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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 11-1 through 11-11 are amended as follows:

11-1. Definitions.

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

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

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

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

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

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

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

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

11-2. **Consumer protection.**
The Office of Consumer Protection is a department of County government. Notwithstanding Section 1A-104(a) and (c), the Office is headed by a merit system employee, who is entitled the Executive Director. The Office [has the following duties, powers and authority] may:

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

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

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

(d) [To] report to any appropriate governmental agencies having government agency with jurisdiction over real estate transactions or consumer protection matters any information concerning violation of any consumer protection [laws. law;]
(e) [To present] communicate the [interest] interests of consumers and/or merchants before administrative and regulatory agencies and legislative bodies [when needed] to ensure that both are adequately [represented in a balanced way.] represented;

(f) [To] assist, advise, and cooperate with the [better business bureau of the County] Better Business Bureau and local, state, and federal agencies and officials to protect and promote the [interest] interests of [the] County [consumer public.] consumers;

(g) [To] assist, develop, and conduct programs of consumer education and information through public hearings, meetings, publications, or other materials prepared for distribution to [the consumer public of the] County consumers[.];

(h) [To undertake activities to] encourage local business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods [and] or services [and in the extension of credit.|];

(i) [To exercise and perform such other functions and duties consistent with the purposes of provisions of this Chapter which may be deemed necessary or appropriate to] protect and promote the welfare of [the] County consumers and merchants[.];

(j) [To annually] report annually on the number, nature, and disposition of complaints filed [and the other relevant activities of] with the Office [during the previous year]. The annual report must include any
recommendations [if any] made by the Advisory Committee on Consumer Protection;

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

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

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


(a) Creation and composition: appointment of members; chair. There is an [advisory committee] Advisory Committee on [consumer affairs] Consumer Protection, which consists of 9 [representatives] persons appointed by the County Executive, subject to confirmation by the County Council. The membership [shall] must reflect a cross-section of consumer and business interests. At least 2 members [shall] must be members of the Better Business Bureau [of Montgomery County] or of another County-wide association of merchants. At least [2] [members shall] member must be a [members] member of the [community action committee] Community Action Board, [one of whom shall represent the economically disadvantaged] and a second member must be recommended by the Community Action Board. If,
after written notice to these groups, no application is received from a
member of [one of] these groups, and no [recommendations are]
recommendation is received from one of these groups, [appointment
may be made] the Executive may appoint a person from the public-at-
large. Each member serves a 3 year term. A member appointed to fill a
vacancy serves the rest of the unexpired term. Each member continues
in office until a successor is appointed and [qualified] confirmed. The
Committee [shall] must elect one member as chair and another member
as vice chair, each to serve in that capacity at the pleasure of the
Committee, and such other officers as it determines.

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

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

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

11-4. Deceptive trade practices.
[1(1)] [It shall be unlawful for any] A merchant [to] must not engage in a deceptive, unfair, or unconscionable trade practice, whether or not any specific consumer has, in fact, been misled, deceived, or damaged thereby. Deceptive, unfair, or unconscionable trade practices [are] include:

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

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

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

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

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

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

(g) [Disparaging] disparaging the consumer goods[,] or services, or business of another by false or misleading representations of material facts[.];
(h) [Advertising] advertising or offering **consumer goods or services** without the intent or authority to sell them [or sell them] as advertised or offered[.]

(i) [Advertising] advertising or offering **consumer goods or services** with intent not to supply reasonably expected public demand, unless the advertisement or offer discloses a [limitation or] limit of quantity or other qualifying condition [which has a tendency to mislead.]

(j) [Making] making false or misleading representations of fact concerning[.]: The reasons for, existence of, or amounts of price reductions; or the price in comparison to the price of competitors or one's own price at a past or future time[.]

(k) [Knowingly falsely] falsely stating that **consumer goods or services**, replacements, or repairs are needed[.]

(l) [Falsely] falsely stating the reasons for offering or supplying **consumer goods or services** at sale or discount prices[.]

(m) [The] harassment of or threat to any **person** [either by telephone, cards or letters] with regard to any act other than legal process[.]

(n) [Any] any deception, fraud, false pretense, false premise, misrepresentation, or [the knowing] concealment, suppression, or omission of any material fact with the intent that **consumers** rely [upon such] on the concealment, suppression, or omission, in connection with [the sale or advertisement of any merchandise or with the subsequent performance of person aforesaid, whether or not any person has, in fact,
been misled, deceived or damaged thereby.] any consumer goods or services:

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

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

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

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

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

[(b)] (s) [Making] performing repairs, alterations, modifications, or [servicing] services exceeding by [twenty-five (25)] 25 percent or more the price quoted in a written estimate without prior approval of [a] the consumer[.];
[(c)] (t) [Failure to reassemble or restore an electrical or mechanical apparatus, appliance, chattel, or other goods or merchandise to its tendered condition unless a service or labor charge is paid without notification prior to receiving the tendered item of said service or labor charge.] imposing or demanding a labor or service charge without notifying the consumer of the charge before dismantling, disassembling or otherwise altering a consumer good;

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

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

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

[2.] (2) [Knowledge] knowledge by the merchant at the time of the sale or lease of the consumer's inability [of the consumer] to receive substantial benefits from the [property or services] consumer good or service sold or leased[.] ;
[3.] [3] (3) [Gross] gross disparity between the price of [the property] consumer goods or services sold or leased and the value of the [property] consumer goods or services measured by the price at which similar [property] consumer goods or services are readily obtainable [in transactions] by like buyers or lessees[.].; 

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

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

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

[(g)] (x) [Falsely] falsely stating or representing that [repairs, alterations, modifications or servicing have been made] any repair, alteration, or service was performed [and receiving remuneration therefor when they have not been.].;
[h] Failing to disclose the following pricing information pertaining to beverages offered for sale in circumstances where the consumer may remove the beverage container from the premises.

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

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

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

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

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

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

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

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

(b) In this Section:

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

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

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

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

(2) A unit of service is:

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

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

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

(1) refusing to allow a consumer to cancel a future service contract, without any obligation to the consumer, within:
(A) three business days after the consumer signs the contract, or

(B) any longer period allowed by State or Federal law;

(2) representing, orally or in writing, that a consumer has no legal right to terminate a future service contract;

(3) failing to offer a consumer the option to either:

(A) enter into an initial contract for 90 days or less; or

(B) receive and pay for each unit of service on a periodic or per unit basis;

(4) refusing to refund to the consumer, after a contract is cancelled during the cancellation period allowed under paragraph (1), any money paid that exceeds the amount a merchant may lawfully retain:

(A) within 15 days, in cash or check form, if the consumer paid in cash, money order, or traveller's check;

(B) immediately, by recrediting the consumer's account, if the consumer signed a credit card slip; or

(C) either by returning the consumer's check immediately or by issuing a refund check within 15 days after the consumer's check clears the merchant's bank, if the consumer paid by check;
(5) contacting, or having an agent contact, a consumer in any manner to collect payment which exceeds the amount a merchant may lawfully retain; and

(6) in addition to any other disclosure requirement imposed under State or Federal law, failing to include in each contract the following disclosure in boldface type, no smaller than 10 points, that contrasts with surrounding text:

**CANCELLATION AND REFUND**

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

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

**OTHER DISCLOSURES**

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

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

(d) A future service contract is cancelled when the consumer delivers a written notice of cancellation to the merchant. Delivery occurs when the consumer either:
mails the notice by certified mail, return receipt requested, through the United States Postal Service; or

(2) delivers the notice to the merchant at the location where the consumer receives the services or at another location the merchant designates in the CANCELLATION AND REFUND disclosure statement in the contract.

(e) Section 11-9 applies to any violation of this Section, except that a merchant who violates this Section is not subject to a Class A criminal violation. A merchant who violates this Section is, however, subject to a Class A civil violation and any other penalty or relief available under Section 11-9.]

11-5. Exemptions from chapter.

This Chapter [shall] does not apply to:

[(1)] (a) [Professional] other than practicing or acting without a license, professional services [of] rendered by any certified public accountants, architects, clergymen, professional engineers, lawyers, veterinarians, insurance agents and brokers licensed by the state, Christian Science practitioners, land surveyors and property line surveyors, optometrists, physical therapists, podiatrists, psychologists, and medical and dental practitioners, engaging in their respective professional [endeavors.]

activities;

[(2)] (b) [Any] any television or radio broadcasting station or [to] any publisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints an advertisement which
violates this [chapter] Chapter, except insofar as [such] the station or
publisher or printer engages in a deceptive or unconscionable practice in
the sale or offering for sale of its own goods or services or [has
knowledge of] knows that the advertising [being in violation of] violates
this [chapter.] Chapter;

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

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

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


Any consumer [subjected to an unlawful trade practice as defined in Section
11-4 or 11-4A, or the Director] may file a written complaint [in writing] with the
Director. The complaint [must] should state the name and address of the person
alleged to have committed the violation, [the details of] describe the violation, and
provide any other information [as] that the Office requires. However, the Director
may act on a complaint that is not complete. The Director may investigate any
violation of and enforce this Chapter without receiving a complaint.
11-7. Procedures [and enforcement].

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

(b) The terms of conciliation agreed to by the parties may be reduced to writing and incorporated into a written assurance of discontinuance or settlement agreement to be signed by the parties. A written assurance or agreement is for conciliation purposes only and does not constitute an admission by any party that any law has been violated. A written assurance of discontinuance or settlement agreement must be signed on behalf of the Office by the Director.
(c) A person must not violate or fail to adhere to any written assurance or agreement of discontinuance or settlement agreement. Any failure by the Department to pursue a violation of any written assurance does not waive any right of the Office or provision of the agreement.

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

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

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

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

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

(3) finds that a complaint is not susceptible of conciliation, the Director should transmit the matter to the County Attorney for appropriate legal action.
(g) Nothing in this Section prevents any person from exercising any right or seeking any remedy to which the person might otherwise be entitled, or from filing any complaint with any other agency or court.

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

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

(1) investigate a violation or a complaint;

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

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

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

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

(b) The **Director** must attempt to conciliate a matter before taking enforcement action. However, when the **Director** finds that any
violation is causing or will cause immediate, substantial, and irreparable injury, or it is otherwise in the public interest, the **Director** may take immediate enforcement action without first attempting conciliation, including issuing a cease and desist order.

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

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

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

11-8. **Conciliation Procedures.**

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

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

(c) Any settlement agreement may require a party to pay the costs of the **Office’s** investigation and related activities and restitution to a **consumer** of money, property, or any other thing received in apparent
violation of this Chapter. A settlement agreement must not preclude the
Office from using any other remedy to correct a violation of this
Chapter.

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

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


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

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

(1) Requiring compliance with a summons or subpoena;

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

(3) Requiring the production of records, correspondence, documents,
papers, books, records or other evidence;
(4) Requiring the transfer of custody of records, documents, correspondence, papers, books or other evidence to the court;

(5) Prohibiting the destruction of any records, documents, correspondence, papers, books or other evidence pending conclusion of any lawful investigation by the Office;

(c) Any disobedience of any final order entered pursuant to this section by any court shall be punishable by such court as a contempt thereof. A person must comply with any summons or subpoena issued under this Chapter.

11-10. Administrative hearing.

(a) The Director may refer a complaint or a violation to a hearing officer designated by the Chief Administrative Officer for an administrative hearing.

(b) If the Director refers a complaint or violation to a hearing officer, the Director must prepare a statement of charges that summarizes:

(1) the nature of the alleged violation, and the approximate date the violation was committed;

(2) the provision of this Chapter alleged to be violated; and

(3) the right of the respondent to be represented by counsel and present witnesses and evidence pertinent to the charges.

(c) The Director must serve the statement of charges and a notice of the time and place of a hearing on the person who is alleged to have
violated this Chapter and notify any complainant or other interested
tperson of the time and place of the hearing.

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

(1) personal service;

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

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

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

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

(f) If a tperson notified of the hearing does not appear at the hearing, the
hearing officer may proceed with the hearing and dismiss the charges,
enter a default judgment, or issue another appropriate order, including
an order directing the tperson who has not appeared to take or refrain
from taking certain actions.
In addition to the requirements of Section 2A-10, if the hearing officer finds by a preponderance of the evidence that a person has violated this Chapter, the hearing officer may order the violator to:

(1) stop committing the violation;

(2) restore money or property;

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

(4) post a performance bond or other security;

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

(6) take any other action that would:

(A) assist the public in obtaining relief; or

(B) prevent future violations.

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

(1) the nature of the violation;

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

(3) whether full restitution has been paid to each affected consumer; and
(4) the risk of future harm to other consumers.

(i) If the hearing officer imposes a civil penalty, the hearing officer should consider:

(A) the severity of the violation;

(B) the severity of any harm to the consumer;

(C) the motives of the violator;

(D) any previous violations by the same person or entity;

(E) whether the penalty will deter future misconduct; and

(F) whether a stop order or restitution would sufficiently protect consumers.

(j) Every person must comply with each order or decision issued by a hearing officer under this Section.

(k) The Director may enforce an order or decision of a hearing officer by taking any appropriate legal action. In addition, the Director may enforce any violation of a decision or order under Section 11-11.


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

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

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

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

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

George L. Leventhal, President, County Council 5/5/06

Approved:

Douglas M. Duncan, County Executive 3/13/06

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council 5/16/06