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CH. 32 TRADE PRACTICES AND CONSUMER PROTECTION

CHAPTER 32
TRADE PRACTICES AND
CONSUMER PROTECTION

COMMENT: This Chapter 32 governing Trade Practices and Consumer Protection, was completely revised by P.L. 21-18:1. Not only did it update the law to govern unlawful trade practices as they have developed since the original law (P.L. 9-67) was enacted, but it also strengthened the role of the Attorney General as Consumer Advocate, permitting the Attorney General to represent consumers in certain situations.

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- Article 4. Prizes and Gifts.
- Article 5. Homeowners' Warranties.
- Article 6. Consumer Protection and Right to Choose Cable Television Service Act.
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§ 32101. Liberal Construction.

This chapter shall be liberally construed so that its beneficial purposes may be accomplished.

§ 32102. Short Title.

This chapter may be cited as the “Deceptive Trade Practices - Consumer Protection Act”.

§ 32103. Definitions.

As used in this chapter:

(a) *Business consumer* means an individual, partnership or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include the government of Guam.

(b) *Consumer goods* means tangible goods purchased primarily for personal use or for use in the home or on a farm.

(c) *Consumer services* means services purchased primarily for personal use or for use in the home or on a farm or to build, repair, maintain or enhance consumer goods.

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(d) *Consumer* means an individual, partnership, association, corporation, or the government of Guam who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of Twenty-Five Million Dollars (\$25,000,000) or more, or that is owned or controlled by a corporation or entity with assets of Twenty-Five Million Dollars (\$25,000,000) or more.

(e) *Developer* is a person who builds or who hires another to build new homes or buildings or condominium units for sale, as provided in this subsection. Any person who, during the three (3) years preceding the enactment of this chapter, built or ordered built, had under construction, or offered for sale three (3) or more new homes, new buildings, or new condominium units, or any combination thereof involving three (3) or more new homes, new buildings, or new condominium units, in which the person had an equity interest, is a developer for purposes of this section. If any member of a partnership meets the definition of a developer, all partners are developers. If any officer or director or majority shareholder of a corporation meets the definition of a developer, the corporation is a developer. If the spouse of any person meets the definition of developer, both husband and wife are developers. *Developer* does not include lending institutions acting in good faith and not having an equity position in the new home or project. It does not include licensed real estate brokers and their salesmen not having an equity position in the new home, buildings, or condominium units, and who disclosed to the consumer all defects therein then known to them.

(f) *Documentary material* includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(g) *Goods* means tangible chattels, real property, land, buildings, homes or condominiums built, purchased or leased for use, investment or resale. *Goods* also includes stocks, bonds, and securities purchased for investment or resale, funeral plans, annuities, retirement plans, and insurance policies purchased for the protection of a person or property.

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(h) *Home* means any building constructed for human habitation, including houses, apartment buildings, time share units, and condominiums. It includes homes built on leasehold property having a term, including all options to renew, in excess of twenty-five (25) years.

(i) *Knowingly* means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(j) *Merchant* means a person who deals in goods or services of the kind involved in the transaction or otherwise by his occupation or statements holds himself out as having knowledge or skill peculiar to the practices, services or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skills. In addition, a person who purports to be a merchant or holds himself out as a merchant is a merchant for purposes of this section.

(k) *Non-business consumer* is a consumer who purchases goods or services primarily for personal use or use in the home or on a farm.

(l) *Person* means an individual, partnership, corporation, association, or other group, however organized.

(m) *Retail sale* means the purchase of goods or services by an end user.

(n) *Sale* and *purchase* include in reference to the sale or purchase of goods and services the leasing or rental of property, but do not include short term rentals of real property or leases of real property of ten (10) years or less.

(o) *Services* means work, labor, or service purchased or leased for use, including but not limited to services furnished in connection with the sale or repair of goods.

(p) *Trade* and *commerce* mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and

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shall include any trade or commerce directly or indirectly affecting the people of Guam.

(q) *Unconscionable action or course of action* means an act or practice which is perpetrated by a person in the course of business in the retail sale of consumer goods or services to the detriment of a non-business consumer and which:

(1) Takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree; or

(2) Results in a gross disparity between the value received and consideration paid, in a transaction involving the transfer of consideration.

(r) *Used* in reference to tangible goods means tangible goods whose value is diminished because the goods are used, second hand, rebuilt, or reconditioned.

(s) *Disaster* means any typhoon, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, explosion, or other catastrophe which may require emergency assistance to save lives, or to protect property, public health and safety or to avert an emergency.

SOURCE: Subsection (s) added by P.L. 22-34:2 (09/27/93).

§ 32104. Waivers: Public Policy.

(a) Any waiver by a consumer of the provisions of this chapter, any warranty, or the provisions of any statute imposing a duty or obligation upon another, is contrary to public policy and is unenforceable and void; provided, however, that a waiver not related to a warranty or provision of law which imposes a duty or obligation on another and which by statute cannot be waived is valid and enforceable if the person claiming the benefit of the waiver pleads and proves:

(1) The consumer was not in a significantly disparate bargaining position; and

(2) The consumer was represented by legal counsel in seeking or acquiring goods or services, other than the purchase or lease for a consideration paid or to be paid that exceeds One Million Dollars (\$1,000,000); and

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(3) Prior to paying any consideration whatsoever, the consumer waived all or part of this chapter by an express provision in a written contract signed by both the consumer and the consumer's attorney or the Attorney General; provided, however, that a business consumer with net assets of Five Million Dollars (\$5,000,000) or more according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles that has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and that it is not in a significantly disparate bargaining position may by written contract prior to payment of any consideration waive the provisions of this chapter without signature of an attorney or the Attorney General.

(4) Any waiver of any express warranty, implied warranty, warranty imposed by statute, common law, or operation of law, or similar provision of law set by statute for the protection of a consumer is subject to the provisions of this chapter.

(5) If any statute provides that a warranty or other provision of law may not be waived, then notwithstanding the provisions of this section the warranty or provision of law may not be waived.

(b) The existence or absence of a disparate bargaining position may not be established as a matter of law solely by evidence of the consumer's financial position relative to other parties to the contract or by matters contained in a written contract relating to the relative bargaining position of the parties.

(c) An agreement to arbitrate constitutes an important waiver of the right of access to the courts. Therefore, as to any agreement to arbitrate executed after the effective date of this chapter, the agreement to arbitrate any matter arising out of the sale of goods or services for any amount of consideration, or any matter or contingency arising therefrom, shall be treated as a waiver of rights under this chapter, is not binding on any consumer unless there is full compliance both with this section and with this chapter, each party is represented by an attorney, and the agreement to arbitrate is signed by the attorneys representing each of the parties.

§ 32105. Remedies Not Exclusive.

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(a) The provisions of this chapter are not exclusive. The remedies specified in this chapter for violation of any section of this chapter or for conduct proscribed by any section of this chapter shall be in addition to any other procedures or remedies for any violation or wrongful conduct provided for in any other law. Nothing in this chapter shall limit any other statutory or any common law rights of the Attorney General, or any other person. If any act or practice proscribed by this chapter is also the basis for a cause of action in common law or a violation of another statute, the person may assert the common law or statutory cause of action under the procedures and with the remedies applicable thereto.

(b) Where any statute allows attorneys' fees, such fees shall be awarded for services of the Attorney General as in any case brought by private counsel. All such fees shall be paid into the Consumer Protection Fund. The Attorney General shall, by regulation, set the hourly rate or rates for government of Guam attorneys, such rate to be not less than One Hundred Twenty-Five Dollars (\$125) per hour. Until such regulations are promulgated, the rates shall be One Hundred Twenty-Five Dollars (\$125) per hour.

§ 32106. No Jury Trial.

There shall be no right of jury trial in any civil action brought pursuant to this chapter, except to the extent mandated by the Organic Act of Guam and the Constitution of the United States.

§ 32107. Bad Faith Action.

On a finding by the court that an action under this chapter was groundless and brought in bad faith, or brought for the purpose of harassment, the court shall award to the innocent party reasonable and necessary attorneys' fees and court costs.

§ 32108. Construction and Application.

(a) Liberal construction. This chapter shall be liberally construed in favor of the consumer and shall be applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty, and to provide efficient and economical procedures to secure such protection. Nothing herein shall be construed as authorizing any person to conduct business in Guam without all necessary licenses and permits.

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

(c) Construction.

(A) In interpreting the definitions and other provisions of this chapter, it is the intent of the Legislature that in construing this chapter, the courts, to the extent possible, will be guided by the interpretations given by the United States Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.A. 45(a)(1) and the Federal Trade Act.

(B) In construing this chapter the court may consider relevant and pertinent decisions of courts in other jurisdictions.

§ 32109. Attorneys' Fees and Costs.

The Attorney General and each consumer who prevails in an action brought under this chapter shall be awarded court costs and reasonable and necessary attorneys' fees.

§ 32110. Notice: Offer of Settlement.

(a) As a prerequisite to filing a suit seeking damages under this chapter against any person by a consumer not represented by the Attorney General, a consumer shall give written notice to the person at least thirty (30) days before filing the suit advising the person, in reasonable detail, of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys' fees, if any, reasonable incurred by the consumer in asserting the claim against the party. During the thirty-(30-)day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer. If the goods weigh less than fifty (50) pounds and were purchased from a merchant, the consumer shall take the goods to the merchant's place of business for such inspection. If the consumer unreasonably refuses to permit the inspection, he can receive only restitution or damages up to the cost of the item, with no other damages, costs, or attorneys fees. After the action is filed, the court shall order

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inspection. If the claimant unreasonably refuses, the court shall dismiss the claim.

(b) If the thirty (30) days written notice is given within one hundred twenty (120) days of the running of the statute of limitations, giving the notice as required by this section shall have the effect of extending the statute of limitations until the one hundred twenty-first (121st) day after the giving of the notice.

(c) Any person who receives the written notice provided by subsection (a) of this section may, within thirty (30) days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided in subsection (b) of this section may, within thirty (30) days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within thirty (30) days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the amount tendered in the settlement offer is the same as or more than, or if the court finds that amount to be substantially the same as, the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less.

(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this chapter. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer provided for by subsection (d) of this section.

(f) If a suit is brought against a consumer over a transaction that is covered by the provisions of this chapter, the consumer may raise any defenses permitted by this chapter relating to the transaction, including

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allegations of violations of this chapter which may be raised as affirmative defenses, without need for a demand or settlement offer to the other party.

§ 32111. Actions by Consumers or Attorney General.

Any aggrieved consumer or the Attorney General may maintain an action for any of the following:

(a) Any prohibited act or practice that is specifically enumerated in this chapter, including but not limited to acts of omission, failure to honor any warranty or agreement with the consumer, or committing any false, misleading or deceptive acts or practices by a merchant to induce a consumer to purchase goods or services.

(b) Any unconscionable action or course of action by any person as to non-business consumers in non-land transactions.

(c) If the Attorney General is representing a consumer or consumers not in a class action suit, the court may not award damages other than restitution, costs and attorneys fees unless specifically permitted by statute. If a consumer is not represented by the Attorney General, the court may award the consumer damages, restitution, costs, attorneys' fees, and all other relief permitted at law or equity.

§ 32112. Recovery by Consumer.

In a suit filed pursuant to this chapter, a consumer, not represented by the Attorney General who prevails may obtain:

(a) The amount of actual, exemplary, and punitive damages found by the trier of fact. If the trier of fact finds that the conduct of the party was committed knowingly and as a regular business practice of the party, the trier of fact may, in addition, award not more than three (3) times the amount of actual damages.

(b) Temporary and permanent orders enjoining such acts or failures to act;

(c) Orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this chapter;

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(d) Full restitution; and

(e) Any other relief available at law or equity which the court deems proper, including but not limited to the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in Guam if the judgment has not been satisfied within thirty (30) days after the judgment becomes final.

§ 32113. Additional Relief.

The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful or prohibited act or practice. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three (3) months after the order to make restitution has become final and nonappealable.

§ 32114. Exemptions.

(a) Nothing in this chapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein in any advertisement in violation of this chapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this chapter, or had a direct or substantial financial interest or commission in the sale or distribution of the unlawfully advertised goods or service. *Financial interest* as used in this section relates to an expectation of financial reward which would be the direct result of such advertisement.

(b) Nothing in this chapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.A. 45(a)(1)). The provisions of this chapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

§ 32115. Intervention by Attorney General.

Whenever a private party brings an action for relief based upon this chapter, the Attorney General shall be served with a copy of the complaint and summons, and may intervene as a matter of right and may cross claim and counterclaim on behalf of other consumers.

§ 32116. Attorney General May Represent Consumers.

The Attorney General may represent one (1) or more named consumers for equitable relief, rescission of contract or sale, restitution, civil penalties and attorneys' fees; may bring a class action on behalf of Guam consumers for equitable relief, rescission of contract or sale, damages, restitution, civil penalties and attorneys' fees; or may sue in the name of the government of Guam for equitable relief, rescission of contract or sale, restitution, civil penalties and attorneys' fees, with information on the individual consumers and their losses and damages available on discovery. Income of the consumer shall not be a factor in determining eligibility for such representation by the Attorney General.

§ 32117. Promotional Material.

If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under this chapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

- (a) The seller received the advertisements or promotional material from the third party;
- (b) The seller's only action with regard to the advertisements or promotional materials was to disseminate the material; and
- (c) The seller has ceased disseminating the material.

§ 32118. Indemnity.

A person against whom an action has been brought under this chapter may seek contribution or indemnity from one who, under a statute or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity or contribution may recover all of his reasonable costs and attorneys' fees expended if he prevails.

§ 32119. Injunctive Relief.

The court may issue any person including the Attorney General temporary restraining orders, and temporary or permanent injunctions to restrain and prevent violations of this chapter and such injunctive relief shall be issued without bond. The complaining party need not show that there is no remedy available at law and need not show irreparable damage if injunctive relief is not granted, but need only show that a violation of this chapter has occurred or is likely to occur. If two (2) or more merchants are engaging in one (1) or more of the same practice or practices prohibited by this chapter, any request for injunctive may be combined on one (1) action naming multiple defendants; provided, that there must be proof that a violation of this chapter has occurred or is likely to occur as to each defendant against whom an injunction or restraining order ultimately issues.

§ 32120. Sale Not Enforceable.

A sale of goods or services which is based upon or induced by a false, misleading, deceptive or prohibited act or practice as described in this chapter is not enforceable by the party responsible for the false, misleading, deceptive or prohibited act or practice, and may be revoked by the consumer if there was reasonable reliance on or material damage to the consumer from the false, misleading, deceptive or prohibited act or practice.

§ 32121. Limitation.

All actions brought under this chapter must be commenced within three (3) years after the date on which the false, misleading, or deceptive act or practice or prohibited act occurred or within three years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice or prohibited act. The period of limitation provided in this section may be extended for a period of one hundred eighty (180) days if the plaintiff proves that failure to timely commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

§ 32122. Voluntary Compliance.

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(a) In the administration of this chapter the Attorney General may accept assurance of voluntary compliance with respect to any act or practice which violates this chapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the court in the form of an order that the violator comply with the terms of the assurance of voluntary compliance.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this chapter restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this chapter.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this chapter. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this chapter.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this chapter, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under subsection (b) of this section are governed by the terms of the voluntary compliance.

§ 32123. Post-judgment Relief.

(a) If a money judgment entered under this chapter is unsatisfied thirty (30) days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

(1) That the judgment debtor is insolvent or in danger of becoming insolvent; and

(2) That the judgment debtor's property is in danger of being lost, removed, or otherwise exempted from collection on the judgment; and

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(3) That the prevailing party will be materially injured unless a receiver is appointed over the judgment debtor's business; and

(4) That there is no adequate and reasonably available remedy other than receivership available to the prevailing party.

(b) Subject to the provisions of subsection (a) of this section, a prevailing party may move that the judgment debtor should show cause why a receiver should not be appointed. Upon adequate notice and hearing, the court shall appoint a receiver over the judgment debtor's business unless the judgment debtor proves that all of the presumptions set forth in subsection (a) of this section are not applicable.

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the judgment debtor's business or have power to manage only the judgment debtor's finances. The order shall limit the duration of the receivership to such time as all judgments issued against the judgment debtor are paid in full. Where there are judgments against a judgment debtor which have been awarded to more than one (1) plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to collect the judgments.

§ 32124. Reports and Examinations.

Whenever the Attorney General has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this chapter, or when the Attorney General reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the Attorney General's Office may:

(a) Require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the Attorney General deems necessary;

(b) Examine under oath any person in connection with the alleged violation;

(c) Examine any merchandise or sample of merchandise deemed necessary and proper; and

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(d) Pursuant to an order of the appropriate court, impound any sample of merchandise that is produced in accordance with this chapter and retain it in the possession of the Attorney General until the completion of all proceedings in connection with which the merchandise is produced.

§ 32125. Civil investigative demand.

(a) Whenever the Attorney General believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this chapter, an authorized agent of the Attorney General may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying.

§ 32126. Same: Contents.

(a) Each demand for information by the Attorney General under this chapter prior to filing an action in the Superior Court, shall:

(1) state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the authorized agent or agents of the Attorney General's Office to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may contain a requirement for disclosure of documentary material which would be discoverable under the Rules of Civil Procedure.

(c) Service of a civil investigative demand may be made by:

(1) Delivering a duly executed copy of the demand to the person to be served or to a partner or to any officer or agent

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authorized by appointment or by law to receive service of process on behalf of that person;

(2) Delivering a duly executed copy of the demand to the principal place of business of the person to be served;

(3) Mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at the principal place of business or if the person has no place of business, to his principal office or place of business.

(d) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at other times and places as may be agreed on by the person served and the Attorney General.

(e) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for a good cause shown, or unless otherwise discoverable if the materials were in the hands of the person who produced the materials, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the Attorney General's Office without the consent of the person who produced the material. The Attorney General shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person. The Attorney General may use the documentary material or copies of it as it determines necessary in the enforcement of this chapter, including presentation before any court. Any material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material. All materials held by the Attorney General pursuant to production are discoverable by a party in another court case to the same extent that the materials would be discoverable if still in the possession of the person who produced the materials for the Attorney General.

(f) At any time before the return date specified in the demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in court.

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(g) A person on whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by a court order.

(h) Service of a similar investigative demand under this section may be made on any person outside Guam if the person has engaged in conduct in violation of this chapter. Such persons shall be deemed to have submitted themselves to the jurisdiction of Guam within the meaning of this section.

§ 32127. Other Remedies Available to Attorney General.

In addition to all other remedies available as provided in this chapter or at law or equity, the Attorney General shall have the following remedies and standing to enforce the provisions of this chapter:

(a) In addition to other remedies available, the court may, upon application of the Attorney General, impose a civil penalty of not more than Five Thousand Dollars (\$5,000) per violation of this chapter.

(b) Any person who violates the terms of an injunction issued upon application of the Attorney General pursuant to this chapter or in any case in which the government of Guam or the Attorney General is a party in an action pursuant to this chapter, in addition to all other remedies for contempt, shall be ordered by the court to forfeit and pay to the government of Guam a civil penalty of not more than Ten Thousand Dollars (\$10,000) per violation. In determining whether an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the Attorney General, acting in the name of the territory of Guam, may petition for recovery of civil penalties under this section.

(c) An order of the court awarding civil penalties under this chapter applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in this chapter.

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(d) The court, at the request of the Attorney General, may, prior to or after judgment, freeze the accounts at any financial institution of any person violating this chapter, if there is a likelihood that the violator will abscond with the money in the accounts. Any aggrieved person may be heard by the court on his objections thereto on two (2) days notice or less if permitted by the court.

§ 32128. Penalties.

(a) Any person who, with intent to avoid, evade or prevent compliance, in whole or in part, with the provisions of this chapter, removes from any place, conceals, or withholds any documentary material or merchandise or sample of merchandise in violation of a court order to produce the same is guilty of a misdemeanor and on conviction is punishable by a fine of not more than Five Thousand Dollars (\$5,000) or by confinement in prison for not more than one (1) year, or by both.

(b) Any person who, with intent to avoid, evade or prevent compliance, in whole or in part, with the provisions of this chapter, destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a felony of the third degree and on conviction is punishable by a fine of not more than Fifty Thousand Dollars (\$50,000) or by confinement in prison for not more than five (5) years, or by both.

(c) If a person fails to comply with a directive of the Attorney General under this chapter or with a civil investigative demand for documentary material served on him under this chapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the material, the Attorney General may file in a petition for an order of the court for enforcement of the appropriate sections of this chapter.

(d) When a petition is filed, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provision of this chapter. Failure to comply with any order entered by the court pursuant to this chapter is punishable by contempt as well as any other penalty specified.

§ 32129. Defenses Limited.

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Nothing in this chapter shall be construed as creating any defense to an action for death or personal injury nor shall anything in this chapter be construed as a defense to any claim by a consumer nor shall it be construed mitigating or reducing any claim for damages made by a consumer.

§ 32130. Application of Penalties.

The penalty provisions of Articles 2, 3, 4 and 5 of this chapter apply only to acts or practices occurring after the effective date of this chapter.

§ 32131. Consumer Protection Fund.

(a) There is hereby established a fund to be known as the Consumer Protection Fund (the "Fund") which shall be maintained separate and apart from other funds of the government of Guam and independent records and accounts shall be maintained in connection therewith. All civil penalties collected by the government of Guam or any person under this chapter shall be deposited in the Fund.

(b) The Fund shall be used exclusively for the purpose of the administration of Chapters 31 and 32 of Title 5 of the Guam Code Annotated. The Fund shall be examined and reported upon by the Director of Administration as required by law.

(c) All civil penalties and attorney's fees imposed pursuant to this chapter paid to the Attorney General shall be paid over to the Fund when collected.

§ 32132. Breach of an Express or Implied Warranty.

Suit may be brought directly notwithstanding an agreement to arbitrate entered into in accordance with the terms of this Chapter, and arbitration may be bypassed by the consumer for breach of express or implied warranty.

ARTICLE 2
DECEPTIVE ACTS AND PROHIBITED PRACTICES

§ 32201. Deceptive Acts and Prohibited Practices.

§ 32202. Defective Tangible Goods Sold by a Merchant Which Do Not Result in Death or Personal Injury.

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§ 32203. Attorney's Fees Mutual.

§ 32201. Deceptive Trade Practices Unlawful.

(a) False, misleading, or deceptive acts or practices, including, but not limited to those listed in this chapter, are hereby declared unlawful and are subject to action by the Attorney General or any person as permitted pursuant to this chapter or other provisions of Guam law. A violation consisting of any act prohibited by this title is in itself actionable, and may be the basis for damages, rescission, or equitable relief. The provisions of this chapter are to be liberally construed in favor of the consumer, balanced with substantial justice, and violation of such provisions may be raised as a claim, defense, crossclaim or counterclaim.

(b) The term *false, misleading, or deceptive acts or practices* includes, but is not limited to, the following acts by any person or merchant, which acts are hereby prohibited and declared illegal and contrary to public policy if committed by any person or merchant:

- (1) Passing off goods or services as those of another; or
- (2) Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services; or
- (3) Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another; or
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services; or
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not; or
- (6) Representing that goods are original or new if the goods are deteriorated or used:
 - (A) Motor vehicles shall be considered new or used based on the definitions of new and used motor vehicles as defined by the U.S. Federal Trade Commission; or
- (7) In selling or attempting to sell goods or services by making statements; or representations in violation of §§ 40120 or 40121,

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Title 10, Guam Code Annotated, or false medical claims or false health claims; or

(8) Representing by statements of fact that consumer goods or consumer services offered for sale have a grossly inflated value which the seller knows to be false and which is not based on the true retail value of the goods or services or comparables. Merely marking a grossly inflated price on an item or requesting a grossly inflated price is not by itself a violation of this subsection; or

(9) Knowingly billing a consumer for goods or services knowing that the consumer has already paid the amounts billed; or

(10) Charging or attempting to charge a consumer for goods or services not provided or not to be provided; or

(11) Charging or attempting to charge a consumer who has previously contracted to buy goods or services additional charges, including taxes, not previously agreed to in the contract as a condition of performance; or

(12) Knowingly representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prorepresentations knows such representations to be false; or

(13) Knowingly misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction; or

(14) Disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge; or

(15) Selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, *multi-level distributorship* means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods, provided that nothing herein shall prohibit the sale of a sales or presentation kit to prospective

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salespersons for Five Hundred Dollars (\$500) or less; provided, that the kit is sold at not more than the actual cost to the seller, that no commission is paid on the sale of the kit, and that a full refund (less any demonstration products used) is offered to the buyer for thirty (30) days after the delivery of the kit if the buyer returns the kit to the seller, whether or not the kit is used; and provided further that if the kit was purchased on Guam the kit can be returned to a location in Guam and the refund immediately collected thereat and if purchased off-island can be returned to the place of purchase for the refund; or

(16) Representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced; all replaced parts must be given to the consumer who may, if he chooses, return such replaced parts to the repairer for rebuilding; or

(17) Using the term *corporation, incorporated, limited*, or an abbreviation of any of those terms in the name of a business entity that is not incorporated under the laws of Guam or other jurisdiction; or

(18) Retaining deposits for goods and services without actually delivering the goods or services as promised and after a written demand for immediate performance or refund has been made by the consumer; or

(19) Accepting a deposit (including money taken for a *reservation*) by a developer or merchant from a purchaser of land, building (including homes) or condominium unit without first fixing in a written contract a firm dollar price for the land, building, or condominium, which writing shall be enforceable against the buyer and the seller. Any such deposit must be placed in escrow in a interest bearing account with a duly licensed title insurance company or bank, with the interest to the credit of the purchaser. If a deposit is taken in violation of this subsection for the purchase of land, building, or condominium, the purchaser may at his option revoke the transaction with penalty as provided below or at his request the court may order specific performance of the contract at a price the same as the court finds the seller paid to purchase or acquire the land plus one-half (1/2) of any increase in the fair market value of

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the land as of the time the deposit was accepted, plus the actual costs of constructing any building or condominium unit on the land, exclusive of administrative costs, sales costs, and administrative overhead. In the alternative, in the event of a violation of this subsection, at the sole option of the consumer, the consumer may revoke the transaction and shall be entitled to a refund of three (3) times the amount of deposit and all other sums paid to the seller; or

(20) Knowingly selling or offering to sell goods to any person which the seller has no right to sell or goods for which the seller cannot deliver clear title to the person as agreed. Nothing herein shall prevent the sale of goods which are subject to liens and encumbrances if revealed in writing to the buyer at or before the time of sale. Nothing in this chapter shall excuse compliance with the Bulk Sales Act; or

(21) Knowingly misrepresenting to a purchaser that goods are immediately available for delivery. Unless a contract or receipt provides otherwise, goods must be delivered to the consumer within fourteen (14) days of the payment therefor; or

(22) Knowingly selling or offering to sell goods or services which the seller thereof is not licensed to sell or offer for sale; or

(23) Knowingly selling or offering to sell services which the seller thereof is not capable of providing; or

(24) Knowingly selling or offering to sell goods which the seller thereof does not have and cannot reasonably obtain for delivery to the consumer in a reasonable time; or

(25) Knowingly making false statements of fact as to the results of purchasing or using goods or services; or

(26) Threatening economic retaliation or physical damage to any person or to any person's property if goods or services are not purchased; or

(27) Violating any rule or regulation of the U.S. Federal Trade Commission; or

(28) Violating any rule or regulation of the U.S. Food and Drug Administration; or

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(29) Doing any other act which is prohibited by the laws of Guam to mislead a consumer to his detriment or to induce another person to buy or sell goods or services to such person's detriment.

(c) The term *false, misleading, or deceptive acts or practices* includes, but is not limited to, the following acts committed by merchants. The following acts are hereby prohibited and declared illegal and contrary to public policy when done by any merchant:

(1) Knowingly representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or mode, if they are of another; or

(2) Disparaging the goods, services, or business of another by false or grossly misleading representation of facts; or

(3) Advertising goods or services with intent not to sell them as advertised; or

(4) ("Bait and switch" prohibited) Advertising goods or services with intent not to sell them as advertised, but rather to induce a consumer into purchasing similar but more expensive goods or services; or

(5) Advertising goods or services with intent not to supply a reasonably expectable public demand, unless the advertisements disclose a limitation of quantity; or

(6) Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions; provided, that nothing herein shall prohibit a "sale", clearance sale, seasonal or holiday sale, or a sale based on reasons which are not misleading and which do not falsely imply a distressed or forced sale; or

(7) Inducing consumers into a business establishment by offering free gifts as an inducement to enter the establishment and then refusing to give such free gifts as promised; or

(8) Falsely stating that one is selling or liquidating goods which are distressed, damaged or misrouted when the goods are not distressed, damaged, or misrouted; or

(9) Failing or refusing to apply against the purchase price of goods or services a deposit made by the consumer; or

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(10) Advertising any sale by fraudulently representing that a person is going out of business; or

(11) Basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any; or

(12) Inducing a consumer to purchase repair services or repair parts by knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service; or

(13) As to comprehensive and collision insurance insuring the vehicle of an insured on policies written after the effective date of this chapter, an insurer may not pay a consumer less than the face amount of an insurance policy for a covered loss, and the insurer is estopped from denying that the face amount of the policy, whether an original or renewal policy, showing the vehicle's value upon which the insurance premium was based, is the true value of the vehicle, unless the insurer can show by a preponderance of the evidence:

(A) That the vehicle insured was damaged by an uninsured cause since the policy was written; or

(B) That the vehicle has accumulated mileage in excess of sixteen thousand (16,000) miles per year or part thereof since the vehicle was first registered, and that the excess mileage situation did not exist when the policy was written; or

(C) That the insured fraudulently and materially misrepresented material facts concerning the value of the property insured (the insured's statement as to the estimated of the value of the vehicle is not a misrepresentation of fact concerning the value of the vehicle); or

(D) That because of multiple insurance policies, a co-insurance situation exists.

An insurer may include in a policy of insurance a schedule showing the depreciated value of the vehicle at various times during the life of the policy, but in such case, the premium shall be based upon the average daily value of the vehicle over the life of the

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policy. In such case, for purposes of this subsection, the face amount of the policy indicating the vehicle's value shall be considered to be the value of the vehicle as shown in the depreciation schedule on the date of loss.

(14) Including a co-insurance clause in any policy of casualty or liability insurance which would limit the liability of the insurance carrier based upon a theory of self-insurance by the insured. Co-insurance shall apply only when there is overlapping insurance by two (2) or more policies. In any case of dual insurance coverage, the policy limits of insurance shall be the total limits of all policies, with payment of claims pro-rated among the various policies. The provisions of this subsection do not apply to insurance for typhoons or earthquakes; provided, that in such cases a seller of insurance shall provide in a separate writing to the insured who purchases a policy of typhoon or earthquake insurance subject to a co-insurance clause an explanation of co-insurance, with the insured to sign an acknowledgement of having read the explanation. Nothing in this subsection shall prohibit the use in casualty or liability insurance policies of "deductible" clauses whereby specific sums are deducted from the losses before payment by the insurer.

(15) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve; provided, however, that nothing in this chapter shall be construed to expand the implied warranty of merchantability as defined in §§ 2314 through 2318, Title 13, Guam Code Annotated, to include obligations in excess of those which are appropriate to the goods; or

(16) Representing that parts have been replaced in goods with new parts in making repairs for a consumer when in fact used parts were used for replacement. When used parts are used in repairs, the exact description of used parts to be used shall be revealed in a writing signed and approved by the consumer prior to commencing repairs or prior to installing or selling such parts. The description of the used parts revealed prior to use and also on the final billing may not be a printed part of any pre-printed contract, but shall be hand written, typed, or computer printed in at least 10 point type. A consumer need not pay for any goods or services used for any repair job in which used parts are used in violation of this subsection, and is entitled to a refund of any amounts already paid therefor. This

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subsection does not apply to used parts for which the consumer is not charged, nor does it apply to used parts having a total value of Five Dollars (\$5) or less and which are essentially the same as new parts. A merchant hired by a consumer to repair an appliance or vehicle must give the consumer in advance of repair a written estimate of the cost of such repair, and must notify the consumer in writing when the repairs will cost more than the estimate; after receipt of which notice the consumer shall have twenty-four (24) hours to decide whether to pay the additional charges, failing which agreement the repairer shall undertake no additional repairs and shall return the item to the consumer, charging only for the work performed, and in no case more than the estimate.

(17) Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. A merchant of vehicles shall reveal to a consumer in writing prior to sale all previous damage to a vehicle and known to the merchant and all repair work done on a vehicle by the merchant or at the merchant's instruction prior to signing a contract of sale or selling a vehicle, and revealing any used parts which were used in the repairs; or

(18) Charging consumers different prices for the same goods or services on account of the race, ethnic origin, color, creed, sex, sexual preference, handicap or age of the consumers; provided however, that nothing in this subsection shall prevent a merchant from giving discounts to local residents.

(19) Violating subparagraphs (f) (marking of outdated food, etc), (g) (damaged consumer products), (h) (marking of water-added products), (i) (sale of cans of rusty food), or (j) all of § 40120, Title 10, Guam Code Annotated;

(20) Violating Regulation Z of the United States Federal Reserve Board in the financing of the sale of goods or services; or

(21) Price gouging in time of disaster prohibited.

(i) It shall be an unfair trade practice for any merchant or landlord to increase the price of any goods, services, or

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dwelling rentals on the basis of shortage anticipated or caused by any disaster. A merchant may add to the normal sales price of goods normally imported by sea incremental freight costs caused as a result of air freight actually incurred, and may pass on to customers actual overtime labor costs for services in addition to regular charges.

(ii) After a disaster in which there is serious damage to five hundred (500) or more of the permanent residential units on the island caused by the disaster, after a typhoon bringing sustained winds to Guam of 100 miles per hour or more, or after an earthquake that affects Guam with a reading on Guam greater than 7.0 on the Richter Scale, the Governor may, by executive order, freeze residential rents to levels in effect the day before the disaster, for up to 120 days from the date of the disaster, which freeze may not be thereafter extended.

(iii) *If* Condition of Readiness 1, 2 or 3, *or* an equivalent condition is declared, *or* after a disaster which damages two hundred (200) *or* more of the permanent residential units on the island, *or* after a typhoon brings sustained winds to Guam of one hundred (100) miles per hour *or more, or* after an earthquake with a reading on Guam greater than 7.0 on the Richter Scale, *I Maga'lahi* may, by Executive Order, freeze mark-ups and prices on designated goods and services which he finds to be in short supply *or* in danger of being in short supply as a result of the disaster to markups and prices in effect the day before the disaster, for up to thirty (30) days after the disaster. Said freeze *shall* not be extended. A merchant may add to the normal sales prices of the goods the increased import cost of the goods, for all goods normally imported by sea, and incremental freight costs caused as a result of air freight actually incurred.

(iv) Merchants and landlords violating this subsection (21) shall be subject to the same damages, penal ties and other liabilities provided in this chapter and for damages equal to three (3) times the amounts of all gross profits on overcharged goods or five (5) times the amount of overcharges for services or rentals, in addition to all other damages and remedies allowed by law or equity, and may be temporarily and

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permanently restrained and enjoined from further violation without the applicant therefor being required to post bond.

(v) The price on all wholesale and retail goods *shall* be frozen whenever *I Maga'lahaen Guåhan* declares Guam to be in Condition of Readiness 1 *or* 2, *or* their equivalent, and *shall* continue to be frozen until seventy-two (72) hours after Guam returns to Condition of Readiness 4, *or* its equivalent. The normal sales prices of goods *shall* include the increased import costs of the goods for all goods normally imported by sea, and incremental freight costs caused as a result of air freight actually incurred.

SOURCE: Subsection (c)(21) added by P.L. 22-34:1 (09/27/93). Subsections (c)(21)(iii) and (v) amended by P.L. 29-019:VI:53 and 54 (Sept. 29, 2007).

COURT DECISIONS: As to the second issue of a violation of 11 GCA § 26115 and 5 GCA § 32201(b)(29), it is clear in this situation that the Defendant-Appellee misrepresented the inclusion of the GRT as part of the purchase price and, further, misrepresented it as a tax above the purchase price which was imposed by the government. The overall message of the Attorney General Opinion is that if additional language indicates that the GRT is not being passed on to the consumer as part of the purchase price it is a violation of Section 26115. This is what occurred in this situation. *Guam v. Marfega Trading Co., Inc., Dbá Islander Rent-a-car*, Guam Supreme Court, 1998 Guam 4 [27].

NOTE: Effective July 17, 2007, reference to Gross Receipts Tax (GRT), amended to Business Privilege Tax (BPT), pursuant to P.L. 29-002:VI:28 (May 18, 2007).

§ 32202. Defective Tangible Goods Sold by a Merchant Which Do Not Result in Death or Personal Injury.

This section does not apply in any case where personal injury or death results from defective tangible goods or the sale of defective tangible goods nor does it apply to goods not sold to an aggrieved consumer by a merchant.

(1) New goods and vehicles less than five (5) years old are defective if, within thirty (30) days of delivery, they break or fail to operate as intended through no fault of or misuse by the consumer. New goods and vehicles less than five (5) years old which are found to be defective within thirty (30) days of delivery must be corrected by the seller, and the seller may not rely upon any manufacturer's warranty to escape responsibility for correction; provided, that the merchant may repair the goods pursuant to warranty and collect

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reimbursement pursuant to the terms of the warranty. This subsection applies only to durable goods having a reasonable life expectancy of over thirty (30) days. Goods having a shorter life expectancy are defective if they fail prematurely. This subsection does not apply to sales without warranty as described in subsection (3) of this section, below.

(2) After thirty (30) days, new goods and vehicles less than five (5) years old shall be repaired or replaced according to the terms of warranty, if any, unless the seller has by advertisement, written or oral communication, indicated some longer time for which the seller assumes responsibility. If a warranty is not honored, the consumer may elect to treat the goods as defective goods and proceed under this section against both the warrantor and the seller from whom the goods were purchased even if more than thirty (30) days have elapsed. If used goods are sold to a consumer as new, the court shall require repair, refund, or replacement as if the item were new, and in addition, if the matter goes to suit, the court shall award the consumer punitive damages of Two Thousand Dollars (\$2,000) or three (3) times the value of the goods, whichever is greater.

(3) Nothing herein shall prohibit the sale of vehicles less than five (5) years and goods (other than new homes) from being sold subject to a defect, nor the sale of goods "as-is where-is" or without warranty if the defects or lack of warranty or selling "as-is where-is" are disclosed to the consumer. In such case, the provisions of this section do not apply. As to goods having a sale price in excess of Two Thousand Dollars (\$2,000), the disclosure that such goods or vehicles are used or sold without guarantee or warranty must be in a separate writing signed by the consumer prior to purchase.

(4) The purchaser of new defective goods or vehicles less than five (5) years old is entitled to have the actionable defects in the goods adjusted at the expense of the seller for thirty (30) days unless some greater time is set by law or agreement of the parties or warranty of the seller unless the goods were sold "as-is where-is" in compliance with this section and all provisions of law. The seller shall repair the item, replace the item with a like item which is not defective upon return of the original item to the seller, or have the purchase price refunded upon return of the item to seller, less damages done to the item by the consumer and less the fair value of

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the usage of the item if used for more than thirty (30) days, at the sole option of the seller as to whether to repair, replace, or refund. Unless it can be proven that the seller knowingly sold defective goods to a consumer without knowledge of the defect, the consumer is not entitled to damages for the consumer's inconvenience nor for lost profits, but is entitled to other actual damages, plus, if the matter is brought to suit, the other relief allowed by this chapter. Before filing suit for such defective goods, the consumer must give a thirty (30) day written notice of the defect, must make the goods reasonably available to the seller for inspection, and, if the consumer took delivery of the goods from the seller at the seller's place of business, must return the goods to the seller at the time of delivery of the notice for the seller's inspection.

(5) A consumer who is fraudulently sold used goods which are affirmatively represented as new is entitled to a refund of the cost of the goods, and may keep the goods as a penalty. In such case, all warranties shall continue in full force and effect. In the alternative, as to appliances and vehicles, the consumer may choose to keep the goods, pay for the goods as agreed, and the seller will be obligated to make all necessary repairs and maintenance for the good's regular and normal usage for a period of five (5) years. Any other settlement (in or out of court) between a consumer and a seller who has sold used goods as new is voidable by the consumer unless first approved in writing by the consumer and either the Attorney General or any attorney representing the consumer.

(6) This section applies only to sales or transactions by merchants.

§ 32203. Attorneys' Fees Mutual.

Any provision for costs or attorneys' fees in any agreement, contract, or lease shall, in the interest of fairness, be construed as being mutual and shall be construed to entitle all parties who are obligated by or who benefit from the provision to receive attorneys' fees and costs.

ARTICLE 3
REGULATION OF TELEMARKETING

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- § 32301. Definitions.
- § 32302. Registration Procedures.
- § 32303. Notice to Consumer.
- § 32304. Contracts Required.
- § 32305. Charges not Collectible.
- § 32306. Filing Information.
- § 32307. Violation Remedies.
- § 32308. Violation of a Deceptive Practice.

§ 32301. Definitions.

(a) The term *telemarketing* means a plan, program, or campaign to induce the purchase of goods, services, or investment opportunities by means of telephone calls but does not include any transaction in which there has been any personal meeting or discussion concerning the matter before or after the transaction between the seller (or the seller's agent) of the goods, services, or investment opportunities and the intended purchaser (or the purchaser's agent) before the consummation of the sale. Telemarketing does not include any situation where telephonic contact was initiated or requested by the consumer, or where the transaction was later reduced to a written contract signed by the consumer. Telemarketing does not include any solicitation by a seller if the seller and the consumer have transacted business or negotiations through any means other than telemarketing during the preceding eighteen (18) months.

(b) A *telephonic seller* or *seller* as used in this article means a person, association, partnership, firm, corporation or other business entity that engages in telemarketing.

§ 32302. Registration Procedures.

(a) Not less than ten (10) days prior to doing business in the Territory of Guam a telephonic seller shall register by filing with the Attorney General's Office the information required by § 32306 of this article and by paying a filing fee of Fifty Dollars (\$50). A seller shall be deemed to do business in Guam if the seller solicits prospective purchasers from locations in Guam or solicits prospective purchasers who are located in Guam.

(b) The information required by § 32306 shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the telephonic seller under

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penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to this article shall be clearly identified and appended to the filing. The information submitted pursuant to § 32306 shall become part of the investigatory records and intelligence information compiled by the Department for Law for enforcement purposes.

(c) Registration of a telephonic seller shall be valid for one (1) year from the effective date thereof and may be annually renewed by making the filing required by § 32306 and paying a filing fee of Fifty Dollars (\$50).

(d) Whenever, prior to expiration of a seller's annual registration, there is a material change in the information required by this article, the seller shall, within ten (10) days, file an addendum updating the information with the Attorney General's Office; provided however, that changes in salespersons soliciting on behalf of a seller shall be updated by addendum filed, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall provide the required information for all salespersons who are currently soliciting or have solicited on behalf of the seller at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include salespersons no longer soliciting for the seller as of the date of the filing of the current addendum.

(e) Upon receipt of a filing and filing fee pursuant to subsections (a) or (b) of this section, the Attorney General's Office shall send the telephonic seller a written confirmation of receipt of the filing. If the seller has more than one (1) business location, the written confirmation shall be sent to the principal business location identified in the seller's filing.

§ 32303. Notice to Consumer.

When tangible goods are delivered to a consumer which have been ordered from a telephonic seller as a part of a telemarketing scheme, there shall also be delivered a written notice on a page by itself in at least 14 point type informing the consumer that the consumer may return the goods anytime within thirty (30) days after actual receipt by the consumer (unless a longer period is given by the seller), and may receive a full refund of all amounts paid, including all shipping and handling charges and all shipping charges paid by the consumer to return the

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goods. The notice shall indicate the name, address, and preferred method of return; provided, that return by the U.S. Postal Service, return in person by the consumer, or return by the same manner as shipped to the consumer shall always be appropriate, at the option of the consumer. The goods shall be considered returned as of the date delivered to the addressee if delivered directly to the seller, or the date delivered by the consumer to the U.S. Postal Service or other appropriate common carrier. Upon actual receipt of such returned goods, the seller shall within five (5) working days return the full purchase price, including all handling and all shipping charges. Any seller who fails to make such refund when due shall be jointly liable with the individual salesperson who actually made the sale for three times the total amount of the sale, including all shipping and handling charges.

§ 32304. Contracts Required.

No sale or contract for sale of services, intangible goods, stocks, bonds, or investment opportunities by a telemarketing seller is final or enforceable until the consumer has signed a contract to purchase the same and delivered a signed copy of the contract to the seller. In the case of stocks, bonds, intangible goods, or investment opportunities the signature of the consumer must be acknowledged by a notary public to be enforceable. If a consumer has actually received stocks, bonds, intangible goods, or the investment opportunity prior to signing the required acknowledged contract, the consumer shall return whatever he received if the consumer disavows the transaction.

§ 32305. Charges Not Collectible.

No telemarketing seller nor its successor in interest (including a bona fide purchaser for value) nor any credit card company may collect any sums due for telemarketing sales made in violation of this article. Any charges collected in violation of this section shall be returned by the person receiving the payment from the consumer.

§ 32306. Filing Information.

Each filing pursuant to this article shall contain the following information:

- (a) The name or names of the seller, including the name under which the seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated

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organization (1) that will engage in business transactions with purchasers relating to sales solicited by the seller or (2) that accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller.

(b) The seller's business form and place of organization and, if the seller is a corporation, a copy of its articles of incorporation, bylaws, and amendments thereto, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to subsection (a).

(c) The complete street address or addresses of all locations, designating the principal location from which the telephonic seller will be conducting business. If the principal business location of the seller is not in Guam, then the seller shall also designate a statutory agent within Guam who is authorized to accept service of process.

(d) A listing of all telephone numbers to be used by the seller and the address where each telephone using each of these telephone numbers is located.

(e) The names of, and the offices held by, the seller's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the seller's business activities.

(f) The complete address of the principal residence, the date of birth, and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to subsection (e).

(g) A statement, meeting the requirements of this subsection, as to both the seller, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether or not identified pursuant to subsection (e)), and as to any person identified pursuant to subsection (e) who:

(1) Has been convicted of a felony or misdemeanor. For the purposes of this subsection, a plea of nolo contendere is a conviction.

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(2) Has at any time during the past seven (7) years filed in bankruptcy or been adjudged a bankrupt.

(3) For purposes of paragraphs (1) and (2) above, the statement shall identify the seller or person, the court rendering the conviction or judgment, and the docket number and date of the conviction or judgment.

(h) A list of the names and principal residence addresses of salespersons who solicit on behalf of the telephonic seller and the names the salespersons use while so soliciting.

(i) A description of the items the seller is offering for sale and a copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect.

(j) A copy of all sales information and literature (including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information) provided by the telephonic seller to salespersons or of which the seller informs salespersons, and a copy of all written materials the seller sends to any prospective or actual purchaser.

(k) If the telephonic seller represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one (1) or more items from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

(1) A list of the items offered.

(2) The value or worth of each item described to prospective purchasers and the basis for the valuation.

(3) The price paid by the telephonic seller to its supplier for each of these items and the name, address, and telephone number of each item's supplier.

(4) If the purchaser is to receive fewer than all of the items described by the seller, the filing shall include the odds a single

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prospective purchaser has of receiving each item and the name and address of each recipient who has, during the preceding twelve (12) months (or if the seller has not been in business that long, during the period the telephonic seller has been in business) received the item having the greatest value and the item with the smallest odds of being received.

§ 32307. Violation Remedies.

In addition to all other remedies permitted by this chapter, the Attorney General on behalf of the government of Guam, may bring an action against any person, firm, corporation, partnership or association, or officer or owner of any corporation who fails to comply with the registration requirements of this article for a civil penalty of not more than Five Thousand Dollars (\$5,000) per violation, for a temporary restraining order, and for a temporary and permanent injunction to enjoin the telemarketing activities in Guam of the violator. Any penalty collected shall be paid into the Consumer Protection Fund.

§ 32308. Violation a Deceptive Practice.

Violation of any of the provisions of this article shall be deemed a deceptive trade practice pursuant to Articles 1 and 2 of this chapter, and is subject to action by the Attorney General.

ARTICLE 4
PRIZES AND GIFTS

§ 32401. Prizes or Gift Offer; Disclosure of Intent to Make Sales Presentation; Good Faith Broadcasts or Publications; Applicability of Section.

§ 32402. Violations.

§ 32403. Unlawful Advertising; Conditional offer of Prizes and Gifts.

§ 32401. Prize or Gift Offer; Disclosure of Intent to Make Sales Presentation; Good Faith Broadcasts or Publications; Applicability of Section.

(a) It is unlawful for any person to offer, by mail, by telephone, in person or by any other means or in any other form, a prize or gift, with

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the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent of offering such sales presentation.

(b) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communications who broadcasts or publishes an advertisement or offer in good faith, without knowledge of its violation of subsection (a) of this section.

§ 32402. Violations.

Any violation of this article shall be deemed a deceptive trade practice pursuant to Articles 1 and 2 of this chapter, and is subject to action by the Attorney General.

§ 32403. Unlawful Advertising; Conditional Offer of Prizes or Gifts.

(a) It is unlawful for any person to use the term "prize" or "gift" or other similar term in any manner that would be untrue or misleading, including, but not limited to, in the manner made unlawful in subsections (b) or (c) of this section.

(b) If a person is notified that such person has already won a prize in any contest, it is unlawful to require the purchase of goods or services or payment of any money whatsoever as a prerequisite to collect the prize, and the contest prize shall be delivered to the awardee without a requirement to pay money or purchase goods or services.

(c) It is unlawful to notify any person by any means that such person will receive a gift (including a prize or consisting of a prize) and that as a condition of receiving the gift such person must pay any money, or purchase or lease (including rent) any goods or services, if any one (1) or more of the following conditions exist:

(1) The shipping charge, depending on the method of shipping used, exceeds

(A) The average cost of postage or the average charge of a delivery service in the business of delivering goods of like size, weight, and kind for shippers other than the offerer of the gift for the geographic area in which the gift is being distributed, or

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(B) The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offerer of the gift.

(2) The handling charge

(A) Is not reasonable, or

(B) Exceeds the actual cost of handling, or

(C) Exceeds the sum of Three Dollars (\$3) in any transaction, or

(D) In the case of a general merchandise retailer, exceeds the actual amount for handling paid to an independent fulfillment house or supplier, either of which is in the business of handling goods for businesses other than the offerer of the gift.

(3) Any goods or services which must be purchased or leased by the offeree of the gift in order to obtain the gift could have been purchased through the same marketing channel in which the gift was offered for a lower price without the gift items at or proximate to the time the gift was offered.

(4) The majority of the gift offerer's sales or leases within the preceding year, through the marketing channel in which the gift is offered or through in-person sales at retail outlets, of the type of goods or services which must be purchased or leased, in order to obtain the gift item, were made in conjunction with the offer of a gift. This subsection does not apply to a gift offer made by a general merchandise retailer in conjunction with a sale at an on-island location, or to the sale or lease through mail order of goods or services (excluding catalog sales) if (A) the goods or services are of a type unlike any other type of goods or services sold or leased by the general merchandise retailer at any time during the period beginning six (6) months before and continuing until six (6) months after the gift offer, (B) the gift offer does not extend for a period of more than two (2) months, and (C) the gift offer is not untrue or misleading in any manner.

(5) The gift offerer represents that the offeree has been specially selected in any manner unless (A) the representation is true and (B) the offeree made purchase from the gift offerer within the

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six-(6-)month period before the gift offer was made or has a credit card issued by, or a retail installment account with, the gift offerer or the offeree previously entered the contest offered by the offeree.

(6) Nothing in this section nor in this chapter may be used as a defense by an offerer to prevent an offerer from awarding a gift or prize to a contest winner, even if the contest was in violation of this or any other statute; and nothing herein shall prevent legitimate contests which do not require the offeree to spend any money with the offerer or purchase any goods or services from the offerer. If an offerer offers a contest winner a prize, this section only invalidates any requirement that the winner purchase goods or services or pay money to get the prize, and does not relieve the offerer of the obligation to award the offeree the prize as won or promised. If a contest sponsor fails to award a prize as promised, the Superior Court may, upon application of the Attorney General or the prize winner, order the sponsor to make the award as promised or pay the full retail value of the prize, plus attorney's fees, and such civil penalties as are provided in this chapter or in any other statute.

(7) This article does not prohibit legitimate contests not requiring the purchase of goods or services or the expenditure of money; nor offers of gifts tied to the sale of other goods or services, if no element of chance is involved, and if the requirement that other goods must be purchased is clearly stated in all advertising and communications; nor does it apply to games at Fiesta Guam, or its successor, or to games conducted in village fiestas authorized by the village mayor.

(8) Nothing in this section authorizes operation of a lottery which requires a purchase or expenditure of money, nor a game of chance which requires a purchase or expenditure of money.

(9) In addition to the remedies provided for in Articles 1 and 2 of this chapter, the Attorney General may also represent a consumer in an action for specific performance of the terms of the contest or offer of gift.

(d) The following definitions apply to this section:

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(1) *Marketing channel* means a method of retail distribution, including, but not limited to, catalog sales, mail order sales, telephone sales, and in-person sales at retail outlets.

(2) *General merchandise retailer* means any person or entity regardless of the form of organization that has continuously offered for sale or lease more than one hundred (100) different types of goods or services to the public in Guam throughout a period exceeding five (5) years.

(3) Each violation of the provisions of this section is a misdemeanor.

ARTICLE 5
HOMEOWNERS' WARRANTIES

§ 32501. Legislative Findings; Protections to Home Purchasers.

§ 32502. Warranties Unwaivable.

§ 32503. Those Subject to Warranties.

§ 32504. Same: Exception.

§ 32505. Settlements Voidable.

§ 32506. Warranties Run With Land.

§ 32507. Warranties in Addition to Other Warranties.

§ 32501. Legislative Findings; Protections to Home Purchasers.

The Legislature finds that owners of new homes are entitled to protection through implied warranties since most people cannot detect shoddy construction in new homes, since it is usually hidden. For purposes of this section, if an existing building not a condominium is remodeled into residential condominium units or otherwise converted into residential condominium units, the resulting residential condominiums shall be considered new homes. Consumers purchasing new homes or contracting for the construction of new homes after the effective date of this chapter are entitled to the following protections:

(a) A new home has the following implied warranties:

(1) That the home was built in a workmanlike manner of suitable new materials of at least average quality, and that any

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exceptions thereto were communicated to the purchaser thereof in a separate writing signed by the purchaser before he occupied the home. Compliance with this subsection (1) shall not excuse compliance with any other warranty.

(2) That the home was built according to plans and specifications filed with Department of Public Works (the "Department"), and that the home fully complies with all laws, the Building Code and all rules and regulations relating thereto. The failure of a building inspection to detect noncompliance with plans, laws, or rules and regulations, the Building Code, or specifications shall not be a defense to a claim under this warranty.

(3) If the home was purchased from a developer who supplied both the lot and the home to the purchaser and did not build on a lot supplied by the purchaser, there is a warranty that the home will not flood for a period of five (5) years, in the absence of any negligence by the homeowner.

(4) In addition to the foregoing warranties, the home is warranted against all defects of construction, materials, and workmanship for eighteen (18) months.

(b) The warranties of this section do not include damages caused by typhoon with sustained winds in excess of one hundred fifty-five (155) miles per hour nor damage by an earthquake exceeding an intensity on Guam of four and seven tenths (4.7) on the Richter Scale. Neither do the warranties cover extraordinary damages caused by acts of God, the negligence or intentional act of any other person, nor damages caused by failure to do normal maintenance, nor for damage caused by unusual usage, abandonment, or neglect of the property.

(c) All times for warranties start to run when the new home is sold to the first occupant or owner or when the new home is completed as evidenced by a certificate of occupancy issued by the Department, as the case may be; or if both events occur, the latest date thereof.

(d) No bonding company which is bonding a contractor constructing a new home shall be responsible for any of the warran-

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ties set out in this section for breaches which occur more than one (1) year after the date the certificate of occupancy is issued for the home by the Department.

§ 32502. Warranties Unwaivable.

The warranties contained in this Article 5 may not be waived.

§ 32503. Those Subject to Warranties.

The warranties contained in this Article 5 may be exercised against the developer and the general contractor who built the home, who shall be strictly liable for any breaches of warranty, as well as against any subcontractor responsible for installing the part of the home in which the breach of warranty occurred who shall be strictly liable for such breach of warranty in the part of the home he installed unless he can prove the defect was a design defect unknown to him or the result of defective materials unknown to him, and that he did all work in a workmanlike manner; and, if the breach of warranty is the result of a design defect or negligence in architectural supervision, the architect shall be strictly liable for all breaches of warranty resulting from faulty supervision or design; all of whom shall be jointly and severally liable for repair costs to correct such breach of warranty, and all damages arising out of the breaches of warranty for which they are responsible. The warranties contained in this article can also be enforced against the manufacturer and supplier of defective materials used in the construction of the home and which defective materials were the cause of the breach of warranty. A person who meets the definition of a developer shall be liable hereunder if he is the seller or shares in or is to share in any part of the profit or loss on the sale or construction of the new home. If a new home is built for an owner who is not a developer, all other persons against whom a warranty can be exercised shall continue to be responsible, but such warranties may not be exercised against the original owner by subsequent owners of the home.

§ 32504. Same: Exception.

If a person who is a developer actually lives in a new house as his domicile for at least two (2) years before selling the same, then the warranties of this Article 5 do not apply.

§ 32505. Settlements Voidable.

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Any settlement (in or out of court) between a consumer and developer or other person who is liable for breach of a warranty established by this Article 5 is voidable by the consumer unless first approved in writing acknowledged by the consumer and signed by either the Attorney General or an attorney representing the consumer. Any such settlement must include the satisfactory correction of all known defects, or if a defect is not correctable, shall provide for full compensation for the consumer's damages. The settlement shall apply only to known existing defects and may not contain a waiver of rights as to other defects not then existing or known to the consumer, nor shall it excuse any person liable hereunder from once again being responsible for correcting the same defect if the defect is not cured and remanifests itself.

§ 32506. Warranties Run With Land.

All warranties on a new home, expressed, implied, or as set forth in this Article 5, run with the land and, if the house is sold or transferred, the warranties pass with the land as a matter of law. Such warranties and the passing thereof do not in themselves create any right of action against any seller who is not a developer as defined in this article and who is not a person who was originally responsible for any warranty.

CROSS-REFERENCES: See 18 GCA § 81107 for the general law regarding warranties which run with the land.

§ 32507. Warranties in Addition to Other Warranties.

All warranties contained in this Article 5 are in addition to all other warranties established by law, equity, or by agreement of the parties. Nothing in this article may be used as a defense in the enforcement of any other warranties.

ARTICLE 6
CONSUMER PROTECTION AND RIGHT
TO CHOOSE CABLE TELEVISION SERVICE ACT

- § 32601. Short Title.
- § 32602. Legislative Findings and Intent.
- § 32603. Access.

§ 32601. Short Title.

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This act shall be known as the “Consumer Protection And Right To Choose Cable Television Service Act”.

SOURCE: Added by P.L. 23-68:1

§ 32602. Legislative Findings and Intent.

(a) The Legislature finds and declares the following:

(1) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through consumer choice in available providers of cable television services (hereinafter “cable operators”);

(2) There is a substantial public, governmental, and First Amendment interest in ensuring that Guam citizenry living in residential buildings have access to available cable operators;

(3) Cable operators are important sources of local news, public affairs, educational, civic and political programming critical to an informed electorate;

(4) The sale of monopoly rights to residential buildings through commissions covertly deducted from residents’ cable television subscription fees deprives the citizenry of the right to choose the news, entertainment, and public affairs programming they wish to receive, and detracts from the governmental interest in promoting program diversity;

(5) There is substantial likelihood that absent the imposition of consumer protection, Guam residents living in residential buildings will have their First Amendment rights deprived by building owners willing to participate in commission schemes; and,

(6) As a result of the economic incentive that building owners have to sell monopoly rights of access to their residents, coupled with the absence of consumer protection requirements for access, the economic viability of freedom of choice and competition amongst cable operators will be seriously jeopardized.

(b) It is the purpose of this act to:

(1) promote and encourage the availability to the public of the widest possible diversity of views, information and news sources and services through multiple cable operators;

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(2) rely on competition in a free marketplace to achieve that availability;

(3) ensure that cable operators on Guam continue to expand their capacity and the programs offered to the public over their cable systems;

(4) ensure that consumers living in residential buildings are protected through assuring them access to all available cable operators;

(5) ensure that no cable operator attempts to gain undue market power vis-a-vis monopolistic or exclusionary rights to residential buildings; and

(6) establish a means which protects Guam residents living in residential buildings against unfair denials of service from the sale of, or agreements which create, monopolistic and exclusionary access rights to their residences.

SOURCE: Added by P.L. 23-68:1

§ 32603. Access.

(a) No property owner, condominium association, managing agent, lessee or other person in possession or control of any residential building (hereinafter "property manager") shall forbid or prevent any occupant, tenant or lessee (hereinafter "tenant") of any such building from (1) receiving cable television service from a cable operator, nor (2) demand or accept payment from any cable operator or such tenant in any form as a condition of permitting the installation of cable television facilities or the maintenance of cable television service in any such building or any portion thereof occupied or leased by such tenant, nor (3) discriminate in rental charges or otherwise against any tenant receiving cable service; provided, however, that the property manager of such building may require, in exchange and as compensation for permitting the installation of cable television facilities within and upon such building, the payment of just compensation by the cable operator which provides such cable television service, said sum to be determined in accordance with the provisions of subparagraphs (c) and (d) hereof, and provided further that the cable operator installing such cable television facilities shall agree to indemnify the owner of such building for any damage caused by the

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installation, operation or removal of such cable television facilities and service.

No cable operator shall install cable television facilities within a residential building pursuant to this subparagraph (a) unless the property manager of such residential building, or a tenant of such residential building requests the delivery of cable television services. In any instance in which a request for service is made by more than three (3) tenants of a residential building, the cable operator may install cable television facilities throughout the building in a manner which enables the cable operator to provide cable television services to tenants of other residential units without requiring the installation of additional cable television facilities other than within the residential units occupied by such other tenants.

(b) No property manager of any improved or unimproved real estate shall forbid or prevent a cable operator from entering upon such real estate for the purpose of and in connection with the construction or installation of such cable television system and cable television facilities, nor shall any such property manager of such real estate forbid or prevent such cable operator from constructing or installing upon, beneath or over (hereinafter "upon") such real estate, including any buildings or other structures located thereon, hardware, cable, equipment, materials or other cable television facilities utilized by such cable operator in the construction and installation of such cable television system; provided, however, that the property manager of any such real estate may require, in exchange and as compensation for permitting the construction or installation of cable television facilities upon such real estate, the payment of just compensation by the cable operator which provides such cable television service, said sum to be determined in accordance with the provisions of subparagraphs (c) and (d) hereof, and provided further that the cable operator constructing or installing such cable television facilities shall agree to indemnify the owner of such real estate for any damage caused by the installation, operation or removal of such cable television facilities and service.

(c) In any instance in which the property manager of a residential building or improved or unimproved real estate intends to require the payment of just compensation in excess of \$1 in exchange for permitting the installation of cable television facilities in and upon such building, or upon such real estate, the property manager shall serve written notice

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thereof upon the cable operator. Any such notice shall be served within 20 days of the date on which such property manager is notified of the cable operator's intention to construct or install cable television facilities in and upon such building, or real estate. Unless timely notice as herein provided is given by the property manager to the cable operator, it will be conclusively presumed that the property manager of any such building or real estate does not claim or intend to require a payment of more than \$1 in exchange and as just compensation for permitting the installation of cable television facilities within and upon such building or real estate. In any instance in which a cable operator intends to install cable television facilities as herein provided, written notice of such intention shall be sent by the cable operator to the property manager. Such notice shall include the address of the property, the name of the cable operator, and information as to the time within which the property manager may give notice, demand payment as just compensation and initiate legal proceedings as provided in this subparagraph (c) and subparagraph (d). In any instance in which a cable operator intends to install cable television facilities within a residential building containing twelve(12) or more residential units, the written notice shall further provide that the property manager may require that the cable operator submit written plans identifying the manner in which cable television facilities are to be installed, including the proposed location of coaxial cable. Approval of such plans by the property manager shall not be unreasonably withheld and such property manager's consent to and approval of such plans shall be presumed unless, within 30 days after receipt thereof, or in the case of a condominium association, 90 days after receipt thereof, the property manager identifies in writing the specific manner in which such plans deviate from generally accepted construction or safety standards, and unless the property manager contemporaneously submits an alternative construction plan providing for the installation of cable television facilities in an economically feasible manner. The cable operator may proceed with the plans originally submitted if an alternative plan is not submitted by the property manager within 30 days, or in the case of a condominium association, 90 days, or if an alternative plan submitted by the property manager fails to comply with generally accepted construction and safety standards or does not provide for the installation of cable television facilities in an economically feasible manner.

(d) Any property manager of a residential building described in subparagraph (a), and any property manager of improved or unimproved

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real estate described in subparagraph (b), who shall have given timely written notice to the cable operator as provided in subparagraph (c), may assert a claim for just compensation in excess of \$1 for permitting the installation of cable television facilities within and upon such building or real estate. Within 30 days after notice has been given in accordance with subparagraph (c), the property manager shall advise the cable operator in writing of the amount claimed as just compensation. If within 60 days after the receipt of the property manager's claim, the cable operator has not agreed to pay the amount claimed or some other amount acceptable to the property manager, the property manager may bring suit to enforce such claim for just compensation in any court of competent jurisdiction and, upon timely demand, may require that the amount of just compensation be determined by a jury. Any such action shall be commenced within 6 months of the notice given by the cable operator pursuant to subparagraph (c) hereof. In any action brought to determine such amount, the property manager may submit evidence of a decrease in the fair market value of the property occasioned by the installation or location of the cable on the property, that the property manager has a specific alternative use for the space occupied by cable television facilities, the loss of which will result in a monetary loss to the property manager, or that installation of cable television facilities within and upon such building or real estate otherwise substantially interferes with the use and occupancy of such building to an extent which causes a decrease in the fair market value of such building or real estate.

(e) Disposition of cable home wiring upon installation. In order to promote competition between cable operators and to assure the smooth transition of services from one cable operator to another, if so desired by a cable subscriber (hereinafter "subscriber"), and to allow private real property owners to protect the aesthetic integrity and value of their property by preventing unsightly and excessive external cables from being attached to or located upon their property:

(1) Upon the installation of cable home wiring to any residential single unit or multiple unit dwelling by a cable operator, the installed wiring shall be deemed to be a fixture of the dwelling, and ownership of the wiring shall be immediately vested in the owner of the dwelling or premises (hereinafter "owner"). After installation of the wiring, a cable operator shall make no attempt to remove it or to restrict its use.

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(2) Upon voluntary termination of existing cable service by a subscriber, whether or not the subscriber is an owner, a tenant, or a property manager, or upon initial subscription of cable service by a subscriber with an alternate cable operator, a cable operator shall not remove the cable home wiring unless the cable operator gives the owner the opportunity to acquire the wiring at the replacement cost, and the owner declines. The cost is to be determined based on the replacement cost per foot of the cabling multiplied by the length in feet of the cable home wiring. If the owner declines to acquire the cable home wiring, the cable operator must then remove the cable home wiring within Thirty (30) days or make no subsequent attempt to remove it or to restrict its use.

(3) “Cable home wiring” is defined to be the internal wiring contained within the premises of a subscriber which begins at the “demarcation” point. For single unit dwellings, the “demarcation” point is the point at or about Twelve (12) inches outside of the location where the cable wire enters the subscriber’s premises; for multiple unit dwellings, it is the interconnection point or junction box between the subscriber’s dwelling unit and the cable operator’s distribution system. It does not include active elements such as amplifiers, converter or decoder boxes, or remote control units. It does not include loop through or other similar series cable wiring in multiple unit dwellings. For multiple dwelling units, it does include the adapters, jacks, or “F” connectors attaching the cable wire to the interconnection point.

(4) Any cable operator disconnecting its cable wire from the interconnection point shall leave the adapters, jacks, or “F” connectors attaching the cable wire to the interconnection point intact and shall not do anything which would otherwise render the cable wire ineffective or unable to be attached to an alternate cable operator’s interconnection point.

(5) The provisions of this Section set forth requirements for the disposition, after a subscriber voluntarily terminates cable service, of that cable home wiring installed by the cable operator or its contractor within the premises of the subscriber. The provisions do not apply where the cable home wiring belongs to the subscriber, such as where the cable operator has transferred ownership to the subscriber, the cable operator has been treating the wire as

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belonging to the subscriber for tax purposes, or the wiring is considered to be a fixture by territorial law.

(6) Nothing in this Section shall affect the cable operator's rights or responsibilities under federal or territorial laws, rules, or regulations to prevent excessive signal leakage while providing cable service, or the cable operator's right to access the subscriber's property or premises.

*(SOURCE: Subpart M § 76.801-76.801 of the FCC's Rules and Regulations, added by order in Docket No. 92-260, effective April 1, 1993, 58 FR 11970. For Report see 71 RR 2d 1214).

(f) Neither the giving of a notice by the property manager under subparagraph (c), nor the assertion of a specific claim, nor the initiation of legal action to enforce such claim, as provided under subparagraph (d), shall delay or impair the right of the cable operator to construct or install cable television facilities and maintain cable television services within or upon any building described in subparagraph (a) or real estate described in subparagraph (b).

(g) No landlord shall demand or accept payment of any fee, charge or other thing of value from any cable operator in exchange for giving the tenants of such landlord access to cable television service; and no landlord shall demand or accept any such payment from any tenants in exchange therefore unless the landlord is itself the provider of the cable television service. Nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained herein shall prohibit a landlord from requiring that the cable operator and the tenant bear the entire cost of the installation, operation or removal of the facilities incident thereto, or prohibit a landlord from demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation or removal, or the just compensation as provided in subparagraphs (a) and (b) hereof.

(h) If any provision of this statute or any application of any provision thereof to any person or circumstance is held invalid, the remainder of this statute and the application of such provision and any remaining provision of this statute to any other person or circumstance shall not be affected thereby.

(i) For purposes of this statute, "cable operator" has the same meaning as defined in the Cable Television Consumer Protection and

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Competition Act of 1992, 47 U.S.C. 522, et seq., as amended. Should the 1992 Cable Act be repealed, the definition in the last version of the Cable Act prior to such repeal shall apply. Notwithstanding the foregoing, for purposes of this statute any entity which provides cable television as of the time of enactment of this Act shall be considered a “cable operator”.

SOURCE: Added by P.L. 23-68:1

§ 32604. Unauthorized Reception of Cable Service.

(a) Unauthorized Interception or Receipt or Assistance in Intercepting or Receiving Service; Definition of ‘Assist in Intercepting or Receiving.’

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this Section, the term ‘assist in intercepting or receiving’ shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of Subparagraph (1).

(b) Civil Action in Superior Court; Injunctions; Damages; Attorney’s Fees and Costs.

(1) Any person aggrieved by any violation of Subsection (a)(1) may bring a civil action in the Superior Court of Guam.

(2) The court may:

(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of Subsection (a)(1);

(B) award damages as described in paragraph (3); and

(C) direct the recovery of full costs, including awarding reasonable attorneys’ fees to an aggrieved party who prevails.

(3)(A) Damages awarded by any court under this Section shall be computed in accordance with either of the following clauses:

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(i) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(ii) the party aggrieved may recover an award of statutory damages for all violations involved in the action, in the sum of the dollar value of the services stolen, but in no event should the award exceed Ten Thousand Dollars (\$10,000.00).

(B) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under Subparagraph (A), by an amount of not more than Fifty Thousand Dollars (\$50,000.00).

(C) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this Section, the court in its discretion may reduce the award of damages to a sum of not less than One Hundred Dollars (\$100.00).

SOURCE: Added by P.L. 27-131:4.

ARTICLE 7
SOCIAL SECURITY NUMBER CONFIDENTIALITY ACT

SOURCE: This entire article was added by P.L. 28-95 (Feb. 7, 2006) with the effective date of May 1, 2006.

- § 32701. Legislative Findings and Intent.
- § 32702. Short Title.
- § 32703. Definitions.
- § 32704. General Rule.

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§ 32705. Exception.

§ 32706. Enforcement.

§ 32707. Effective Date.

§32701. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that nationwide, the broad use and public exposure of Social Security Numbers has been a major contributor to the tremendous growth in identity theft and other forms of credit fraud.

Therefore, it is the intent of *I Liheslaturan Guåhan* to protect the citizens of Guam from identity theft through the inappropriate disclosure and misappropriation of their Social Security Numbers by limiting its use and display to the general public.

§ 32702. Short Title.

This Act shall be known and may be cited as the “*Social Security Number Confidentiality Act*”.

§ 32703. Definitions.

The following definitions shall be used in interpreting this Act:

(a) “*Phish*” means the act of sending an electronic mail or message over the internet to a user in an attempt to mislead the user into surrendering private information for any purpose other than the purpose disclosed to the user by the sender of the e-mail or message.

(b) “*Public entity*” means the government of Guam and any agency or instrumentality thereof. For purposes of this Act, public entity does *not* include the federal government.

(c) “*Private entity*” means any individual, corporation, company, partnership, firm, association, or any entity other than a public entity.

(d) “*Private information*” means any privileged personal information protected by law requiring the consent of that individual prior to disclosure.

(e) “*Publicly post*” or “*publicly display*” means to intentionally communicate, openly exhibit or otherwise make available to the general public.

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§ 32704. General Rule.

No public or private entity shall:

(a) Assign an identification number to an individual which is identical to or incorporates an individual's Social Security Number (SSN).

(b) Publicly post or publicly display, in any manner, private information or an individual's SSN.

(c) Print an individual's SSN on any card required for the individual to access products or services provided by the person or entity.

(d) Print an individual's SSN on identification cards or badges.

(e) Print an individual's SSN on materials that are mailed, unless Federal or Guam law requires the SSN to be on the document to be mailed. Notwithstanding this Act, applications and forms sent by mail may include SSNs.

(f) Require an individual to transmit his private information or SSN over the internet in an unsecured or unencrypted connection.

(g) Deny to any individual any right, benefit or privilege provided by law because of an individual's refusal to disclose his SSN as provided in 5 U.S.C. §552(a). Any public or private entity which requests an individual to disclose his SSN shall inform the individual upon his request whether that disclosure is mandatory or voluntary, by what statutory or legal authority the SSN is solicited, and what uses will be made of it.

(h) *Phish* across the internet in an attempt to have an individual disclose private information or their SSN.

§ 32705. Exception.

(a) Nothing in this Act shall prevent any public entity or private entity from using a SSN for internal verification and administrative purposes, so long as the use does not result in, or require the release of,

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the SSN to persons not designated by the entity to perform associated functions authorized by law.

(b) This Act shall *not* be asserted as a means to avoid compliance with an otherwise valid request for records pursuant to the Freedom of Information Law and the Sunshine Reform Act of 1999, Title 5 GCA, Chapter 10, and the Open Government Law, Title 5 GCA, Chapter 8.

§ 32706. Enforcement. The Attorney General may:

(a) bring suit against any public entity or private entity for violating the provisions of this Section;

(b) collect civil penalties of up to Two Hundred Fifty Dollars (\$250) per violation together with attorney's fees and costs incurred in the investigation and prosecution of the matter;

(c) seek appropriate injunctive relief; and

(d) bring criminal charges pursuant to Title 9 GCA § 46.80 regarding the theft or the misappropriation of an individual's SSN.

§ 32707. Effective Date.

This Act shall become effective on May 1, 2006 and apply to acts occurring on or after May 1, 2006.
