

Deceptive Practices

Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505

The Illinois Consumer Fraud Act is Illinois' "mini-FTC Act." Under § 2 of the Act, unfair or deceptive acts or practices are made unlawful. Note that the statute refers to FTC and court interpretations of the FTC Act, so these authorities are relevant when assessing whether a particular act falls within the Illinois statute. Section 10a of the Act provides for a private right of action for violations of the Act. (The additional restrictions that § 10a attempts to impose on actions against car dealers were struck down as unconstitutional special legislation in *Allen v. Woodfield Chevrolet Inc.*, 208 Ill. 2d 12, 802 N.E.2d 752 (2003).)

Section 2A of the ICFA prohibits "chain referral" and pyramid sales schemes, wherein a person is induced to make a payment or purchase based on the promise of a credit for referring other prospective buyers. Other sections of the Act regulate a wide variety of specific transactions and practices. For example, § 2B.1 requires mail order businesses to disclose their legal name and actual street address. Section 2SS requires gift certificates and gift cards to be valid for at least five years and prohibits most post-purchase fees. Illinois was among the first states to enact a "Truth in Music" law (ICFA § 2XX), targeting so-called "imposter groups": Musical groups that perform under the name of a well-known band must include at least one member of the original band.

Uniform Deceptive Trade Practices Act, 815 ILCS 510

The UDTPA was originally intended to protect businesses from dishonest competitors, rather than to protect consumers directly. It defines various acts as deceptive trade practices but provides only for injunctive relief rather than damages, although damages often are available under other laws (such as the Illinois Consumer Fraud Act, which incorporates the UDTPA by reference).

Section 2(10) of the UDTPA provides that it is a deceptive trade practices to advertise goods or services while not intending to supply a reasonable quantity. Illinois courts have interpreted this provision, together with other state and federal laws, as a prohibition on "bait-and-switch" advertising. *See, e.g., Chandler v. American General Finance, Inc.*, 329 Ill. App. 3d 729, 768 N.E.2d 60 (1st Dist. 2002); *Xydakis v. Target, Inc.*, 333 F. Supp. 2d 683 (N.D. Ill. 2004).

Unsolicited Merchandise Act, 815 ILCS 430

A recipient of unsolicited goods may keep them without obligation to the sender. This applies only to goods that are addressed to or intended for the recipient; it does not apply to misdirected goods. Nor does it apply where the parties have "otherwise agreed" (e.g., negative option plans). It applies to all methods of delivery, not just postal mail.

Fraudulent Sales Act, 815 ILCS 350

The Fraudulent Sales Act applies to any sale designed to induce a belief that the business will cease operating at the premises after the sale has concluded. It requires the seller to post an inventory of the goods to be sold, and to obtain a license to conduct the sale from the local government.

Physical Fitness Services Act, 815 ILCS 645

The Physical Fitness Services Act regulates gyms and other fitness facilities. Among other provisions, it requires that contracts include a 3-day cancellation period and prohibits lifetime contracts and those requiring payments for more than 3 years. The initial term of a contract may not be more than 2 years, although it can be renewable as long as the renewal price is at least 10% of the original membership price. A contract that violates the Act is void and unenforceable.

In *Pulcini v. Bally Total Fitness Corp.*, 353 Ill. App. 3d 712, 820 N.E.2d 31 (1st Dist. 2004), customers of Bally fitness clubs who had signed up for renewable membership plans sued under the Physical Fitness Services Act. Pulcini paid \$50 up front and authorized Bally to take \$38 from her checking account each month for 36 months (\$30 toward the membership fee, plus \$8 in monthly dues). She argued that this contract violated the Act because it had an initial term of 3 years; Bally argued that the term was one month, renewable by the payment of monthly dues. Even under Bally's view of the contract, however, it was still illegal because the \$8 renewal price was less than 10% of the original membership price. The purpose of the 10% requirement is to ensure that a consumer has a realistic cancellation option at the end of each renewal period.

Note: This report describes various Illinois statutes (and a few recent court decisions) relevant to the topic of deceptive practices, and is intended to serve as an example of what is expected for these reports. Because there are so many relevant state statutes on this topic, only the most important ones are included here, together with some minor statutes that relate to problems in the reading assignment. For reports on other topics, it may be more appropriate to emphasize other types of material (e.g., recent federal legislation) instead of or in addition to state laws.