

COMMITTEE ON HOUSING, SPORTS AND VETERANS AFFAIRS

04/12/06-AMENDED AND REPORTED OUT TO THE FLOOR W/3 MIN. DEBATE TIME  
03/27/06 - AMENDED AND REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY  
11/02/05 - REASSIGNED TO THE COMMITTEE ON GOVERNMENT OPERATIONS AND  
CONSUMER PROTECTION

**BILL NO. 26-0166**

**BLUE COPY**

**Twenty-Sixth Legislature of the Virgin Islands  
of the United States**

NOVEMBER 2, 2005

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An Act amending 12A V.I.C. to enact the Consumer Fraud and Deceptive Business Practices Act of 2006, and for other purposes

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**PROPOSED BY:**

Senator Pedro Encarnacion  
Co Sponsors: Craig Barshinger, Lorraine L. Berry,  
Roosevelt St. C. David, Louis Patrick Hill, Neville James,  
Terrence "Positive" Nelson, Ronald E. Russell and  
Juan Figueroa-Serville

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*Be it enacted by the Legislature of the Virgin Islands:*

**1**           SECTION 1. Title 12A Virgin Islands Code, is amended by adding chapter 5 to read as  
**2**  
**3** follows:

**4**           "Chapter 5.   Consumer Fraud and Deceptive Business Practices  
**5**

**6**           **SECTION ANALYSIS**

**7**           301.   Short Title

**8**           302.   Purpose; rules of construction  
**9**  
**10**

- 1** 303. Definitions
- 2** 304. Unfair competition and deceptive practices
- 3** 305. Chain referral sales; pyramid sales
- 4** 306. Disclosure of legal name of business and address
- 5** 307. Solicitations regarding records
- 6** 308. Return of down payment on rejection
- 7** 309. Assignment
- 8** 310. Offers of free prizes, gifts, or gratuities; disclosure of conditions
- 9** 311. Telemarketing; free trials
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**§301. Short title**

This Chapter may be cited as the “The Consumer Fraud and Deceptive Business Practices Act”.

**§302. Purpose; rules of construction**

The provisions of this chapter shall be liberally construed to protect the consuming public from deceptive and unfair acts or practices in the conduct of any trade or commerce.

**§303. Definitions**

(a) “Advertisement” means any public offer of merchandise with the purpose of attracting the attention of the consumer, whether through the press, handbills or other publications, radio, television, or any other informative media;

(b) “Chain referral sale” means the provision or offer to provide a consumer a prize, discount, rebate, or other compensation as an inducement for a sale that requires the prospective consumer to give names of other prospective consumers to the seller, if earning the prize, discount, rebate, or other compensation is contingent upon a sale to one of the referred consumers;

(c) “Commissioner” means the Commissioner of the Department of Licensing and Consumer Affairs;

(d) “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;

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**1** (e) "Deceptive business practice" means any false, falsely disparaging, or  
**2** misleading oral or written statement, visual description or other representation of any  
**3** kind made in connection with the sale, lease, rental, or loan of consumer goods or  
**4** services, or in the extension of consumer credit or in the collection of consumer debts,  
**5** which has the capacity, tendency or effect of deceiving or misleading consumers.

**6** (f) "Department" means the Department of Licensing and Consumer Affairs.

**7** (g) "Merchandise" means any article of commerce usually sold directly to the  
**8** consumer.

**9** (h) "Person" means any natural person or his legal representative, partnership,  
**10** corporation, domestic or foreign, company, trust, business entity or association, and any  
**11** agent, employee, salesman, partner, officer, director, member, stockholder, associate,  
**12** trustee or cestui que trust thereof;

**13** (i) "Pyramid sales scheme" means any plan or operation whereby a person in  
**14** exchange for money or other thing of value acquires the opportunity to receive a benefit  
**15** or thing of value which is primarily based upon the inducement of additional persons, by  
**16** himself or others, regardless of number, to participate in the same plan or operation and is  
**17** not primarily contingent on the volume or quantity of goods, services, or other property  
**18** sold or distributed or to be sold or distributed to persons for purposes of resale to  
**19** consumers. For purposes of this subsection, "money or other thing of value" does not  
**20** include payments made for sales demonstration equipment and materials furnished on a  
**21** nonprofit basis for use in making sales and not for resale;  
**22**

**23** (j) "Sale" means a revenue transaction where goods or services are delivered  
**24** to a customer in return for cash or a contractual obligation to pay.  
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1 (k) "Trade or commerce" means the advertising, offering for sale, sale, or  
2 distribution of any services and any property, tangible or intangible, real, personal or  
3 mixed, and any other article, commodity, or thing of value wherever situated;

4 (l) "Telemarketing" means a plan, program, or campaign that is conducted to  
5 induce the purchase of goods or services by use of one or more telephones and which  
6 involves calls to or from more than one consumer.

7 **§304. Deceptive business acts or practices; chain referral sales; pyramid sales**

8 It is unlawful for any person to engage in unfair methods of competition or unfair  
9 or deceptive trade acts or practices in the conduct of any trade or commerce. In  
10 construing this chapter, consideration must be given to the interpretations of the Federal  
11 Trade Commission and the federal courts relating to 15 U.S.C. §45 at the time of  
12 enactment of this act.

13 **§305. Disclosure of legal name of business and address**

14 It is unlawful in the sale of consumer goods or service for any person conducting  
15 a mail order or catalog business in the Virgin Islands, and utilizing a post office box  
16 address or a street address representing a site used primarily for the receipt or delivery of  
17 mail or as a telephone answering service, to fail to disclose the legal name under which  
18 business is conducted and the complete street address from which business is actually  
19 conducted in all advertising and promotional materials, including order blanks and forms.

20 **§306. Solicitations regarding records**

21 It is an unlawful practice for any person to offer for sale or sell to a consumer  
22 access to any records or copies of any records pertaining to the consumer which may be  
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1 obtained at no cost or a nominal cost from a governmental agency as defined in the  
2 Federal Fair Credit Reporting Act, 15 U.S.C. §1861, unless all offers, solicitations, and  
3 applications for any such service include the following statement in capital letters in not  
4 less than 10 point type:

5 "MANY GOVERNMENT RECORDS ARE AVAILABLE FREE OR AT A NOMINAL  
6 COST FROM GOVERNMENT AGENCIES. CREDIT REPORTING AGENCIES ARE  
7 REQUIRED BY LAW TO GIVE YOU A COPY OF YOUR CREDIT RECORD UPON  
8 REQUEST, AT NO CHARGE OR FOR A NOMINAL FEE."  
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10 **§307. Return of down payment on rejection**

11 If the furnishing of merchandise, whether under purchase order or a contract of  
12 sale, is conditioned on the consumer's providing credit references or having a credit  
13 rating acceptable to the seller and the seller rejects the credit application of that  
14 consumer, the seller must return to the consumer any down payment, whether the down  
15 payment is in the form of money, goods, chattels or otherwise, made under that purchase  
16 order or contract and may not retain any part of the down-payment. The retention by the  
17 seller of part or all of the down payment, whether such down payment is in the form of  
18 money, goods, chattels or otherwise, under those circumstances as a fee for investigating  
19 the credit of the consumer or as liquidated damages to cover depreciation of the  
20 merchandise which was the subject of the purchase order or contract or for any other  
21 purpose is an unlawful practice within the meaning of this chapter, whether that fee or  
22 those charges are claimed from the down payment, whether such down payment is in the  
23 form of money, goods, chattels or otherwise, or made as a separate charge to the  
24 consumer.  
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**1** §308. Assignment

**2** (a) If a consumer in a retail installment sales transaction gives the seller a  
**3** negotiable instrument in part or full payment for the merchandise that is the subject of a  
**4** purchase order, retail charge agreement or retail installment sales contract before that  
**5** merchandise is delivered or furnished to him, the assignment of that agreement or  
**6** contract or the transfer of that negotiable instrument does not bar that consumer from  
**7** asserting against the assignee or transferee any defense or right of action he may have  
**8** against the seller, unless the contract or agreement contains, in at least 10-point bold type,  
**9** the following notice: "NOTICE TO BUYER You have the right to give the assignee  
**10** named (or if no assignee is named, to give the seller) written notice of any defense or  
**11** right of action that you may have against the seller within 5 days of delivery of the  
**12** merchandise described herein. If a notice is not received within that time, you may not  
**13** assert the defense or right of action against the assignee; and such a notice is not given  
**14** within the time period stated." Notice is received within the meaning of this section, if  
**15** the seller or assignee has refused to accept delivery by certified or registered mail of such  
**16** a notice. It is an unlawful practice within the meaning of this chapter for a seller to  
**17** transfer, assign or negotiate a negotiable instrument made by and received from a  
**18** consumer in connection with an order for or a contract involving merchandise to be  
**19** furnished by that seller to that consumer with the intent of not furnishing or delivering  
**20** merchandise of the quantity, quality and specifications and at the time and place called  
**21** for by that order or contract.  
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**24** (b) This Section does not apply where the merchandise that is the subject of  
**25** the purchase order, retail charge agreement or retail installment sales contract is a motor  
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1 vehicle, or where the negotiable instrument is made in accordance with the provisions of  
2 Subchapter I of the National Housing Act.

3 **§309. Offers of free prizes, gifts, or gratuities; disclosure of conditions**

4 It is an unlawful practice for any person to promote or advertise any business,  
5 product, utility service, including but not limited to, the provision of electric,  
6 telecommunication, or gas service, or interest in property, by means of offering free  
7 prizes, gifts, or gratuities to any consumer, unless all material terms and conditions  
8 relating to the offer are clearly and conspicuously disclosed at the outset of the offer so as  
9 to leave no reasonable probability that the offering might be misunderstood.  
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11 **§310. Telemarketing; free trials**

12 (a) A person or entity that, by means of a telemarketing plan, program, or  
13 campaign, offers free goods or services to a Virgin Islands consumer on a trial basis and  
14 assesses a periodic fee or charge for the goods or services after the end of the free trial  
15 period must send to the consumer who accepts the free goods or services an invoice that  
16 the consumer may use to pay the periodic fee or charge or indicate that the consumer no  
17 longer wishes to receive the goods or services after the end of the free trial period. The  
18 invoice must contain an address and telephone number the consumer may use to cancel  
19 the goods or services, if the consumer no longer wishes to receive the free goods or  
20 services after the end of the free trial period.  
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22 (b) Violation of this section constitutes an unlawful practice within the  
23 meaning of this chapter.  
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25 **§311. Simulation of checks**  
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1 It is an unlawful practice for any person to promote or advertise any business,  
 2 product or interest in property by means of distributing documents designed to simulate  
 3 checks or other negotiable instruments, unless such instrument has printed upon both the  
 4 front and back, the following statement: "This is not a Check". However, it is not an  
 5 unlawful practice under this section for a person to distribute for commercial purposes a  
 6 sample or specimen of a check or other instrument which is used to solicit orders for the  
 7 sale of that instrument and which is clearly marked as a non-negotiable sample or  
 8 specimen.

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 10 **§312 Wholesale advertising**

11 (a) A person may represent directly or by implication in any advertising that a  
 12 person offers to sell or sells a particular article of merchandise at a wholesale price, if that  
 13 person can substantiate significant savings on his price as compared to identical  
 14 merchandise offered for sale by retailers in the trade area. However, it is an unlawful  
 15 practice to represent directly or by implication in any advertising that a person is a  
 16 wholesaler or offers to sell or sells merchandise at wholesale to the public, unless the  
 17 person:

18 (1) makes a substantial and significant number of sales for resale in  
 19 the ordinary course of business; and

20 (2) can substantiate savings on the prices offered as compared to  
 21 merchandise offered for sale by retailers in the trade area.

22 (b) It is an unlawful practice to represent directly or by implication in any  
 23 advertising that a person offers to sell or sells a particular article of merchandise at a  
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1 wholesale price unless that person can substantiate significant savings on his price, as  
2 compared to identical merchandise offered for sale by retailers in the trade area.

3 §313. Reserved

4 §314. Reserved

5 §315. Reserved

6 §316. Reserved

7 §317. Reserved

8 §318. Reserved

9 §319. Reserved

10 §320. Reserved

11 §321. Reserved

12 §322. Reserved

13 §323. Reserved

14 §324. Reserved

15 §325. Reserved

16 §326. Regulations

17 (1) The Commissioner may adopt such rules and regulations, pursuant to title  
18 3, chapter 35 as may be necessary to effectuate the purposes of this chapter, including  
19 regulations defining specific deceptive business practices.

20 (2) The rules and regulations may supplement but may not be inconsistent  
21 with the rules, regulations and decisions of the Federal Trade Commission and the federal  
22 courts in interpreting the provisions of Section 5(a) of the Federal Trade Commission Act  
23 (15 U.S.C. §45).  
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**§327. Enforcement**

The Department of Licensing and Consumer Affairs shall be responsible for the administration and enforcement of this chapter.

**§328. Remedies of the Department of Licensing and Consumer Affairs**

(a) The Department may bring:

(1) An action to obtain a declaratory judgment that an act or practice violates this chapter.

(2) An action to enjoin any person who has violated, is violating, or is otherwise likely to violate, this chapter.

(3) An action on behalf of one or more consumers for the actual damages caused by an act or practice in violation of this chapter. However, damages are not recoverable under this chapter against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this chapter.

(4) A motion in the Superior Court to appoint a receiver; or

(5) Any other action provided by law.

(b) The Department may petition the Superior Court 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 this chapter. If the court finds the method, act or practice to have been entered into with the intent to defraud, the court may impose a civil penalty in a sum not to exceed \$50, 000 per violation.

(c) A civil penalty imposed under subsection (b) must be paid to the Department of Finance who shall deposit the money in the Treasury of the Government

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1 of the Virgin Islands in a special fund designated the Consumer Protection Fund,  
2 established in title 33, chapter 111, section 3100o.

3 (d) If the Court finds a person to have engaged in any method, act, or practice  
4 declared unlawful under this chapter, and the violation was committed against a person  
5 65 years of age or older, the court may impose an additional civil penalty not to exceed  
6 \$10,000 for each violation.

7 (e) A civil penalty imposed under subsection (d) must be paid to the  
8 Department of Finance who shall deposit the money in the Treasury of the Government  
9 of the Virgin Islands in a special fund designated the Elderly Victim Fund established in  
10 title 33, chapter 111, section 3100n.

11 (f) The Court shall consider the following in determining whether to impose a  
12 civil penalty under subsection (d):

13 (1) Whether the defendant's conduct was in willful disregard of the  
14 right of the person 65 years of age or older;

15 (2) Whether the defendant knew or should have known that the  
16 defendant's conduct was directed to a person 65 years of age or older;

17 (3) Whether the person 65 years of age or older was substantially more  
18 vulnerable to the defendant's conduct because of age, poor health, infirmity,  
19 impaired understanding, restricted mobility, or disability, than other persons; and

20 (4) Any other factors the court considers appropriate.

21 (g) Any other actions as provided by law.

22 **§329. Assurance of voluntary compliance; settlements**  
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1 The Commissioner may order mediation with respect to any method, act or  
2 practice found to be violative of this chapter from any person who has engaged in, is  
3 engaging in, or was about to engage in the method, act or practice. Evidence of a  
4 violation of a mediation agreement is prima facie evidence of a violation of this chapter  
5 in any subsequent proceeding brought by the Department against the alleged violator.

6 **§330. Powers of receiver**

7 When a receiver is appointed by the court under this chapter, the receiver shall  
8 have the power to sue for, collect, receive and take into his possession all the goods and  
9 chattels, rights and credits, moneys and effects, lands and tenements, books, records,  
10 documents, papers, choses in action, bills, notes and property of every description,  
11 derived by means of any practice declared to be illegal and prohibited by this chapter,  
12 including property with which the property has been mingled, if it cannot be identified  
13 in kind because of the commingling, and to sell, convey, and assign the same and hold  
14 and dispose of the proceeds thereof under the direction of the court. Any person who  
15 has suffered damages as a result of the use or employment of any unlawful practices and  
16 submits proof to the satisfaction of the court that he has in fact been damaged, may  
17 participate with general creditors in the distribution of the assets to the extent he has  
18 sustained out-of-pocket losses. In the case of a partnership or business entity, the  
19 receiver shall settle the estate and distribute the assets under the direction of the court.  
20 The court has jurisdiction of all questions arising in such proceedings and may make  
21 such orders and judgments therein as may be required.

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23 **§331. Private right of action**  
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Any person who suffers actual damage as a result of a violation of this chapter

committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief that the court considers proper.

**§332. Recovery of costs**

The court may award to a prevailing party, as part of the judgment, a sum equal to the aggregate amount of costs and expenses, including reasonable attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the prevailing attorney for, or in connection with, the prosecution of the action.

**§333. Exemptions**

Nothing in this chapter applies to any of the following:

(a) Actions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this territory or the United States;

(b) 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;

(c) (1) The communication of any false, misleading or deceptive information, provided by the seller of real estate located in the Virgin Islands, by a real estate salesman or broker licensed under. The Real Estate Brokers and Salesmen Act, title 27

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1 Virgin Islands Code §421 *et seq.*, unless the salesman or broker knows of the false,  
2 misleading or deceptive character of such information.

3 (2) This subsection is effective as to any communication, whenever occurring;

4 (d) Claims seeking damages for conduct that results in bodily injury, death, or  
5 damage to property other than the property that is the subject of the practice claimed to be  
6 unlawful. This subsection applies to causes of action filed on or after its effective date.

7 (e) (1) The communication of any false, misleading, or deceptive information  
8 by an insurance producer, registered firm, or limited insurance representative, as those  
9 terms are defined in the title 22 Virgin Islands Code, or by an insurance agency or  
10 brokerage house concerning the sale, placement, procurement, renewal, binding,  
11 cancellation of, or terms of any type of insurance or any policy of insurance unless the  
12 insurance producer has actual knowledge of the false, misleading, or deceptive character  
13 of the information. This provision shall be effective as to any communications, whenever  
14 occurring.

15 (2) This subsection applies to all causes of action that accrue on or after the  
16 effective date of this chapter.

17 **§334. Waiver or modification**

18 Any waiver or modification of the rights, provisions, or remedies of this chapter is  
19 void and unenforceable.

20 **§335. Severability**

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

3 SECTION 2. Title 14 Virgin Islands Code is amended by adding chapter 122 to  
4 read as follows:

5 *“Chapter 122. Deception*

6 **§3045. Deception**

7 (a) Any person who knowingly sells, offers to sell, or attempts to sell the right  
8 to participate in a pyramid sales scheme, as defined in the Consumer Fraud and  
9 Deceptive Business Practices Act, codified in title 12A, chapter 5 of this Code, commits a  
10 misdemeanor and, in addition to any fines and penalties imposed by the Consumer Fraud  
11 and Deceptive Business Practices Act, may be imprisoned not more than one year.”

12 SECTION 3. Title 33 Virgin Islands Code is amended by adding sections 3100n  
13 to read as follows:

14 **“§3100n. Elderly Victim Fund**

15 (a) There is established in the Treasury of the Virgin Islands a special fund  
16 designated the “Elderly Victim Fund”. The Commissioner of Finance shall maintain and  
17 provide for the administration of the special fund as a separate and distinct fund in the  
18 Treasury. No monies in the fund are available for expenditure, except as provided in  
19 this section.

20 (b) The Elderly Victim Fund is constituted of:

21 (1) Any civil penalty imposed under 12A V.I.C. §328(d), of the  
22 Consumer Fraud and Deceptive Business Practices Act; and

23 (2) All sums appropriated thereto from time to time by Legislature.  
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**1** (c) The Commissioner of Finance shall disburse all moneys deposited into the  
**2** Elderly Victim Fund exclusively for the expenditure by the Department of Human  
**3** Services for grants to senior centers throughout the territory.

**4** (d) The Commissioner of Finance shall submit quarterly reports to the  
**5** Governor and the Legislature, listing all receipts and expenditures pertaining to the  
**6** Elderly Victim Fund.

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**8** BR05-0909/ October 18, 2005/ PFA  
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