

HOUSE BILL No. 4644

May 6, 1999, Introduced by Reps. Wojno, Scott, Rick Johnson, Spade, Mans, Neumann, Pestka, Lockwood, Clark, Daniels, Bogardus, Basham, O'Neil, Hale and Thomas and referred to the Committee on Insurance and Financial Services.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 1996 PA 226.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 3. (1) Unfair, unconscionable, or deceptive methods,
2 acts, or practices in the conduct of trade or commerce are unlaw-
3 ful and are defined as follows:
- 4 (a) Causing a probability of confusion or misunderstanding
5 as to the source, sponsorship, approval, or certification of
6 goods or services.
- 7 (b) Using deceptive representations or deceptive designa-
8 tions of geographic origin in connection with goods or services.
- 9 (c) Representing that goods or services have sponsorship,
10 approval, characteristics, ingredients, uses, benefits, or
11 quantities that they do not have or that a person has

1 sponsorship, approval, status, affiliation, or connection that he
2 or she does not have.

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

5 (e) Representing that goods or services are of a particular
6 standard, quality, or grade, or that goods are of a particular
7 style or model, if they are of another.

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

10 (g) Advertising or representing goods or services with
11 intent not to dispose of those goods or services as advertised or
12 represented.

13 (h) Advertising goods or services with intent not to supply
14 reasonably expectable public demand, unless the advertisement
15 discloses a limitation of quantity in immediate conjunction with
16 the advertised goods or services.

17 (i) Making false or misleading statements of fact concerning
18 the reasons for, existence of, or amounts of price reductions.

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

21 (k) Representing to a party to whom goods or services are
22 supplied that the goods or services are being supplied in
23 response to a request made by or on behalf of the party, when
24 they are not.

25 (l) Misrepresenting that because of some defect in a
26 consumer's home the health, safety, or lives of the consumer or
27 his or her family are in danger if the product or services are

1 not purchased, when in fact the defect does not exist or the
2 product or services would not remove the danger.

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

6 (n) Causing a probability of confusion or of misunderstand-
7 ing as to the legal rights, obligations, or remedies of a party
8 to a transaction.

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

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

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

19 (r) Representing that a consumer will receive goods or serv-
20 ices "free", "without charge", or words of similar import without
21 clearly and conspicuously disclosing with equal prominence in
22 immediate conjunction with the use of those words the conditions,
23 terms, or prerequisites to the use or retention of the goods or
24 services advertised.

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

1 (t) Entering into a consumer transaction in which the
2 consumer waives or purports to waive a right, benefit, or immu-
3 nity provided by law, unless the waiver is clearly stated and the
4 consumer has specifically consented to it.

5 (u) Failing, in a consumer transaction that is rescinded,
6 canceled, or otherwise terminated in accordance with the terms of
7 an agreement, advertisement, representation, or provision of law,
8 to promptly restore to the person or persons entitled to it a
9 deposit, down payment, or other payment, or in the case of prop-
10 erty traded in but not available, the greater of the agreed value
11 or the fair market value of the property, or to cancel within a
12 specified time or an otherwise reasonable time an acquired secur-
13 ity interest.

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

19 (w) Representing that a consumer will receive a rebate, dis-
20 count, or other benefit as an inducement for entering into a
21 transaction, if the benefit is contingent on an event to occur
22 subsequent to the consummation of the transaction.

23 (x) Taking advantage of the consumer's inability reasonably
24 to protect his or her interests by reason of disability, illiter-
25 acy, or inability to understand the language of an agreement
26 presented by the other party to the transaction who knows or
27 reasonably should know of the consumer's inability.

1 (y) Gross discrepancies between the oral representations of
2 the seller and the written agreement covering the same transac-
3 tion or failure of the other party to the transaction to provide
4 the promised benefits.

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

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

9 (bb) Making a representation of fact or statement of fact
10 material to the transaction such that a person reasonably
11 believes the represented or suggested state of affairs to be
12 other than it actually is.

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

16 (dd) Subject to subdivision (ee), representations by the
17 manufacturer of a product or package that the product or package
18 is 1 or more of the following:

19 (i) Except as provided in subparagraph (ii), recycled, recy-
20 clable, degradable, or is of a certain recycled content, in vio-
21 lation of guides for the use of environmental marketing claims
22 published by the federal trade commission, 57 F.R. p 36363
23 (August 13, 1992).

24 (ii) For container holding devices regulated under part 163
25 ~~-(plastic degradable containers)-~~ of the natural resources and
26 environmental protection act, ~~Act No. 451 of the Public Acts of~~
27 ~~1994, being sections 324.16301 to 324.16303 of the Michigan~~

~~1 Compiled Laws~~ 1994 PA 451, MCL 324.16301 TO 324.16303,
2 representations by a manufacturer that the container holding
3 device is degradable contrary to the definition provided in that
4 act.

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

12 (ff) Offering a consumer a prize if in order to claim the
13 prize the consumer is required to submit to a sales presentation,
14 unless a written disclosure is given to the consumer at the time
15 the consumer is notified of the prize and the written disclosure
16 meets all of the following requirements:

17 (i) Is written or printed in a bold type that is not smaller
18 than 10-point.

19 (ii) Fully describes the prize, including its cash value,
20 won by the consumer.

21 (iii) Contains all the terms and conditions for claiming the
22 prize, including a statement that the consumer is required to
23 submit to a sales presentation.

24 (iv) Fully describes the product, real estate, investment,
25 service, membership, or other item that is or will be offered for
26 sale, including the price of the least expensive item and the
27 most expensive item.

1 (GG) HAVING A COURIER OR OTHER THIRD PARTY PICK UP A
2 CONSUMER'S PAYMENT ON A HOME SOLICITATION SALE DURING THE PERIOD
3 THE CONSUMER IS ENTITLED TO CANCEL THE SALE UNDER 1971 PA 227,
4 MCL 445.111 TO 445.117.

5 (2) The attorney general may promulgate rules to implement
6 this act under the administrative procedures act of 1969, ~~Act~~
7 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~
8 ~~24.328 of the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO
9 24.328. The rules shall not create an additional unfair trade
10 practice not already enumerated by this section. However, to
11 assure national uniformity, rules shall not be promulgated to
12 implement subsection (1)(dd) or (ee).

13 Enacting section 1. This amendatory act does not take
14 effect unless Senate Bill No. _____ or House Bill No. _____
15 (request no. 03156'99 a) of the 90th Legislature is enacted into
16 law.