



Deceptive Trade Practices

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- [Background](#)
- [Applicability of Deceptive Trade Practices Statutes](#)
- [Other Practices Deemed Deceptive or Unfair](#)
- [Remedies for Violations of Deceptive Trade Practices Statutes](#)
- [State and Local Provisions Prohibiting Deceptive Trade Practices](#)
- [Additional Resources](#)
- [Organizations](#)

Background

Federal legislation and statutes in every state prohibit employment of unfair or deceptive trade practices and [UNFAIR COMPETITION](#) in business. The Federal Trade Commission regulates federal laws designed to prohibit a series of specific practices prohibited in interstate commerce. Several states have established [CONSUMER PROTECTION](#) offices as part of the state attorney general offices.

The Federal Trade Commission Act (FTCA), originally passed in 1914 and amended several times thereafter, was the original [STATUTE](#) in the United States prohibiting "unfair or deceptive trade acts or practices." Development of the federal law was related to federal antitrust and trademark [INFRINGEMENT](#) legislation. Prior to the enactment in the 1960s of state statutes prohibiting deceptive trade practices, the main focus of state law in this area was "unfair competition," which refers to the tort action for practices employed by businesses to confuse consumers as to the source of a product. The tort action for a business "passing off" its goods as those of another was based largely on the [COMMON LAW](#) tort action for trademark infringement.

Because the law governing deceptive trade practices was undefined and unclear, the National Conference of Commissioners on Uniform State Laws in 1964 drafted the Uniform Deceptive Trade Practices Act. The NCCUSL revised this uniform law in 1966. The law was originally "designed to bring state law up to date by removing undue restrictions on the common law action for deceptive trade practices." Only eleven states have adopted this act, but it has had a significant effect on other states. Most state deceptive or unfair trade practices statutes were originally enacted between the mid-1960s and mid-1970s.

Applicability of Deceptive Trade Practices Statutes

Deceptive trade practices statutes do not govern all situations where one party has deceived another party. Most states limit the scope of these statutes to commercial transactions involving a consumer purchasing or leasing goods or services for personal, household, or family purposes. The terms used in each statute to set forth the scope of the statute are often the subject of [LITIGATION](#). The majority of states requires a liberal interpretation of the terms of the deceptive trade practices statutes, including those describing the applicability of the statutes.

Trade or Commerce

Several states limit the applicability of deceptive trade practices to transactions in trade or commerce. This requirement usually incorporates a broad range of profit-oriented transactions. But it generally excludes trade between non-merchants and similar transactions.

Consumer Transactions

The appropriate plaintiff under most deceptive trade practices acts is a consumer, commonly defined as a person who will use a good or service for personal, family, or household purposes. The determination of whether a plaintiff is a consumer often requires use of one of two types of analysis, a subjective test and an objective test. The subjective analysis typically considers the intended use of the good or service at the time of the transaction. Thus, if a buyer of a good intends at the time of a purchase to use to good for a personal, family, or household purpose, the buyer will likely be considered a consumer under the relevant statute. The objective analysis considers whether the type of good or service involved in the transaction is ordinarily used for a personal, family, or household purpose.

Goods or Services

Goods are defined under the [UNIFORM COMMERCIAL CODE](#) as those items movable at the time of a purchase. Many deceptive trade practices statutes apply this definition to the requirement that goods are involved in a transaction for a deceptive trade practices statute to apply. Livestock are also usually included in the definition of a good. Statutes and courts usually define services broadly, including in the definition most activities conducted on behalf of another. Some states require that consumers seek to purchase merchandise, which incorporates goods, services, real property, commodities, and some intangibles.

Prohibited Acts and Practices

Most state deceptive trade practices statutes include broad restrictions on "deceptive" or "unfair" trade practices. These states often include prohibitions against [FRAUDULENT](#) practices and unconscionable practices. The Federal Trade Commission, when interpreting the FTCA, does not require that the person committing an act of deception have the intent to deceive. Moreover, the FTC does not require that actual deception occur. The FTC merely requires that a party have the capacity to deceive or commit an unfair trade practice. If a business or individual has this capacity or tendency to deceive, the FTC under the FTCA may order the company to cease and desist the deceptive or unfair practice. State statutes similarly do not require that a company specifically intends to deceive, nor must a company always have knowledge that a statement is false to be liable for misrepresentations made to a consumer.

A consumer who has been victimized by a potential deceptive or unfair trade practice should consult the deceptive trade practice statute in that state, plus consult [CASE LAW](#) applying this statute, to determine whether he or she has a cause of action. In addition to the broad prohibition against deception, most state statutes also include a list of practices that are defined as deceptive. Under the Uniform Deceptive Trade Practices Act, if a business or person engages in the following, the action constitutes a deceptive trade practice:

- Passes off goods or services as those of another
- Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services
- Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another

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- Uses deceptive representations or designations of geographic origin in connection with goods or services
- Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have
- Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or second-hand
- Represents that goods or services are of particular standard, quality, or grade, or that goods are of particular style or model, if they are of another
- Disparages the goods, services, or business of another by false or misleading misrepresentation of fact
- Advertises goods or services with intent not to sell them as advertised
- Advertises goods or services with intent not to supply reasonably expected public demand, unless advertisement discloses a limitation of quantity
- Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions
- Engages in any other conduct which similarly creates the likelihood of confusion or of misunderstanding

Most states include similar items in their lists of deceptive trade practices violations, even if those states have not adopted the uniform act. In addition, the FTC and many states prohibit other unfair practices, including the following:

- Unfair provisions in contracts of adhesion
- Coercive or high-pressure tactics in sales and collection efforts
- Illegal conduct
- Taking advantage of bargaining power of vulnerable groups
- Taking advantage of emergency situations
- Unconscionable activities, including outrageous and offensive conduct by a business in the sale of goods or services

Other Practices Deemed Deceptive or Unfair

Debt Collection

The Federal Fair Debt Collection Practices Act and state debt collection statutes govern most abuses by debt collectors in debt collection activities. Deceptive trade practices statutes may provide remedies in situations that are not covered by these debt collection statutes. For example, most debt collection statutes do not cover some forms of debt collection, such as foreclosures, repossessions, and evictions, but a deceptive trade practices statute may apply. Moreover, deceptive trade practices statutes may also permit a consumer to bring a cause of action against a [CREDITOR](#) for debt collection practices of an independent agency hired by the creditor. Several cases have dealt with issues regarding misrepresentations made by debt collectors or deceptive agreements proposed by debt collectors.

Breach of Warranties

Consumers have several means of enforcing a [WARRANTY](#) provided in a sales or service contract. If a business employs deceptive practices with respect to the advertisement or negotiation of a warranty, a deceptive trade practices statute may provide a consumer a remedy in addition to a breach of warranty claim.

Insurance

Most states have enacted legislation regarding deceptive practices of insurance companies, including those practices related to the sale of policies and the payment of claims. In some states, employment of a deceptive practice in insurance is also a deceptive trade practice. A deceptive trade practices statute may also provide a remedy in insurance cases where state insurance laws do not apply.

Pyramid Schemes and Similar Practices

Several states prohibit certain illegal business schemes through deceptive trade practices statutes. One such scheme is a "pyramid scheme," where investors make money by recruiting others to join and invest in a company rather than selling a product as claimed by the company. Other schemes include deceptive employment opportunity claims and misleading or deceptive game or contest promotions. Some states do not specifically include these schemes in the statute, but courts in those states may have applied provisions of the relevant deceptive trade practices statute in cases involving these schemes.

Remedies for Violations of Deceptive Trade Practices Statutes

A consumer who has been the victim of a deceptive trade practice has a variety of remedies. State deceptive trade practices statutes have been particularly successful due to the damages provisions included in the statutes. About half of the states provide minimum [STATUTORY](#) damages to a litigant who has proven a deceptive trade practice, even if the litigant has not proven actual damages. Many states also permit courts to award treble damages, which means the actual damages to a party injured by a deceptive trade practice are tripled. Several states also permit courts to impose [PUNITIVE DAMAGES](#) and/or attorney's fees for these practices.

In addition to monetary damages, several other options may exist for a person injured by a deceptive trade practice. When the FTC has [JURISDICTION](#) over a case, it may enjoin a deceptive trade practice of a company under the FTCA. Statutes in each of the states also permit government enforcement officials to seek cease and desist orders to prevent businesses from engaging in deceptive trade practices. These remedies may be available in addition to civil remedies sought by private litigants.

State and Local Provisions Prohibiting Deceptive Trade Practices

Although many state deceptive trade practices statutes include similar provisions, application of these statutes often differs from state to state. Consumers who have been victimized by a deceptive trade practice should be sure to consult their relevant state statutes to determine the appropriate procedures to follow, the appropriate office to contact, and special requirements that must be met to bring a suit in that state. Each state has adopted some version of a deceptive trade practices statute. The following are brief summaries of these statutes.

ALABAMA: The state statute prohibits 22 specific practices, plus any other deceptive or unconscionable acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office or a district attorney's office may enforce the statute for violations by a business.

ALASKA: The state statute prohibits 41 specific practices, plus other unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

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ARIZONA: The state statute prohibits deception or an omission of a material fact by one party to a transaction with the intent to deceive the other party. The transaction must involve the sale, offer for sale, or [LEASE](#) of goods, real property, services, or intangibles for the statute to apply. The attorney general's office or a county attorney's office may enforce the statute for violations by a business.

ARKANSAS: The state statute prohibits 10 specific practices, plus any other deceptive or unconscionable acts or practices. The transaction must involve the sale or advertisement of goods or services for the statute to apply.

CALIFORNIA: The state statute prohibits 23 specific practices, plus any other unfair methods of competition and unfair or deceptive practices. Parties must intend for the transaction to result in the sale or lease of goods or services to a consumer for the statute to apply.

COLORADO: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 43 specific practices. Transactions must be in the course of a person's business, vocation, or occupation, and involve the sale of goods, services, or real property for the statute to apply. The attorney general's office or a district attorney's office may enforce the statute for violations by a business.

CONNECTICUT: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The Commission of Consumer Protection or the attorney general's office may enforce the statute for violations by a business.

DELAWARE: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 12 specific practices, plus other conduct that creates the likelihood of a misunderstanding on the part of a consumer. The transaction must be conducted in the course of business, vocation, or occupation for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

DISTRICT OF COLUMBIA: The state statute prohibits 31 specific practices, plus other unfair, deceptive, or unlawful trade practices. The transaction must involve trade practices involving consumer goods or services. The Office of Consumer Protection may enforce the statute for violations by a business.

FLORIDA: The state statute prohibits unfair methods of competition, unconscionable acts or practices, and deceptive or unfair acts or practices. A finding of a violation may be based on rules promulgated by the Federal Trade Commission. The transaction must be conducted in trade or commerce for the statute to apply. The Department of Legal Affairs or the state attorney's office may enforce the statute for violations by a business.

GEORGIA: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits deceptive or unfair acts or practices in a consumer transaction or an office supply transaction. A number of specific examples are included in the statute. The statute applies to consumer transactions in trade or commerce. Georgia Office of Consumer Affairs may enforce the statute for violations by a business.

HAWAII: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 12 specific practices, plus any other conduct that creates a misunderstanding on the part of a consumer. The transaction must be conducted in the course of a business, vocation, or occupation for the statute to apply.

IDAHO: The state statute prohibits 18 specific practices, plus any misleading consumer practices or un-conscionable practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

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ILLINOIS: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 26 specific practices, plus other unfair methods of competition and unfair or deceptive acts or practices. Proscribed practices include concealment or omission by a business of any material fact with an intent to cause reliance by a consumer. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

INDIANA: The state statute prohibits a number of specific practices, including transactions involving contracts with unconscionable provisions. The transaction must be a consumer transaction as defined by the statute for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

IOWA: The state statute prohibits four specific practices, plus any other unfair or deceptive acts, or concealment or omission of a material fact by a business with the intent to cause reliance on the part of the consumer. The transaction must involve the sale, offer of sale, or advertisement of goods, real property, or several intangible items described in the statute for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

KANSAS: The state statute prohibits 11 specific practices, plus any unconscionable practices as defined by the statute. The transaction must involve the sale or lease of property or services intended for personal, family, household, business, or agricultural purposes. The attorney general's office or local prosecuting attorney's office may enforce the statute for violations by a business.

KENTUCKY: The state statute prohibits unfair or deceptive acts or practices, including unconscionable practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office or county attorney's office may enforce the statute for violations by a business.

LOUISIANA: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The Governor's Consumer Protection Division may enforce the statute for violations by a business.

MAINE: The state legislature adopted the Uniform Deceptive Trade Practices Act. The state statute prohibits 12 specific practices, plus conduct likely to create confusion or misunderstanding to a consumer, unfair methods of competition, and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

MARYLAND: The state statute prohibits unfair or deceptive trade practices, including a number of practices specified in the statute. The transaction must involve the sale, offer for sale, or lease of consumer goods, real property, or services. Consumer debt collection and extension of consumer credit are also within the scope of the statute. The Division of Consumer Protection of the Attorney General's office may enforce the statute for violations by a business.

MASSACHUSETTS: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

MICHIGAN: The state statute prohibits 31 specific practices, plus any other deceptive, unfair, or unconscionable acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office or a district attorney's office may enforce the statute for violations by a business.

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MINNESOTA: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 13 specific practices, plus any other deceptive or un-conscionable acts or practices. The transaction must be conducted in the course of business, vocation, or occupation for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

MISSISSIPPI: The state statute prohibits 22 specific practices, plus any other deceptive or unconscionable acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The Attorney General's Office of Consumer Protection may enforce the statute for violations by a business.

MISSOURI: The state statute prohibits deceptive or unfair acts or concealment or omission of a material fact from a consumer. The transaction may involve the sale, offer for sale, or advertisement of any merchandise for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

MONTANA: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must involve the sale, offer for sale, or advertisement of any real or [PERSONAL PROPERTY](#), services, intangibles, or anything of value. The attorney general's office may enforce the statute for violations by a business.

NEBRASKA: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 14 specific practices, plus unfair methods of competition, other unfair or deceptive acts or practices, and all unconscionable acts by a supplier in a consumer transaction. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

NEVADA: The state statute prohibits a number of deceptive trade practices set forth in the statute. The transaction must be conducted in the course of a business or occupation. The Commissioner of Consumer Affairs, Director of the Department of Commerce, attorney general's office, or a district attorney's office may enforce the statute for violations by a business.

NEW HAMPSHIRE: The state statute prohibits 12 specific practices, plus any unfair methods of competition or any other unfair or deceptive act or practice. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

NEW JERSEY: The state statute prohibits unconscionable commercial practices, deception, [FRAUD](#), or the knowing concealment or omission of a material fact with the intent to cause reliance on the part of a consumer. The statute includes numerous specific prohibitions. The transaction may be conducted in conjunction with the sale or advertisement of any merchandise or real property for the statute to apply. The attorney general's office or the director of a county or municipal office of consumer affairs may enforce the statute for violations by a business.

NEW MEXICO: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 17 specific deceptive practices, two specific unconscionable practices, and other unfair or deceptive trade practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

NEW YORK: The state statute prohibits deceptive acts or practices and [FALSE ADVERTISING](#). The transaction must be conducted in business, trade, or commerce, or in the furnishing of a service in the state, for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

NORTH CAROLINA: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in or affect commerce, including all business activities. The

Encyclopedia of Everyday Law: Deceptive Trade Practices

attorney general's office may enforce the statute for violations by a business.

NORTH DAKOTA: The state statute prohibits deceptive acts or practices, fraud, or misrepresentation with the intent for consumer to rely on the representation. The transaction may involve a sale or advertisement of any merchandise for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

OHIO: The state legislature adopted the Uniform Deceptive Trade Practices Act. The state statute prohibits 11 specific practices, plus any other deceptive or unconscionable acts or practices. The transaction must be a consumer transaction for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

OKLAHOMA: The state legislature adopted the Uniform Deceptive Trade Practices Act which prohibits 11 specific deceptive trade practices. The transaction must be conducted in a course of a business, vocation, or occupation for the statute to apply. The attorney general's office or a district attorney's office may enforce the statute for violations by a business.

OREGON: The state statute prohibits 20 specific unfair or deceptive acts or practices, plus two unconscionable tactics. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office or a district attorney's office may enforce the statute for violations by a business.

PENNSYLVANIA: The state statute prohibits 21 practices, plus other unfair methods of competition, deceptive acts or practices, or any fraudulent or deceptive conduct that is likely to create confusion to a consumer. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

RHODE ISLAND: The state statute prohibits 19 specific unfair methods of competition or unfair or deceptive practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

SOUTH CAROLINA: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

SOUTH DAKOTA: The state statute prohibits knowing and intentional deceptive practices, plus practices involving an omission of a material fact in connection with a sale of merchandise to a consumer. The transaction must be conducted in business for the statute to apply. The attorney general's office or the state's attorney with attorney general approval may enforce the statute for violations by a business.

TENNESSEE: The state statute prohibits 30 specific practices, plus any other deceptive or unfair acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

TEXAS: The state statute prohibits 25 specific practices, plus additional actions for breach of warranty, insurance violations, or unconscionable acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The Consumer Protection Division of the attorney general's office or a district attorney's office may enforce the statute for violations by a business.

UTAH: The state statute prohibits 15 specific unconscionable practices by a supplier in a consumer transaction, plus other deceptive acts or practices. The transaction must be a consumer transaction for the statute to apply. The Division of Consumer Protection or other state officials or agencies with authority over

Encyclopedia of Everyday Law: Deceptive Trade Practices

suppliers may enforce the statute for violations by a business.

VERMONT: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

VIRGINIA: The state statute prohibits 32 specific practices, plus any other fraudulent acts or practices. A supplier must conduct a consumer transaction for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

WASHINGTON: The state statute prohibits unfair methods of competition and unfair or deceptive acts or practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

WEST VIRGINIA: The state statute prohibits 16 specific practices, plus other unfair methods of competition and unfair or deceptive practices. The transaction must be conducted in trade or commerce for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

WISCONSIN: The state statute prohibits 14 specific practices, plus other untrue, deceptive, or misleading representations; unfair methods of competition; and unfair trade practices. The statute applies to virtually any transaction due to the broad scope of the statutory language. The Department of Agriculture, Trade, and Consumer Protection may enforce the statute for violations by a business.

WYOMING: The state statute prohibits several specific practices, plus other unfair or deceptive acts or practices. The transaction must be conducted in the scope of a business and in a consumer transaction for the statute to apply. The attorney general's office may enforce the statute for violations by a business.

Additional Resources

Revised Uniform Deceptive Trade Practices Act. National Conference of Commissioners on Uniform State Laws, 1966. Available at http://www.law.upenn.edu/bll/ulc/fnact99/1920_69/rudtpa66.h...

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Unfair and Deceptive Acts and Practices, Fourth Edition. Sheldon, Jonathan, and Carolyn L. Carter, National Consumer Law Center, 1997.

Unfair Trade Practices Laws: Resource Book. Alliance of American Insurers, 1986.

U.S. Code, Title 15: Commerce and Trade, Chapter 2: Federal Trade Commission; Promotion of Export Trade and Prevention of Unfair Methods of Competition. U. S. House of Representatives, 1999. Available at http://uscode.house.gov/title_15.htm

Organizations

American Council on Consumer Interests (ACCI)

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Primary Contact: Ken McEldowney, Executive Director

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National Consumer Law Center (NCLC)
18 Tremont Street
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National Consumers League (NCL)
1701 K Street, NW, Suite 1201
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Fax: (202) 835-0747
URL: <http://www.nclnet.org/>

National Fraud Information Center (NFIC)
P.O. Box 65868
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Fax: (202) 835-0767
URL: <http://www.fraud.org/>

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