

Bill No. 3-06  
Concerning: Consumer Protection-  
Revisions  
Revised: 2-9-06 Draft No. 2  
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Ch. 7, Laws of Mont. Co. 2006

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive, and Councilmember Perez

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**AN ACT** to:

- (1) prohibit certain merchants from engaging in certain unfair trade practices;
- (2) create an administrative hearing process to adjudicate violations of the County consumer protection law;
- (3) clarify the County's authority to enforce the County consumer protection law;
- (4) repeal obsolete provisions of and update terms in the County consumer protection law;
- and
- (5) generally amend the County consumer protection law.

By amending

Montgomery County Code  
Chapter 11, Consumer Protection

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 11-1 through 11-11 are amended as follows:**

2   **11-1.           Definitions.**

3           In this Chapter, the following words and phrases have the following meanings:

4           **Consumer:** A purchaser, lessee, or recipient, or prospective purchaser, lessee  
5 or recipient of [real estate,] **consumer goods or services** [or consumer credit],  
6 including a co-obligor or surety.

7           **Consumer goods[,] or services[, credit and debts]:** **Real estate**, goods,  
8 services, credit, debts, [and] or obligations [which] that are primarily for personal,  
9 household, family or agricultural purposes.

10          **Director:** The Director of the Office of Consumer Protection, or the **Director's**  
11 designee.

12          **Merchant:** Any person who offers or makes available to **consumers**, either  
13 directly or indirectly, [real estate, merchandise, goods, services or credit] **consumer**  
14 **goods or services.**

15          **Office:** The Office of Consumer Protection.

16          **Person:** An individual, proprietor, partnership, corporation, firm, cooperative,  
17 association, or any other group of individuals or legal entity, however organized.

18          **Real estate:** [Leaseholds and all] Any leasehold or other tangible [interests]  
19 interest in residential real property, [dwellings, buildings] dwelling, building, or other  
20 [structures situate] structure located on residential real property, including a  
21 condominium [units] unit.

22   **11-2.           Consumer protection.**

23 The Office of Consumer Protection is a department of County government.  
24 Notwithstanding Section 1A-104(a) and (c), the Office is headed by a merit system  
25 employee, who is entitled the Executive Director. The Office [has the following  
26 duties, powers and authority] may:

27 (a) [To] receive and investigate complaints and initiate its own  
28 investigation of deceptive, [or] unfair, or unconscionable trade practices  
29 against **consumers**[; to], hold hearings, compel the attendance of  
30 witnesses, administer oaths, take the testimony of any person under oath  
31 and[, in connection therewith,] require the production of any evidence  
32 relating to any matter under investigation or in question by the Office [.  
33 At any hearing, a witness has the right to be advised by counsel present  
34 during the hearing.];

35 (b) [To] issue summonses and subpoenas to compel the attendance of  
36 witnesses and the production of documents, papers, books, records, and  
37 other evidence in any matter [over] to which this [law] Chapter  
38 applies[.];

39 (c) [To] issue cease and desist orders and bring enforcement actions [with  
40 respect to **consumer** practices which violate] regarding any trade  
41 practice that violates this Chapter[.];

42 (d) [To] report to any appropriate [governmental agencies having]  
43 government agency with jurisdiction over **real estate** transactions or  
44 **consumer** protection matters any information concerning violation of  
45 any **consumer** protection [laws.] law;

- 46 (e) [To present] communicate the [interest] interests of **consumers** and[/or]  
47 **merchants** before administrative and regulatory agencies and  
48 legislative bodies [when needed] to ensure that both are adequately  
49 [represented in a balanced way.] represented;
- 50 (f) [To] assist, advise, and cooperate with the [better business bureau of the  
51 County] Better Business Bureau and local, state, and federal agencies  
52 and officials to protect and promote the [interest] interests of [the]  
53 County [consumer public.] consumers;
- 54 (g) [To] assist, develop, and conduct programs of **consumer** education and  
55 information through public hearings, meetings, publications, or other  
56 materials prepared for distribution to [the consumer public of the]  
57 County consumers[.];
- 58 (h) [To undertake activities to] encourage local business and industry to  
59 maintain high standards of honesty, fair business practices, and public  
60 responsibility in the production, promotion, and sale of **consumer**  
61 **goods** [and] or services [and in the extension of credit.];
- 62 (i) [To exercise and perform such other functions and duties consistent  
63 with the purposes of provisions of this Chapter which may be deemed  
64 necessary or appropriate to] protect and promote the welfare of [the]  
65 County **consumers** and **merchants**[.];
- 66 (j) [To annually] report annually on the number, nature, and disposition of  
67 complaints filed [and the other relevant activities of] with the Office  
68 [during the previous year]. The annual report must include any

69 recommendations [, if any,] made by the Advisory Committee[.] on  
 70 Consumer Protection;

71 (k) [To] adopt regulations under method [(3) for the conduct of the  
 72 activities of the Department.] (2) to implement this Chapter;

73 (l) [To exercise and perform the duties associated with the local inspector  
 74 of weights and measures.] operate a voluntary arbitration program; and

75 (m) [To exercise and perform the various provisions of law] enforce laws  
 76 pertaining to motor vehicle repair, electrical appliances, [closing-out  
 77 sales, solicitors, hawkers and peddlers] secondhand personal property,  
 78 and any other [provisions which the council may, by law, direct] law  
 79 that the Office is assigned to enforce.

80 **11-3. Advisory Committee on Consumer [affairs] Protection.**

81 (a) *Creation and composition; appointment of members; chair.* There is an  
 82 [advisory committee] Advisory Committee on [consumer affairs]  
 83 Consumer Protection, which consists of 9 [representatives] **persons**  
 84 appointed by the County Executive, subject to confirmation by the  
 85 County Council. The membership [shall] must reflect a cross-section of  
 86 **consumer** and business interests. At least 2 members [shall] must be  
 87 members of the Better Business Bureau [of Montgomery County] or of  
 88 another County-wide association of **merchants**. At least [2] 1  
 89 [members shall] member must be a [members] member of the  
 90 [community action committee] Community Action Board, [one of  
 91 whom shall represent the economically disadvantaged] and a second  
 2 member must be recommended by the Community Action Board. If,

93 after written notice to these groups, no application is received from a  
94 member of [one of] these groups, and no [recommendations are]  
95 recommendation is received from one of these groups, [appointment  
96 may be made] the Executive may appoint a person from the public-at-  
97 large. Each member serves a 3 year term. A member appointed to fill a  
98 vacancy serves the rest of the unexpired term. Each member continues  
99 in office until a successor is appointed and [qualified] confirmed. The  
100 Committee [shall] must elect one member as chair and another member  
101 as vice chair, each to serve in that capacity at the pleasure of the  
102 Committee, and such other officers as it determines.

103 (b) *Compensation.* Members of the Committee receive no compensation for  
104 their services.

105 (c) *Meetings; services; reports.* The Committee [meets on call] must meet  
106 when required by the chair [as frequently as required to perform its  
107 duties], but no less than once each month. The Committee [submits]  
108 must submit an annual report to the [County] Executive and [the  
109 County] Council.

110 (d) *Powers and duties.* The Committee [advises] must advise the Office in  
111 carrying out its duties and functions under this Chapter, and [holds] may  
112 hold public hearings on any topic related to Consumer Protection [as  
113 necessary, including hearings on including or excluding persons or  
114 organizations from the application of this Chapter].

115 **11-4. Deceptive trade practices.**

116 [(1)] [It shall be unlawful for any] **A merchant** [to] must not engage in a  
 117 deceptive, unfair, or unconscionable trade practice, whether or not any specific  
 118 **consumer** has, in fact, been misled, deceived, or damaged thereby. Deceptive,  
 119 unfair, or unconscionable trade practices [are] include:

120 (a) [Representations] a representation that **consumer goods or services**  
 121 have sponsorship, approval, accessories, characteristics, ingredients,  
 122 uses, benefits, or quantities that they do not have[.];

123 (b) [Representations] a representation that the **merchant** has a sponsorship,  
 124 approval, corporate indication, status, affiliation, or connection that [he]  
 125 the merchant does not have[.];

126 (c) [Representations] a representation that **consumer goods** are original or  
 127 new if they are deteriorated, altered, reconditioned, reclaimed, or  
 128 secondhand[.];

129 (d) [Representations] a representation that **consumer goods or services** are  
 130 of a particular standard, quality, grade, style, or model, if they are of  
 131 another[.];

132 (e) [The] a misrepresentation as to a material fact [which] that has a  
 133 tendency to mislead[.];

134 (f) [The] a failure to state a material fact if [such use or] the failure  
 135 deceives or tends to deceive[.];

136 (g) [Disparaging] disparaging the **consumer goods**[,] or services, or  
 137 business of another by false or misleading representations of material  
 8 facts[.];

- 139 (h) [Advertising] advertising or offering **consumer goods or services**  
140 without the intent or authority to sell them [or sell them] as advertised or  
141 offered[.];
- 142 (i) [Advertising] advertising or offering **consumer goods or services** with  
143 intent not to supply reasonably expected public demand, unless the  
144 advertisement or offer discloses a [limitation or] limit of quantity or  
145 other qualifying condition [which has a tendency to mislead.];
- 146 (j) [Making] making false or misleading representations of fact  
147 concerning[: The] the reasons for, existence of, or amounts of price  
148 reductions; or the price in comparison to the price of competitors or  
149 one's own price at a past or future time[.];
- 150 (k) [Knowingly falsely] falsely stating that **consumer goods or services**,  
151 replacements, or repairs are needed[.];
- 152 (l) [Falsely] falsely stating the reasons for offering or supplying **consumer**  
153 **goods or services** at sale or discount prices[.];
- 154 (m) [The] harassment of or threat to any **person** [either by telephone, cards  
155 or letters] with regard to any act other than legal process[.];
- 156 (n) [Any] any deception, fraud, false pretense, false premise,  
157 misrepresentation, or [the knowing] concealment, suppression, or  
158 omission of any material fact with the intent that **consumers** rely [upon  
159 such] on the concealment, suppression, or omission, in connection with  
160 [the sale or advertisement of any merchandise or with the subsequent  
161 performance of person aforesaid, whether or not any person has, in fact,

162 been misled, deceived or damaged thereby.] any consumer goods or  
 163 services;

164 (o) [Any] any false, falsely disparaging or misleading oral or written  
 165 statement, visual description or other representation of any kind [which]  
 166 that has the capacity, tendency, or effect of deceiving or misleading  
 167 **consumers** and is made in connection with [the sale, lease, rental, loan  
 168 or bailment of consumer goods or services; the offering for sale, lease,  
 169 rental, loan or bailment of consumer goods or services; the extension of  
 170 consumer credit; or the collection of consumer debts.] any consumer  
 171 goods or services;

172 (p) any representation that an agreement confers or limits rights, remedies,  
 173 or obligations that it does not confer or limit, or that are prohibited by  
 174 law;

175 (q) failure of any merchant to comply with a warranty;

176 [(2) It shall be unlawful for any merchant to engage in an unconscionable  
 177 trade practice. Unconscionable trade practices are:

178 (a) (r) [Failure] failure to provide a written estimate of repairs, alterations,  
 179 modifications, or [servicing] services when requested by a **consumer**  
 180 and the [subsequent] later repair, alteration, modification, or servicing  
 181 of any item without first tendering [said] a written estimate[.];

182 [(b)] (s) [Making] performing repairs, alterations, modifications, or [servicing]  
 183 services exceeding by [twenty-five (25)] 25 percent or more the price  
 184 quoted in a written estimate without prior approval of [a] the  
 185 consumer[.];

186 [(c)] (t) [Failure to reassemble or restore an electrical or mechanical apparatus,  
 187 appliance, chattel, or other goods or merchandise to its tendered  
 188 condition unless a service or labor charge is paid without notification  
 189 prior to receiving the tendered item of said service or labor charge.]  
 190 imposing or demanding a labor or service charge without notifying the  
 191 consumer of the charge before dismantling, disassembling or otherwise  
 192 altering a consumer good;

193 [(d)] (u) [Failing] failing to supply [to] a **consumer** with a copy of a [sales or  
 194 service] contract, lease, promissory note, trust agreement, or [other]  
 195 evidence of indebtedness [which that person may execute.] when the  
 196 consumer executes the document;

197 [(e)] (v) [Making] making or enforcing unconscionable contract terms [of  
 198 provisions of sales or leases]. In applying this subsection,  
 199 [consideration shall be given to any of] the following factors may be  
 200 considered:

201 [1.] (1) [Knowledge] knowledge by the **merchant** [at the time credit  
 202 sales are] when a credit sale or loan is consummated that there  
 203 was no reasonable probability of payment in full of the obligation  
 204 by the **consumer**[.];

205 [2.] (2) [Knowledge] knowledge by the **merchant** at the time of the sale  
 206 or lease of the **consumer's** inability [of the **consumer**] to receive  
 207 substantial benefits from the [property or services] **consumer**  
 208 good or service sold or leased[.];

209 [3.] (3) [Gross] gross disparity between the price of [the property]  
 210 consumer goods or services sold or leased and the value of the  
 211 [property] consumer goods or services measured by the price at  
 212 which similar [property] consumer goods or services are readily  
 213 obtainable [in transactions] by like buyers or lessees[.];

214 [4.] (4) [The] the fact that the **merchant** contracted for or received  
 215 separate charges for insurance with respect to credit sales with the  
 216 effect of making the sales, considered as a whole,  
 217 unconscionable[.];

218 [5.] (5) [The] the fact that the **merchant** has knowingly taken  
 219 advantage of the inability of [the] a consumer reasonably to  
 220 protect his or her interests [by reason] because of physical or  
 1 mental infirmities, ignorance, illiteracy, [or] inability to  
 222 understand the language of the agreement, or similar factors[.];

223 [(f)] (w) [Replacing] replacing [parts or components] any part in an electrical  
 224 or mechanical apparatus, appliance, chattel, or other [goods or  
 225 merchandise] consumer good when [such parts or components are] the  
 226 part was not defective, unless expressly requested by the **consumer**[.];

227 [(g)] (x) [Falsely] falsely stating or representing that [repairs, alterations,  
 228 modifications or servicing have been made] any repair, alteration, or  
 229 service was performed [and receiving remuneration therefor when they  
 230 have not been.];

231 [(h) Failing to disclose the following pricing information pertaining to  
232 beverages offered for sale in circumstances where the consumer may  
233 remove the beverage container from the premises.

234 1. In the case of sales in reusable beverage containers, the net  
235 price to the consumer excluding the amount of any deposit.

236 2. In the case of sales in nonreusable beverage containers, the  
237 total price to the consumer.

238 For the purpose of this disclosure requirement, the following shall  
239 apply:

240 1. The terms "beverages" and "nonreusable beverage  
241 containers" shall be as defined in section 52-16B of this Code.

242 2. Disclosure shall be accomplished by displaying  
243 conspicuously nearby the point at which selection is made by the  
244 consumer a notice containing the required information in a format  
245 clearly legible to the consumer making the selection.]

246 (y) taking payment for goods or services without delivering the goods or  
247 performing the services; or

248 (z) practicing, or in any way engaging in, any trade, occupation, or  
249 profession without a license, registration, certificate, or other evidence  
250 of training or experience required by law.

251 **[11-4A. Unfair Trade Practices-Future Service Contracts.**

252 (a) It is unlawful for a merchant to engage in an unfair trade practice in the  
253 offering or sale of a future service contract.

254 (b) In this Section:

255 (1) Future service contract means a contract for the sale of services  
256 that:

257 (A) will be provided on a continuing basis or during a period  
258 of time after the date the contract is signed,

259 (B) are provided by a health spa, dance studio, weight  
260 reduction service, self-defense school, dating service, or  
261 vacation and travel club, and

262 (C) will primarily be provided in the County or under a  
263 contract signed in the County.

264 (2) A unit of service is:

265 (A) a day for which services are available to the consumer, or

266 (B) another unit, such as a visit, lesson, or referral, if the  
267 contract provides services on the basis of the other unit.

268 (c) Unfair trade practices prohibited by this Section are:

269 (1) refusing to allow a consumer to cancel a future service contract,  
270 without any obligation to the consumer, within:

- 271 (A) three business days after the consumer signs the contract,  
272 or
- 273 (B) any longer period allowed by State or Federal law;
- 274 (2) representing, orally or in writing, that a consumer has no legal  
275 right to terminate a future service contract;
- 276 (3) failing to offer a consumer the option to either:
- 277 (A) enter into an initial contract for 90 days or less; or
- 278 (B) receive and pay for each unit of service on a periodic or  
279 per unit basis;
- 280 (4) refusing to refund to the consumer, after a contract is cancelled  
281 during the cancellation period allowed under paragraph (1), any  
282 money paid that exceeds the amount a merchant may lawfully  
283 retain:
- 284 (A) within 15 days, in cash or check form, if the consumer paid  
285 in cash, money order, or traveller's check;
- 286 (B) immediately, by recrediting the consumer's account, if the  
287 consumer signed a credit card slip; or
- 288 (C) either by returning the consumer's check immediately or  
289 by issuing a refund check within 15 days after the  
290 consumer's check clears the merchant's bank, if the  
291 consumer paid by check;

- 292 (5) contacting, or having an agent contact, a consumer in any manner  
293 to collect payment which exceeds the amount a merchant may  
294 lawfully retain; and
  
- 295 (6) in addition to any other disclosure requirement imposed under  
296 State or Federal law, failing to include in each contract the  
297 following disclosure in boldface type, no smaller than 10 points,  
298 that contrasts with surrounding text:

299 CANCELLATION AND REFUND

300 Under Montgomery County law, you can cancel this contract without  
301 any obligation within 3 business days after signing it and receive a full  
302 refund.

303 You must notify (name of service provider) of your decision to cancel  
304 this contract by certified mail or by written notice delivered to (name of  
305 service provider).

306 OTHER DISCLOSURES

307 Federal law gives you certain rights to stop an automatic charge against  
308 your credit card or bank account under this contract. The only charges  
309 or fees you are required to pay under this contract are:

310 (list each charge or fee per year, month, or week, or per unit of service).

- 311 (d) A future service contract is cancelled when the consumer delivers a  
312 written notice of cancellation to the merchant. Delivery occurs when  
3 the consumer either:

- 314 (1) mails the notice by certified mail, return receipt requested,  
 315 through the United States Postal Service; or
- 316 (2) delivers the notice to the merchant at the location where the  
 317 consumer receives the services or at another location the  
 318 merchant designates in the CANCELLATION AND REFUND  
 319 disclosure statement in the contract.
- 320 (e) Section 11-9 applies to any violation of this Section, except that a  
 321 merchant who violates this Section is not subject to a Class A criminal  
 322 violation. A merchant who violates this Section is, however, subject to a  
 323 Class A civil violation and any other penalty or relief available under  
 324 Section 11-9.]

325 **11-5. Exemptions from chapter.**

326 This Chapter [shall] does not apply to:

- 327 [(1)] (a) [Professional] other than practicing or acting without a license,  
 328 professional services [of] rendered by any certified public accountants,  
 329 architects, clergymen, professional engineers, lawyers, veterinarians,  
 330 insurance agents and brokers licensed by the state, Christian Science  
 331 practitioners, land surveyors and property line surveyors, optometrists,  
 332 physical therapists, podiatrists, psychologists, and medical and dental  
 333 practitioners, engaging in their respective professional [endeavors.]  
 334 activities;
- 335 [(2)] (b) [Any] any television or radio broadcasting station or [to] any  
 336 publisher or printer of a newspaper, magazine, or other form of printed  
 337 advertising who broadcasts, publishes, or prints an advertisement which

338 violates this [chapter] Chapter, except insofar as [such] the station or  
 339 publisher or printer engages in a deceptive or unconscionable practice in  
 340 the sale or offering for sale of its own goods or services or [has  
 341 knowledge of] knows that the advertising [being in violation of] violates  
 342 this [chapter.] Chapter;

343 [(3)] (c) [Public service] public utility companies [subject to the jurisdiction of  
 344 the public service commission, as provided in article 78 of the  
 345 Annotated Code of Maryland.] to the extent that the company's services  
 346 and operations are regulated by the state Public Service Commission;

347 [(4)] (d) [Defective] defective tenancies or other complaints concerning any  
 348 condition in [a] rental [facility] housing which arises out of a landlord-  
 349 tenant relationship and [which] constitutes a violation of [chapter]  
 0 Chapter 29[.] ; and

351 [(5)] (e) [The] the sale of **real estate**, directly or indirectly by any owner-  
 352 occupant of the **real estate** [, or re-sale of real estate directly or  
 353 indirectly by any owner of less than three (3) dwelling units].

354 **11-6. Filing [of] complaints.**

355 Any **consumer** [subjected to an unlawful trade practice as defined in Section  
 356 11-4 or 11-4A, or the Director] may file a written complaint [in writing] with the  
 357 **Director**. The complaint [must] should state the name and address of the **person**  
 358 alleged to have committed the violation, [the details of] describe the violation, and  
 359 provide any other information [as] that the Office requires. However, the Director  
 360 may act on a complaint that is not complete. The Director may investigate any  
 361 violation of and enforce this Chapter without receiving a complaint.

362 **11-7. Procedures [and enforcement].**

363 [(a) After receiving a complaint under Section 11-6, the Director may  
364 investigate the facts and issues. In that investigation the Director may  
365 use the authority granted in Section 11-2. Whenever appropriate, the  
366 Director may refer a complaint to the state Real Estate Commission, the  
367 Consumer Protection Division of the state Attorney General's office, or  
368 the Federal Trade Commission. If the Director finds reasonable grounds  
369 to believe a violation has occurred, the Director must attempt to  
370 conciliate the matter by methods of initial conference and persuasion  
371 with all interested parties and any representatives the parties may  
372 choose to assist them. In attempting a conciliation to assist a  
373 complaining consumer in resolving the consumer's individual dispute,  
374 the Director may utilize the good offices of the Advisory Committee on  
375 Consumer Affairs. Conciliation conferences are informal, and nothing  
376 said or done in a conciliation conference may be made public by the  
377 Office, the Committee, or its members unless the parties agree in  
378 writing to make the matter public.

379 (b) The terms of conciliation agreed to by the parties may be reduced to  
380 writing and incorporated into a written assurance of discontinuance or  
381 settlement agreement to be signed by the parties. A written assurance or  
382 agreement is for conciliation purposes only and does not constitute an  
383 admission by any party that any law has been violated. A written  
384 assurance of discontinuance or settlement agreement must be signed on  
385 behalf of the Office by the Director.

386 (c) A person must not violate or fail to adhere to any written assurance or  
 387 agreement of discontinuance or settlement agreement. Any failure by  
 388 the Department to pursue a violation of any written assurance does not  
 389 waive any right of the Office or provision of the agreement.

390 (d) The Office may seek the cooperation of licensing authorities and  
 391 contracting departments of County government in connection with any  
 392 investigation under this Chapter of any person licensed to do business in  
 393 the County or having a contractual relationship with County  
 394 government.

395 (e) If the Director finds that a complaint lacks reasonable grounds upon  
 396 which to base a violation of this Chapter, the Director may dismiss the  
 397 complaint or order further investigation.

398 (f) If the Director, with respect to an alleged violation of Section 11-4 or  
 399 11-4A,

400 (1) does not conciliate a complaint after the parties have, in good  
 401 faith, attempted a conciliation, or

402 (2) does not effect an assurance of discontinuance or settlement  
 403 agreement, or

404 (3) finds that a complaint is not susceptible of conciliation, the  
 405 Director should transmit the matter to the County Attorney for  
 406 appropriate legal action.

407 (g) Nothing in this Section prevents any person from exercising any right or  
408 seeking any remedy to which the person might otherwise be entitled, or  
409 from filing any complaint with any other agency or court.

410 (h) Any written assurance of discontinuance or settlement agreement or any  
411 cease and desist order under this Chapter may require the violator to pay  
412 the costs of investigation by the Office, and may also include  
413 stipulations or conditions for restitution by the violator to the consumer  
414 of money, property or other things received from the consumer in  
415 connection with a violation of this Chapter. The stipulations and  
416 conditions must not preclude the Office from utilizing any other  
417 stipulation, condition, or remedy necessary to correct a violation of this  
418 Chapter.]

419 (a) The **Director** must enforce this Chapter, and may:

420 (1) investigate a violation or a complaint;

421 (2) refer a complaint or a violation to any federal, state, or local  
422 agency with jurisdiction over the complaint;

423 (3) refer a complaint or a violation to a hearing officer under Section  
424 11-10;

425 (4) pursue an enforcement action under Section 11-11; or

426 (5) attempt to conciliate a matter with the parties.

427 (b) The **Director** must attempt to conciliate a matter before taking  
428 enforcement action. However, when the **Director** finds that any

429 violation is causing or will cause immediate, substantial, and irreparable  
430 injury, or it is otherwise in the public interest, the **Director** may take  
431 immediate enforcement action without first attempting conciliation,  
432 including issuing a cease and desist order.

433 (c) This Section does not prevent any **person** from exercising any right or  
434 seeking any remedy to which that **person** is otherwise entitled, or from  
435 filing any complaint with any other agency or court.

436 (d) This Section does not prevent the **Director** from following a different  
437 procedure or pursuing a different enforcement action during or after an  
438 investigation when the **Director** finds that doing so will serve the public  
439 interest.

440 (e) The **Director** may seek the cooperation of any licensing authority and  
441 contracting department in County government.

442 **11-8. Conciliation Procedures.**

443 (a) When conciliating a matter, the **Director** may use the services of any  
444 member of the Advisory Committee on **Consumer Protection**.

445 (b) The parties may incorporate the terms of a conciliation into a settlement  
446 agreement. A settlement agreement does not constitute an admission by  
447 any party that any law has been violated. The **Director** may sign a  
448 settlement agreement on behalf of the **Office**.

449 (c) Any settlement agreement may require a party to pay the costs of the  
450 **Office's** investigation and related activities and restitution to a  
451 **consumer** of money, property, or any other thing received in apparent

452 violation of this Chapter. A settlement agreement must not preclude the  
 453 Office from using any other remedy to correct a violation of this  
 454 Chapter.

455 (d) Each signatory must adhere to any settlement agreement. Any failure  
 456 by the Office or another party to pursue a violation of any settlement  
 457 agreement does not waive any provision of the agreement or any right  
 458 of the Office under the agreement or this Chapter.

459 (e) The Director may enforce a violation of a settlement agreement under  
 460 Section 11-10 as if it is a violation of this Chapter.

461 **[11-7A] 11-9. Enforcement of summonses and subpoenas.**

462 (a) If any **person** does not comply with any summons or subpoena issued  
 463 under this Chapter, the County [, on behalf of the Office,] may enforce  
 464 the summons or subpoena by appropriate legal action.

465 (b) Any court with jurisdiction may [, upon request of the County,] grant  
 466 injunctive or other appropriate relief to enforce a summons or  
 467 subpoena.[:

468 (1) Requiring compliance with a summons or subpoena;

469 (2) Requiring the attendance of the named defendant before the  
 470 Office at a time and place specified by the court;

471 (3) Requiring the production of records, correspondence, documents,  
 472 papers, books, records or other evidence;

- 473 (4) Requiring the transfer of custody of records, documents,  
474 correspondence, papers, books or other evidence to the court;
- 475 (5) Prohibiting the destruction of any records, documents,  
476 correspondence, papers, books or other evidence pending  
477 conclusion of any lawful investigation by the Office;]
- 478 (c) [Any disobedience of any final order entered pursuant to this section by  
479 any court shall be punishable by such court as a contempt thereof] A  
480 person must comply with any summons or subpoena issued under this  
481 Chapter.

482 **11-10. Administrative hearing.**

- 483 (a) The Director may refer a complaint or a violation to a hearing officer  
484 designated by the Chief Administrative Officer for an administrative  
485 hearing.
- 486 (b) If the Director refers a complaint or violation to a hearing officer, the  
487 Director must prepare a statement of charges that summarizes:
- 488 (1) the nature of the alleged violation, and the approximate date the  
489 violation was committed;
- 490 (2) the provision of this Chapter alleged to be violated; and
- 491 (3) the right of the respondent to be represented by counsel and  
492 present witnesses and evidence pertinent to the charges.
- 493 (c) The Director must serve the statement of charges and a notice of the  
494 time and place of a hearing on the person who is alleged to have

495 violated this Chapter and notify any complainant or other interested  
496 person of the time and place of the hearing.

497 (d) The Director may use any of the following methods to serve or notify a  
498 person under this Chapter:

499 (1) personal service;

500 (2) regular or certified mail, postage prepaid, addressed to the last-  
501 known residential or business address of the respondent; regular  
502 mail is presumed to be served 3 days after mailing;

503 (3) posting a notice in a conspicuous place at the respondent's  
504 residence or place of business; or

505 (4) publication in a newspaper of general circulation in the County  
506 once a week for 3 successive weeks if no address can be found  
507 for a party after a diligent search or if the hearing officer  
508 determines that the person is avoiding receiving notice.

509 (e) Unless otherwise provided in this Section, Article 1 of Chapter 2A  
510 governs any proceeding held under this Section.

511 (f) If a person notified of the hearing does not appear at the hearing, the  
512 hearing officer may proceed with the hearing and dismiss the charges,  
513 enter a default judgment, or issue another appropriate order, including  
514 an order directing the person who has not appeared to take or refrain  
515 from taking certain actions.

516 (g) In addition to the requirements of Section 2A-10, if the hearing officer  
517 finds by a preponderance of the evidence that a **person** has violated this  
518 Chapter, the hearing officer may order the violator to:

519 (1) stop committing the violation;

520 (2) restore money or property;

521 (3) pay any costs of investigation or related activities of the  
522 **Department;**

523 (4) post a performance bond or other security;

524 (5) pay a civil penalty authorized under Section 11-11; or

525 (6) take any other action that would:

526 (A) assist the public in obtaining relief; or

527 (B) prevent future violations.

528 (h) When a violator is ordered to post a performance bond or other security,  
529 in setting the amount of security to be posted the hearing officer should  
530 consider:

531 (1) the nature of the violation;

532 (2) the amount of money, property, or any other thing received from  
533 a **consumer** in connection with the violation;

534 (3) whether full restitution has been paid to each affected **consumer;**  
535 and

- 536           (4) the risk of future harm to other consumers.
- 537           (i) If the hearing officer imposes a civil penalty, the hearing officer should  
538 consider:
- 539                   (A) the severity of the violation;
- 540                   (B) the severity of any harm to the consumer;
- 541                   (C) the motives of the violator;
- 542                   (D) any previous violations by the same person or entity;
- 543                   (E) whether the penalty will deter future misconduct; and
- 544                   (F) whether a stop order or restitution would sufficiently  
545 protect consumers.
- 546           (j) Every person must comply with each order or decision issued by a  
547 hearing officer under this Section.
- 548           (k) The Director may enforce an order or decision of a hearing officer by  
549 taking any appropriate legal action. In addition, the Director may  
550 enforce any violation of a decision or order under Section 11-11.

551 **[11-8. Costs.**

552           In any action brought under this Chapter, the Office is entitled to recover its  
553 investigation and hearing costs from a violator if an unlawful trade practice is found  
554 to exist.]

555 **[11-9] 11-11.           Enforcement and [Penalties] penalties.**

556 [Any merchant who is found to have committed a violation of any of the  
557 provisions of this chapter relating to unlawful trade practices is liable for the payment  
558 to the County of a civil penalty, recoverable in a civil action, in the sum of not more  
559 than \$1,000.00 for each violation. In any action brought by the county to enforce this  
560 chapter, the court may grant such relief as the court finds necessary to redress injury  
561 to persons resulting from the violation of this Chapter. In addition, any such  
562 merchant is subject to injunctive or other appropriate action or proceeding to correct  
563 any violation of this Chapter, and any court of competent jurisdiction may issue  
564 restraining orders, temporary or permanent injunctions, or other appropriate forms of  
565 relief. In addition, the County may enforce or correct any violation of this Chapter as  
566 a class A violation.]

567 (a) A **person** who violates this Chapter is subject to a civil penalty under  
568 Section 11-10 of not more than \$1,000 for each violation or the  
569 penalty for a Class A violation. If the violation is enforced as a Class  
570 A civil violation, the maximum penalty is \$1,000 rather than the  
571 penalty set under Section 1-19.

572 (b) The **Director** may bring an action in any court with jurisdiction to  
573 recover a civil penalty, enjoin any violation of this Chapter, or enforce  
574 any order, decision, summons or subpoena issued under this Chapter.

575 (c) In any action the **Director** brings to enforce this Chapter, the **Director**  
576 may seek damages, restitution, the posting of a bond, or any other  
577 available legal or equitable relief.

578 *Approved:*

579

580

*George L. Leventhal*

*5/5/06*

George L. Leventhal, President, County Council

Date

581 *Approved:*

582

583

*Douglas M. Duncan*

*5/13/06*

Douglas M. Duncan, County Executive

Date

584 *This is a correct copy of Council action.*

585

586

*Linda M. Lauer*

*5/16/06*

Linda M. Lauer, Clerk of the Council

Date