



# HOUSE BILL No. 5860

May 8, 1996, Introduced by Rep. Bryant and referred to the Committee on Commerce.

A bill to amend section 11 of Act No. 331 of the Public Acts of 1976, entitled  
"Michigan consumer protection act,"  
being section 445.911 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 11 of Act No. 331 of the Public Acts of  
2 1976, being section 445.911 of the Michigan Compiled Laws, is  
3 amended to read as follows:

4 Sec. 11. (1) Whether or not he OR SHE seeks damages or has  
5 an adequate remedy at law, a person may bring an action to do  
6 either or both of the following:

7 (a) Obtain a declaratory judgment that a method, act, or  
8 practice is unlawful under section 3.

1 (b) Enjoin in accordance with the principles of equity a  
2 person who is engaging or is about to engage in a method, act, or  
3 practice ~~which~~ THAT is unlawful under section 3.

4 (2) Except in a class action, a person who suffers loss as a  
5 result of a violation of this act may bring an action to recover  
6 actual damages or \$250.00, whichever is greater. ~~, together with~~  
7 ~~reasonable attorneys' fees.~~

8 (3) A person who suffers loss as a result of a violation of  
9 this act may bring a class action on behalf of persons residing  
10 or injured in this state for the actual damages caused by ~~any~~ 1  
11 OR MORE of the following:

12 (a) A method, act, or practice in trade or commerce defined  
13 as unlawful under section 3.

14 (b) A method, act, or practice in trade or commerce declared  
15 to be unlawful under section 3(1) by a final judgment of the cir-  
16 cuit court or an appellate court of this state ~~which~~ THAT is  
17 either reported officially or made available for public dissemi-  
18 nation ~~pursuant to~~ UNDER section 9 by the attorney general not  
19 less than 30 days before the method, act, or practice on which  
20 the action is based occurs.

21 (c) A method, act, or practice in trade or commerce declared  
22 by a circuit court of appeals or the supreme court of the United  
23 States to be an unfair or deceptive act or practice within the  
24 meaning of section 5(a)(1) of the federal trade commission act,  
25 CHAPTER 311, 38 STAT. 719, 15 U.S.C. ~~45(a)(1)~~ 45, in a deci-  
26 sion which affirms or directs the affirmance of a cease and  
27 desist order issued by the federal trade commission if the order

1 is final within the meaning of section 5(g) of the federal trade  
2 commission act, CHAPTER 311, 38 STAT. 719, 15 U.S.C. ~~45(g)~~ 45,  
3 and which is officially reported not less than 30 days before the  
4 method, act, or practice on which the action is based occurs.  
5 For purposes of this-subdivision, a method, act, or practice  
6 shall not be deemed to be unfair or deceptive within the meaning  
7 of section 5(a)(1) of the federal trade commission act solely  
8 because the method, act, or practice is made unlawful by another  
9 federal statute that refers to or incorporates section 5(a)(1) of  
10 the federal trade commission act.

11 (4) On motion of a person and without bond in an action  
12 brought under subsection (3) the court may make an appropriate  
13 order: to reimburse persons who have suffered damages; to carry  
14 out a transaction in accordance with the aggrieved persons' rea-  
15 sonable expectations; to strike or limit the application of  
16 unconscionable clauses of contracts to avoid an unconscionable  
17 result; or to grant other appropriate relief. The court after a  
18 hearing may appoint a receiver or order sequestration of the  
19 defendant's assets if it appears to the satisfaction of the court  
20 that the defendant threatens or is about to remove, conceal, or  
21 dispose of his OR HER assets to the detriment of members of the  
22 class.

23 (5) If at any stage of proceedings brought under subsection  
24 (3) the court requires that notice be sent to the class, a person  
25 may petition the court to require the defendant to bear the cost  
26 of notice. In determining whether to impose the cost on the  
27 defendant or the plaintiff, the court shall consider the

1 probability that the person will succeed on the merits of his OR  
2 HER action.

3 (6) If the defendant shows by a preponderance of the evi-  
4 dence that a violation of this act resulted from a bona fide  
5 error notwithstanding the maintenance of procedures reasonably  
6 adapted to avoid the error, the amount of recovery shall be  
7 limited to actual damages.

8 (7) An action under this section shall not be brought more  
9 than 6 years after the occurrence of the method, act, or practice  
10 ~~which~~ THAT is the subject of the action nor more than 1 year  
11 after the last payment in a transaction involving the method,  
12 act, or practice ~~which~~ THAT is the subject of the action,  
13 whichever period of time ends at a later date. However, when a  
14 person commences an action against another person, the defendant  
15 may assert ~~—~~ as a defense or counterclaim ~~—, any~~ A claim under  
16 this act arising out of the transaction on which the action is  
17 brought.