

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

**1995 Legislative Session**

Bill No. CB-32-1995

Chapter No. 22

Proposed and Presented by Chairwoman MacKinnon (by request - County Executive)

Introduced by Council Member MacKinnon

Co-Sponsors

Date of Introduction May 23, 1995

**BILL**

AN ACT concerning

Consumer Protection

For the purpose of abolishing the Consumer Protection Commission and providing for certain enforcement authority by the Director of Business and Regulatory Affairs.

BY repealing:

SUBTITLE 2. ADMINISTRATION.

Sections 2-144, 2-145, and 2-154,

The Prince George's County Code

(1991 Edition, 1994 Supplement).

BY repealing and reenacting with amendments:

SUBTITLE 2. ADMINISTRATION.

Sections 2-142, 2-146, 2-147, 2-148, 2-149, 2-150,

2-151, 2-152, 2-153, 2-155, 2-156, 2-157, 2-158,

2-159, 2-160, 2-162, and 2-162.01,

The Prince George's County Code

(1991 Edition, 1994 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 2-144, 2-145, and 2--154, of the Prince George's County Code be and the same are hereby repealed:

**SUBTITLE 2. ADMINISTRATION.**

## **DIVISION 8. CONSUMER PROTECTION.**

### **Subdivision 1. Consumer Protection Commission.**

**Sec. 2-144. [Composition of Commission; term; Chairman.] Reserved.**

[(a) The Consumer Protection Commission shall be composed of five (5) members chosen to be broadly representative of the consuming public and the business community. They shall be appointed by the County Executive pursuant to the provisions of Sections 402 and 322 of the Charter. All members shall serve at the pleasure of the County Executive.

(b) The Chairman shall be designated by the County Executive subject to confirmation by the Council.]

**Sec. 2-145. [Commission staff.] Reserved.**

[(a) The Commission staff shall be provided through the Office of Consumer Affairs.]

**Sec. 2-154. [Majority vote required.] Reserved.**

[The Commission shall issue subpoenas, issue cease and desist orders, initiate court proceedings, vacate, annul or suspend any license, and accept any written assurance pursuant to Section 2-152 only upon a majority vote of the full Commission.]

SECTION 2. BE IT FURTHER ENACTED that Sections 2-142, 2-146, 2-147, 2-148, 2-149, 2-150, 2-151, 2-152, 2-153, 2-155, 2-156, 2-157, 2-158, 2-159, 2-160, 2-162, and 2-162.01 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

## **SUBTITLE 2. ADMINISTRATION.**

## **DIVISION 8. CONSUMER PROTECTION.**

### **Subdivision 1. [Consumer Protection Commission] General**

**Sec. 2-142. Definitions.**

(a) As used in this Division:

(1) [**Commission** shall mean the Consumer Protection Commission of the County.

(2) **Condominium** shall mean property subject to the condominium regime established under the Maryland Condominium Act, being Title 11, Real Property Article, Annotated Code of Maryland.

[(3)] (2) **Consumer** shall mean a natural person who purchases merchandise or

services or borrows money or receives credit for his personal, family, household or agricultural purposes, or is required to pay for towing services that are not contracted for.

[(4)] (3) **[Executive] Director** shall mean [that individual who shall be responsible for administration of the Consumer Protection Commission and prosecution of consumer complaints before the Commission] the Director of the Office of Business and Regulatory Affairs or the Director's designee.

[(5)] (4) **Lender** shall mean a person who loans money or extends credit to a consumer.

[(6)] (5) **Merchandise** shall mean real estate and any chattels, personal or real, including, but not limited to, goods, parts, materials and real estate leases.

[(7)] (6) **Merchant** shall mean a person who offers merchandise or services for purchase by a consumer.

[(8)] (7) **Organization** shall mean a corporation, trust, estate, partnership, cooperative, association, or any other group of individuals however organized.

[(9)] (8) **Purchase** shall mean and include taking by sale, discount, negotiation, mortgage, lien or lease.

[(10)] (9) **Services** shall mean work, labor, or any kind of activity furnished or agreed to be furnished to a consumer, including but not limited to building and construction services, underwriting services, the repair of automobiles, television sets and other similar commodities, the repair or installment of plumbing, heating, electrical or mechanical devices; provided, however, that nothing herein shall apply to the professional services of accountants, architects, clergymen, lawyers, engineers, surveyors, and medical and dental practitioners.

[(11)] (10) **Cemetery** shall mean a place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either a burial park for earth interment; a mausoleum for vault or crypt interments; a structure or place used or intended to be used for the interment of cremated remains or any combination of one or more thereof. The provisions of this Division shall not apply, however, to cemeteries containing a total of less than one (1) acre of land available or to be made available for interment; or to any

cemetery owned and operated by a bona fide and recognized church, synagogue, or other church or religious organization where more than seventy-five percent (75%) of the total amount of land available or to be made available for interment at any such cemetery has been reserved or is utilized exclusively by and for the benefit of recognized members and their families of such church, synagogue, or other church or religious organization; or to any cemetery operated by any nonprofit organization which was created by an act of the General Assembly of the State of Maryland prior to 1900.

[(12)] (11) **Cemetery Authority** shall mean a person, firm or corporation who undertakes to establish, maintain, manage, operate, improve or conduct a cemetery, the interring of human remains, or the care, preservation, and embellishment of cemetery property.

**Sec. 2-146. Unlawful practices.**

\* \* \* \* \*

(c) In addition to Section 2-146(a), the following practices are declared to be unlawful in connection with the ownership and/or management of cemeteries. In determination of unreasonableness as provided for and required herein, the [Commission] Director shall, among other factors, consider the practices, policies, rules, regulations, or prices of services of other cemetery authorities in Prince George's County and the Washington and Baltimore Metropolitan Areas and any model rules and regulations recommended by the collective action of the cemetery authorities in Prince George's County:

\* \* \* \* \*

**Sec. 2-147. [Commission; powers] Powers and duties.**

(a) The [Consumer Protection Commission] Director shall have the power to:

(1) Receive and investigate complaints from all persons affected by potential or actual violation of this Division, or to initiate its own investigation of frauds and unfair dealings against such persons;

(2) Issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence in any matter over which this Division

applies; administer oaths or affirmations to any person whose testimony is required; interrogate witnesses; inspect premises; require written answers to questionnaires; require periodical written reports and the filing of statements;

(3) Issue cease and desist orders with respect to unlawful consumer practices [declared to be unlawful by the Commission];

(4) Report to the appropriate law enforcement officers any information concerning violations of any consumer protection laws, the reporting of which to be within the discretion of the [Commission] Director;

(5) Represent the interest of consumers generally before administrative and regulatory agencies and legislative groups;

(6) Assist, advise, and cooperate with local, State and Federal agencies and officials to protect and promote the interest of the County consumer public;

(7) Assist, develop and conduct programs of consumer education and information through publications and other materials prepared for distribution to the County Consumer public;

(8) 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 merchandise and services, and in the extension of credit; and,

(9) Exercise and perform such other functions, powers and duties as may be deemed necessary or appropriate to protect and promote the welfare of County consumers.

**Sec. 2-148. Additional remedies; license revocation.**

(a) In addition to the powers provided in Section 2-147, the County, on behalf of the [Commission] Director, shall have the authority:

(1) To seek and obtain, in an action in the Circuit Court an injunction prohibiting a continuing violator of this Division or a person disobeying a subpoena of the [Commission] Director, or a repeated, persistent, or multiple violator, from continuing unlawful practices or engaging in such activities after appropriate notice to such person. Such notice shall state generally the relief sought and be served at least ten (10) days prior to the institution of such

action;

(2) To vacate, annul, or suspend the Traders or Business License of any person licensed under the laws of this County;

(3) In lieu of instituting or continuing an action or proceeding, the [Commission] Director may accept written assurance of discontinuance of any act or practice in violation of this Division. Such assurance may include a stipulation for the payment by the violator of the costs of investigation [by the Commission] and may also include a stipulation for the restitution by the violator to consumers of money, property or other things received from such consumers in connection with a violation of this Division. An assurance entered into pursuant to this Section shall not be deemed to admit the violation unless it does so by its terms. Violation of an assurance entered into pursuant to this Section shall be treated as a violation of this Section and shall be subject to all the provisions herein.

**Sec. 2-149. Recovery of costs.**

In any action brought under the provisions of this Division, the County is entitled to recover from a violator the [Commission's] costs for investigation and hearing; provided an improper practice or a violation of any written assurance in Subsection 2-148(3) or consent finding in Subsection 2-148(3) is found to exist.

**Sec. 2-150. Complaint procedure; investigation; conciliation.**

(a) Any person subjected to unlawful practice or conduct in violation of this Division may file with the [Commission] Director a complaint in writing. The complaint shall state the name and address of the person alleged to have committed the violation complained of and the particulars thereof, but the [Commission] Director may relax this requirement for illiteracy or for other good cause.

(b) Upon filing a complaint as set forth in this Section, the [Commission] Director shall make such investigation as it deems appropriate to ascertain facts and issues.

(c) If the [Commission] Director shall determine that there are reasonable grounds to believe a violation has occurred and is susceptible of conciliation, [it] the Director shall attempt to conciliate the matter by methods of initial conference and persuasion with all

interested parties and such representatives as the parties may choose to assist them.

Conciliation conferences shall be informal. Nothing said or done during such initial conferences shall be made public by the [Commission or its members] Director or any member of the [Commission] staff of the Office of Business and Regulatory Affairs unless the parties agree thereto in writing.

**Sec. 2-151. Cooperation in investigation.**

The [Commission, or its authorized representative,] Director is authorized to seek the cooperation of all departments and agencies of the County Government in connection with any investigation under this Division [by the Commission], or to refer any matter which poses a serious legal problem to a legal referral agency or to any other agency suited to handle such problems.

**Sec. 2-152. Conciliation; consent finding; compliance.**

(a) The terms of conciliation agreed to by the parties may be reduced to writing and incorporated into a consent finding to be signed by the parties. This agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated. [Consent findings shall be signed on behalf of the Commission by the Chairman or the Acting Chairman of the Commission.]

(b) It shall be a violation of this Division to violate or fail to adhere to any provision contained in a consent finding. Any failure by the [Commission] Director to enforce compliance with any provision of a consent finding shall not constitute a waiver of any right of the [Commission] Director or provision of such agreement.

**Sec. 2-153. Dismissal or referral of complaint.**

(a) If the [Chairman] Director determines that the complaint lacks reasonable grounds upon which to base a violation of this Division or is not within the jurisdiction of the [Commission] Director under the provisions of this Division [, he shall so inform the Commission. The Commission may at its discretion] the Director may dismiss such complaint or order such further investigation as may be necessary.

(b) The Director may determine that the complaint should be forwarded for handling to

the Office of the Attorney General of Maryland or other appropriate agency.

**Sec. 2-155. Public hearing; procedure; records.**

(a) The [Commission] Director, with respect to a matter which [it] the Director believes may involve a violation of this Division, may hold a public hearing to determine whether a violation has been committed.

(1) The [Commission] Director shall mail a copy of the statement of charges, by registered or certified mail, first class, return receipt requested, to the respondent.

(2) The [Commission] Director shall mail notice of the time and date of the hearing to all other parties of record by regular mail.

(3) The provisions of paragraphs (1) and (2) of this subsection shall not preclude the use of other methods of service in addition to those prescribed above.

(b) The hearing shall be open to the public and shall be held not less than ten (10) days after service of the statement of charges. The parties of record may, at their option, appear before the [Commission] Director in person or by duly authorized representative or may have the assistance of an attorney. The parties may present testimony and evidence, and the right to cross-examine witnesses shall be preserved. All testimony and evidence shall be given under oath or by affirmation and may be required by the issuance of a subpoena signed by [any Commission member] the Director. Irrelevant, unduly repetitious or protracted testimony and evidence shall not be permitted. Hearings may be limited by the [Commission] Director, provided the parties are so notified prior to the hearing.

(c) The [Commission] Director shall keep a full record of the hearing. Such record shall be public and open to inspection by any person. Upon request by any interested party to the proceeding, the [Commission] Director shall furnish such party a copy of the hearing record at such cost as the Commission deems appropriate.

**Sec. 2-156. Cease and desist orders; compliance; civil proceedings.**

(a) If, at the conclusion of the hearing, the [Commission] Director shall determine, upon the preponderance of testimony and evidence, that the person complained against has violated this Division, the [Commission] Director shall state [its] findings and issue an order requiring



the person complained against to cease and desist from such unlawful conduct or practice, and to take such affirmative action, including but not limited to an order for restitution of money or property, as will effectuate the purposes of this Division. The [Commission] Director shall mail copies of [its] the order to the respondent and to all other parties of record by regular mail.

(b) In addition, a civil penalty in an amount not to exceed One Thousand Dollars (\$1,000) may be ordered by the [Commission] Director upon a finding of a violation of this Division together with:

(1) A pattern of consumer fraud as demonstrated by two (2) or more additional proven violations, all occurring within a single twelve (12) month period and all based on the same or similar consumer complaints, and

(2) A pattern of defiance of [Commission] orders of the Director for restitution and/or to cease and desist as demonstrated by two (2) or more outstanding orders where the respondent has failed to comply with said orders and all rights of appeal have been exhausted.

(c) In determining the imposition and amount of any civil penalty, for a pattern of consumer frauds as in paragraph (b)(1), above, the [Commission] Director shall consider the following:

- (1) The respondent's history of violations of this Division;
- (2) The nature and gravity of the violations;
- (3) The respondent's efforts at cooperation in resolving complaints;
- (4) The ratio of the number of violations to the volume of the respondent's business; and
- (5) The degree to which the respondent's failure to accept negotiated settlements on the consumer complaints resulting in findings of violations was based on good faith defenses to the charges;

(d) The order shall contain a notice that if the [Commission] Director determines that the person complained against has not, after thirty (30) calendar days following service of its order, corrected the unlawful conduct or practice and complied with the order, the

[Commission] Director will transmit the matter to the Office of Law for enforcement pursuant to this Division.

(e) Any determination by the [Consumer Protection Commission] Director of violation of this Division shall constitute a conclusive finding. The County Attorney may institute, in the name of the County, a body politic, civil proceedings, including the seeking of such money judgments, restraining orders and temporary or permanent injunctions, as are necessary and proper to obtain complete compliance with the Commission's order.

**Sec. 2-157. Dismissal of complaint after hearing.**

If, at the conclusion of the hearing, the [Commission] Director determines, upon the preponderance of the testimony and evidence, that the person complained against has not violated this Division, the [Commission] Director shall state [its] findings and issue [its] an order dismissing the complaint.

**Sec. 2-158. Civil action in County name.**

(a) If, at any time a complaint has been filed, the [Commission] Director believes that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the [Commission] Director shall transmit the matter to the Office of Law.

(b) The Office of Law may bring, in the name of the County, a body politic, any action necessary to preserve such status quo or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions. The County Attorney is authorized to take such actions.

**Sec. 2-159. Rules and regulations.**

The [Commission] Director may adopt rules and regulations for the conduct of [its activities] hearings under this Division. The rules and regulations shall be made available to the public.

**Sec. 2-160. Rights and remedies, judicial review.**

\* \* \* \* \*

(b) Any aggrieved person is authorized to [have judicial review of a Commission order. Proceedings for review shall be governed by Subtitle B of the Maryland Rules of Procedure,

Annotated Code of Maryland. Such review shall be limited to administrative findings, inferences or conclusions which are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the Commission;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- (6) Arbitrary or capricious] appeal a decision or order of the Director pursuant to this Division to the Board of Administrative Appeals.

**Sec. 2-162. Nonabatement of complaints.**

(a) There shall be a nonabatement of complaints or legal action pending under the existing laws at time of passage of this Division.

[(b) There shall be a nonabatement of appropriated funds, personal property, assets, personnel or organization under the prior law which are transferred to the Commission, except that the County Executive shall act to appoint a new Commission and a new Chairman within two (2) months of the effective date of this Act.]

**Subdivision 2. Real Estate Practices.**

**Sec. 2-162.01. Contracts for the sale of real property.**

\* \* \* \* \*

(e) Notwithstanding any other provision of this Division, the jurisdiction of the [Consumer Protection Commission] Office of Business and Regulatory Affairs shall not extend to this Subdivision except for the purpose of assisting in consumer education and information as to the requirements of this Section.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law and shall be retroactively effective to July 1, 1995.

Adopted this 13th day of June, 1995.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY:

Anne T. MacKinnon  
Chairwoman

ATTEST:

Joyce T. Sweeney  
Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_

BY:

Wayne K. Curry  
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.