

# HOUSE BILL No. 5777

March 7, 2002, Introduced by Reps. Shulman, Ruth Johnson, Bovin, Anderson, Godchaux, Scranton, Adamini, Rich Brown, Ehardt, DeRossett, Mead, Richner, Birkholz, Murphy, Vander Veen, Van Woerkom and DeVuyst and referred to the Committee on Commerce.

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending section 3 (MCL 445.903), as amended by 2000 PA 14,  
and by adding section 3e.

## 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

1 quantities that they do not have or that a person has  
2 sponsorship, approval, status, affiliation, or connection that he  
3 or she does not have.

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

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

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

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

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

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

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

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

26 (l) Misrepresenting that because of some defect in a  
27 consumer's home the health, safety, or lives of the consumer or

1 his or her family are in danger if the product or services are  
2 not purchased, when in fact the defect does not exist or the pro-  
3 duct or services would not remove the danger.

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

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

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

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

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

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

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

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

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

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

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

26       (x) Taking advantage of the consumer's inability reasonably  
27 to protect his or her interests by reason of disability,

1 illiteracy, or inability to understand the language of an  
2 agreement presented by the other party to the transaction who  
3 knows or reasonably should know of the consumer's inability.

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

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

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

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

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

19 (dd) Subject to subdivision (ee), representations by the  
20 manufacturer of a product or package that the product or package  
21 is 1 or more of the following:

22 (i) Except as provided in subparagraph (ii), recycled, recy-  
23 clable, degradable, or is of a certain recycled content, in vio-  
24 lation of guides for the use of environmental marketing claims,  
25 ~~published by the federal trade commission, 57 F.R. p 36363~~  
26 ~~(August 13, 1992)~~ 16 C.F.R. PART 260.

1           (ii) For container holding devices regulated under part 163  
2 of the natural resources and environmental protection act, 1994  
3 PA 451, MCL 324.16301 to 324.16303, representations by a manufac-  
4 turer that the container holding device is degradable contrary to  
5 the definition provided in that act.

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

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

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

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

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

25           (iv) Fully describes the product, real estate, investment,  
26 service, membership, or other item that is or will be offered for

1 sale, including the price of the least expensive item and the  
2 most expensive item.

3 (gg) Having an independent courier service or other third  
4 party pick up a consumer's payment on a home solicitation sale  
5 during the period the consumer is entitled to cancel the sale  
6 under 1971 PA 227, MCL 445.111 to 445.117.

7 (HH) VIOLATING SECTION 3E.

8 (2) The attorney general may promulgate rules to implement  
9 this act under the administrative procedures act of 1969, 1969 PA  
10 306, MCL 24.201 to 24.328. The rules shall not create an addi-  
11 tional unfair trade practice not already enumerated by this  
12 section. However, to assure national uniformity, rules shall not  
13 be promulgated to implement subsection (1)(dd) or (ee).

14 SEC. 3E. (1) A PERSON SHALL NOT INITIATE THE TRANSMISSION,  
15 OR CONSPIRE WITH ANOTHER TO INITIATE THE TRANSMISSION, OF A COM-  
16 Mercial ELECTRONIC MAIL MESSAGE, EITHER FROM A COMPUTER LOCATED  
17 IN THIS STATE OR TO AN ELECTRONIC MAIL ADDRESS THAT THE SENDER  
18 KNOWS OR HAS REASON TO KNOW IS HELD BY A RESIDENT OF THIS STATE,  
19 THAT MEETS EITHER OF THE FOLLOWING:

20 (A) USES A THIRD PARTY'S INTERNET DOMAIN NAME WITHOUT PER-  
21 MISSION OF THE THIRD PARTY, OR OTHERWISE MISREPRESENTS OR  
22 OBSCURES ANY INFORMATION IDENTIFYING THE POINT OF ORIGIN OR THE  
23 TRANSMISSION PATH OF A COMMERCIAL ELECTRONIC MAIL MESSAGE.

24 (B) CONTAINS FALSE OR MISLEADING INFORMATION IN THE SUBJECT  
25 LINE.

26 (2) A PERSON SHALL NOT ASSIST IN THE TRANSMISSION OF A  
27 COMMERCIAL ELECTRONIC MAIL MESSAGE IF THE PERSON KNOWS OR

1 CONSCIOUSLY AVOIDS KNOWING THAT THE INITIATOR OF THE COMMERCIAL  
2 ELECTRONIC MAIL MESSAGE IS ENGAGED OR INTENDS TO ENGAGE IN AN ACT  
3 OR PRACTICE THAT VIOLATES SUBSECTION (1) OR ANY OTHER PROVISION  
4 OF THIS ACT.

5 (3) FOR PURPOSES OF THIS SECTION, A PERSON IS CONSIDERED TO  
6 KNOW THAT THE INTENDED RECIPIENT OF A COMMERCIAL ELECTRONIC MAIL  
7 MESSAGE IS A RESIDENT OF THIS STATE IF THAT INFORMATION IS AVAIL-  
8 ABLE, UPON REQUEST, FROM THE REGISTRANT OF THE INTERNET DOMAIN  
9 NAME CONTAINED IN THE RECIPIENT'S ELECTRONIC MAIL ADDRESS.

10 (4) AN INTERACTIVE COMPUTER SERVICE MAY, UPON ITS OWN INI-  
11 TIATIVE, BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OF  
12 A COMMERCIAL ELECTRONIC MAIL MESSAGE THAT IT REASONABLY BELIEVES  
13 IS OR WILL BE SENT IN VIOLATION OF THIS SECTION.

14 (5) AN INTERACTIVE COMPUTER SERVICE MAY NOT BE HELD LIABLE  
15 FOR ANY ACTION VOLUNTARILY TAKEN IN GOOD FAITH TO BLOCK THE  
16 RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OF A COMMERCIAL ELEC-  
17 TRONIC MAIL MESSAGE THAT IT REASONABLY BELIEVES IS OR WILL BE  
18 SENT IN VIOLATION OF THIS SECTION.

19 (6) AS USED IN THIS SECTION:

20 (A) "ASSIST IN THE TRANSMISSION" OF A COMMERCIAL ELECTRONIC  
21 MAIL MESSAGE MEANS TO ACT TO PROVIDE SUBSTANTIAL ASSISTANCE OR  
22 SUPPORT THAT ENABLES ANOTHER PERSON TO FORMULATE, COMPOSE, SEND,  
23 ORIGINATE, INITIATE, OR TRANSMIT A COMMERCIAL ELECTRONIC MAIL  
24 MESSAGE.

25 (B) "COMMERCIAL ELECTRONIC MAIL MESSAGE" MEANS AN ELECTRONIC  
26 MAIL MESSAGE SENT FOR THE PURPOSE OF PROMOTING THE SALE OR LEASE  
27 OF REAL PROPERTY, GOODS, OR SERVICES. THE TERM DOES NOT INCLUDE



1 AN ELECTRONIC MAIL MESSAGE TO WHICH AN INTERACTIVE COMPUTER  
2 SERVICE PROVIDER HAS ATTACHED AN ADVERTISEMENT IN EXCHANGE FOR  
3 FREE USE OF AN ELECTRONIC MAIL ACCOUNT IF THE SENDER HAS AGREED  
4 TO THAT ARRANGEMENT.

5 (C) "ELECTRONIC MAIL ADDRESS" MEANS A DESTINATION, COMMONLY  
6 EXPRESSED AS A STRING OF CHARACTERS, TO WHICH ELECTRONIC MAIL MAY  
7 BE SENT OR DELIVERED.

8 (D) "INITIATE THE TRANSMISSION" OF A COMMERCIAL ELECTRONIC  
9 MAIL MESSAGE MEANS THE ACTION BY THE ORIGINAL SENDER TO SEND,  
10 ORIGINATE, INITIATE, OR TRANSMIT A COMMERCIAL ELECTRONIC MAIL  
11 MESSAGE. THE TERM DOES NOT INCLUDE AN ACTION BY AN INTERVENING  
12 INTERACTIVE COMPUTER SERVICE THAT MAY HANDLE OR RETRANSMIT THE  
13 MESSAGE, UNLESS THE INTERVENING INTERACTIVE COMPUTER SERVICE  
14 ASSISTS IN THE TRANSMISSION OF AN ELECTRONIC MAIL MESSAGE WHEN IT  
15 KNOWS OR CONSCIOUSLY AVOIDS KNOWING THAT THE PERSON INITIATING  
16 THE TRANSMISSION IS ENGAGED OR INTENDS TO ENGAGE IN AN ACT OR  
17 PRACTICE THAT VIOLATES SUBSECTION (1) OR ANOTHER PROVISION OF  
18 THIS ACT.

19 (E) "INTERACTIVE COMPUTER SERVICE" MEANS AN INFORMATION  
20 SERVICE, SYSTEM, OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR  
21 ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER,  
22 INCLUDING, BUT NOT LIMITED TO, AN INFORMATION SERVICE OR SYSTEM  
23 THAT PROVIDES ACCESS TO THE INTERNET, AND AN INFORMATION SYSTEM  
24 OPERATED OR SERVICE OFFERED BY A LIBRARY OR EDUCATIONAL  
25 INSTITUTION.

26 (F) "INTERNET DOMAIN NAME" MEANS A GLOBALLY UNIQUE,  
27 HIERARCHICAL REFERENCE TO AN INTERNET HOST OR SERVICE, ASSIGNED

- 1 THROUGH CENTRALIZED INTERNET NAMING AUTHORITIES, COMPRISING A
- 2 SERIES OF CHARACTER STRINGS SEPARATED BY PERIODS, WITH THE
- 3 RIGHT-MOST STRING SPECIFYING THE TOP OF THE HIERARCHY.