Any action for damages under this Section shall be forever barred unless commenced within 3 years after the cause of action accrued; provided that, whenever any action is brought by the Attorney General for a violation of this Act, the running of the foregoing statute of limitations, with respect to every private right of action for damages which is based in whole or in part on any matter complained of in said action by the Attorney General, shall be suspended during the pendency thereof, and for one year thereafter.

Section 10B.

Nothing in this Act shall apply to:

(1) Actions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.

(2) The provisions of "An act to protect trademark, owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a trademark, brand or name," approved July 8, 1935, as amended.

(3) 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, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

Section 11.

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

Section 11A.

This Act shall be liberally construed to effect the purposes thereof.

Section 12.

This Act shall be known and may be cited as the "Consumer Fraud and Deceptive Business Practices Act."

UNIFORM DECEPTIVE TRADE PRACTICES ACT

AN ACT defining and prohibiting deceptive trade practices and providing remedies to those persons likely to be damaged by such practices. Approved Aug. 5, 1965. L.1965, p. 2647. Effective Jan. 1, 1966.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

311. Definitions.] § 1. As used in this Act, unless the context otherwise requires:

(1) "article" means a product as distinguished from a trademark, label or distinctive dress in packaging;

(2) "certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization;

(3) "collective mark" means a mark used by members of a cooperative, association or other collective group or organization to identify goods or services and distinguish them from those of others or to indicate membership in the collective group or organization;

(4) "mark" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement;

(5) "person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest or any other legal or commercial entity;

(6) "service mark" means a mark used by a person to identify services and to distinguish them from the services of others;

(7) "trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others;

(8) "trade name" means a word, name, symbol, device or any combination of the foregoing in any form of arrangement used by a person to identify his business, vocation or occupation and distinguish it from the business, vocation or occupations of others.

312. Acts constituting deceptive trade practice.] § 2. A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he:

(1) passes off goods or services as those of another;

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship approval or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;

(4) uses deceptive representations or designations of geographic origin in connection with goods or services;

(5) represents 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) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) represents that goods or services are a particular standard, quality or grade or that goods are a particular style or model, if they are of another;

(8) disparages the goods, services or business of another by false or misleading representation of fact;

(9) advertises goods or services with intent not to sell them as advertised;

(10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) make false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(12) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

In order to prevail in an action under this Act, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

This Section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this State.

313. Injunctive relief.] § 3. A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it in accordance with the principles of equity and upon terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to

deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

Costs or attorneys' fees or both may be assessed against a defendant only if the court finds that he has wilfully engaged in a deceptive trade practice.

The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this State.

314. Applicability of act.] § 4. This Act does not apply to:

(1) conduct in compliance with the orders or rules of or a statute administered by a Federal, state or local governmental agency;

(2) publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character; or

(3) actions or appeals pending on the effective date of this Act.

Subsections (2) and (3) of Section 2¹ do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name or other trade identification that was used and not abandoned before the effective date of this Act, if the use was in good faith and is otherwise lawful except for this Act.

¹ Section 312 of this chapter.

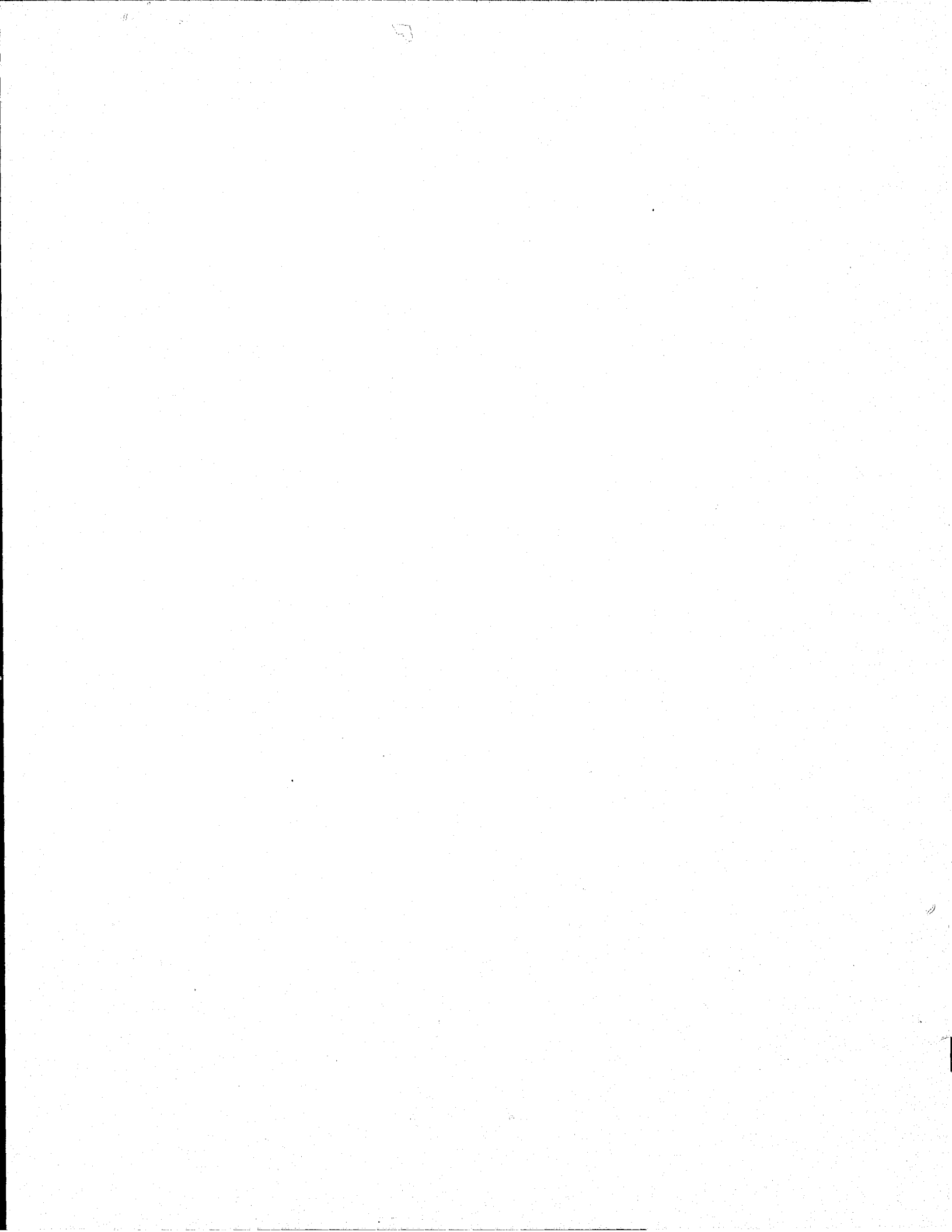
315. Uniformity of interpretation.] § 5. This Act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

316. Short title.] § 6. This Act may be cited as the Uniform Deceptive Trade Practices Act.

317. Severability clause.] § 7. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

318. Effective Date.] § 8. This act takes effect January 1, 1966.





END