



HOUSE BILL No. 5127

September 26, 1995, Introduced by Reps. Tesanovich, Cherry, Hanley, LaForge, Gernaat, Prusi, Baade, Anthony, Randall, Bodem, DeHart, Yokich, Freeman, Kelly, Martinez, Leland, Willard, Pitoniak, DeMars, Gire, Perricone, Hertel, Voorhees, Weeks, Brewer, Agee, Dalman, Brater, Gagliardi, Goschka and Bobier and referred to the Committee on Commerce.

A bill to amend section 3 of Act No. 331 of the Public Acts of 1976, entitled

"Michigan consumer protection act,"

as amended by Act No. 276 of the Public Acts of 1994, being section 445.903 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3 of Act No. 331 of the Public Acts of
2 1976, as amended by Act No. 276 of the Public Acts of 1994, being
3 section 445.903 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 3. (1) Unfair, unconscionable, or deceptive methods,
6 acts or practices in the conduct of trade or commerce are unlaw-
7 ful and are defined as follows:

1 (a) Causing a probability of confusion or misunderstanding
2 as to the source, sponsorship, approval, or certification of
3 goods or services.

4 (b) Using deceptive representations or deceptive designa-
5 tions of geographic origin in connection with goods or services.

6 (c) Representing that goods or services have sponsorship,
7 approval, characteristics, ingredients, uses, benefits, or quan-
8 tities ~~which~~ THAT they do not have or that a person has spon-
9 sorship, approval, status, affiliation, or connection ~~which~~
10 THAT he or she does not have.

11 (d) Representing that goods are new if they are deterio-
12 rated, altered, reconditioned, used, or secondhand.

13 (e) Representing that goods or services are of a particular
14 standard, quality, or grade, or that goods are of a particular
15 style or model, if they are of another.

16 (f) Disparaging the goods, services, business, or reputation
17 of another by false or misleading representation of fact.

18 (g) Advertising or representing goods or services with
19 intent not to dispose of those goods or services as advertised or
20 represented.

21 (h) Advertising goods or services with intent not to supply
22 reasonably expectable public demand, unless the advertisement
23 discloses a limitation of quantity in immediate conjunction with
24 the advertised goods or services.

25 (i) Making false or misleading statements of fact concerning
26 the reasons for, existence of, or amounts of ~~—~~ price
27 reductions.

1 (j) Representing that a part, replacement, or repair service
2 is needed when it is not.

3 (k) Representing to a party to whom goods or services are
4 supplied that the goods or services are being supplied in
5 response to a request made by or on behalf of the party, when
6 they are not.

7 (l) Misrepresenting that because of some defect in a
8 consumer's home the health, safety, or lives of the consumer or
9 his or her family are in danger if the product or services are
10 not purchased, when in fact the defect does not exist or the
11 product or services would not remove the danger.

12 (m) Causing a probability of confusion or of misunderstand-
13 ing with respect to the authority of a salesperson, representa-
14 tive, or agent to negotiate the final terms of a transaction.

15 (n) Causing a probability of confusion or of misunderstand-
16 ing as to the legal rights, obligations, or remedies of a party
17 to a transaction.

18 (o) Causing a probability of confusion or of misunderstand-
19 ing as to the terms or conditions of credit if credit is extended
20 in a transaction.

21 (p) Disclaiming or limiting the implied warranty of mer-
22 chantability and fitness for use, unless a disclaimer is clearly
23 and conspicuously disclosed.

24 (q) Representing or implying that the subject of a consumer
25 transaction will be provided promptly, or at a specified time, or
26 within a reasonable time, if the merchant knows or has reason to
27 know it will not be so provided.

1 (r) Representing that a consumer will receive goods or
2 services "free", "without charge", or words of similar import
3 without clearly and conspicuously disclosing with equal promi-
4 nence in immediate conjunction with the use of those words the
5 conditions, terms, or prerequisites to the use or retention of
6 the goods or services advertised.

7 (s) Failing to reveal a material fact, the omission of which
8 tends to mislead or deceive the consumer, and which fact could
9 not reasonably be known by the consumer.

10 (t) Entering into a consumer transaction in which the con-
11 sumer waives or purports to waive a right, benefit, or immunity
12 provided by law, unless the waiver is clearly stated and the con-
13 sumer has specifically consented to it.

14 (u) Failing, in a consumer transaction ~~which~~ THAT is
15 rescinded, canceled, or otherwise terminated in accordance with
16 the terms of an agreement, advertisement, representation, or pro-
17 vision of law, to promptly restore to the person or persons enti-
18 tled ~~thereto any~~ TO IT A deposit, down payment, or other pay-
19 ment, or in the case of property traded in but not available, the
20 greater of the agreed value or the fair market value of the prop-
21 erty, or to cancel within a specified time or an otherwise rea-
22 sonable time an acquired security interest.

23 (v) Taking or arranging for the consumer to sign an acknowl-
24 edgment, certificate, or other writing affirming acceptance,
25 delivery, compliance with a requirement of law, or other per-
26 formance, if the merchant knows or has reason to know that the
27 statement is not true.

1 (w) Representing that a consumer will receive a rebate,
2 discount, or other benefit as an inducement for entering into a
3 transaction, if the benefit is contingent on an event to occur
4 subsequent to the consummation of the transaction.

5 (x) Taking advantage of the consumer's inability reasonably
6 to protect his or her interests by reason of disability, illiter-
7 acy, or inability to understand the language of an agreement
8 presented by the other party to the transaction who knows or rea-
9 sonably should know of the consumer's inability.

10 (y) Gross discrepancies between the oral representations of
11 the seller and the written agreement covering the same transac-
12 tion or failure of the other party to the transaction to provide
13 the promised benefits.

14 (z) Charging the consumer a price that is grossly in excess
15 of the price at which similar property or services are sold.

16 (aa) Causing coercion and duress as the result of the time
17 and nature of a sales presentation.

18 (bb) Making a representation of fact or statement of fact
19 material to the transaction such that a person reasonably
20 believes the represented or suggested state of affairs to be
21 other than it actually is.

22 (cc) Failing to reveal facts that are material to the trans-
23 action in light of representations of fact made in a positive
24 manner.

25 (dd) Subject to subdivision (ee), representations by the
26 manufacturer of a product or package that the product or package
27 is ~~any of the following: (i) Except as provided in subparagraph~~

1 ~~(ii)~~, recycled, recyclable, degradable, or is of a certain
2 recycled content, in violation of ~~guidelines regarding~~
3 ~~environmental~~ guides for the use of environmental marketing
4 claims published by the federal trade commission, ~~16 C.F.R. part~~
5 ~~260, P~~ 57 F.R. P 36363 (August 13, 1992).

6 ~~(ii) For container holding devices regulated pursuant to~~
7 ~~Act No. 145 of the Public Acts of 1988, being sections 445.581 to~~
8 ~~445.584 of the Michigan Compiled Laws, representations by a manu-~~
9 ~~facturer that the container holding device is degradable contrary~~
10 ~~to the definition provided in that act.~~

11 (ee) Representing that a product or package is degradable,
12 biodegradable, or photodegradable unless it can be substantiated
13 by evidence that the product or package will completely decompose
14 into elements found in nature within a reasonably short period of
15 time after consumers use the product and dispose of the product
16 or the package in a landfill or composting facility, as
17 appropriate.

18 (FF) OFFERING A CONSUMER A PRIZE IF IN ORDER TO CLAIM THE
19 PRIZE THE CONSUMER IS REQUIRED TO SUBMIT TO A SALES PRESENTATION,
20 UNLESS A WRITTEN DISCLOSURE IS GIVEN TO THE CONSUMER AT THE TIME
21 THE CONSUMER IS NOTIFIED OF THE PRIZE AND THE WRITTEN DISCLOSURE
22 MEETS ALL OF THE FOLLOWING REQUIREMENTS:

23 (i) IS WRITTEN OR PRINTED IN A BOLD TYPE THAT IS NOT SMALLER
24 THAN 10-POINT.

25 (ii) FULLY DESCRIBES THE PRIZE, INCLUDING ITS CASH VALUE,
26 WON BY THE CONSUMER.

1 (iii) CONTAINS ALL THE TERMS AND CONDITIONS FOR CLAIMING THE
2 PRIZE, INCLUDING A STATEMENT THAT THE CONSUMER IS REQUIRED TO
3 SUBMIT TO A SALES PRESENTATION.

4 (iv) FULLY DESCRIBES THE PRODUCT, REAL ESTATE, INVESTMENT,
5 SERVICE, MEMBERSHIP, OR OTHER ITEM THAT IS OR WILL BE OFFERED FOR
6 SALE, INCLUDING THE PRICE OF THE LEAST EXPENSIVE ITEM AND THE
7 MOST EXPENSIVE ITEM.

8 (2) The attorney general may promulgate rules to implement
9 this act ~~pursuant to~~ UNDER the administrative procedures act of
10 1969, Act No. 306 of the Public Acts of 1969, ~~as amended,~~ being
11 sections 24.201 to 24.328 of the Michigan Compiled Laws. The
12 rules shall not create ~~any~~ AN 'additional unfair trade
13 ~~practices~~ PRACTICE not already enumerated by this section.
14 However, to assure national uniformity, rules shall not be
15 promulgated to implement subsection (1)(dd) or (ee).