

SENATE BILL No. 313

March 19, 2003, Introduced by Senators BASHAM, BERNERO, CLARK-COLEMAN, THOMAS, JACOBS, KUIPERS, PRUSI, BISHOP, CLARKE, SWITALSKI, GOSCHKA, EMERSON, SCHAUER, LELAND, CHERRY and SCOTT and referred to the Committee on Commerce and Labor.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2002 PA 613,
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
3 unlawful and are defined as follows:

4 (a) Causing a probability of confusion or misunderstanding as
5 to the source, sponsorship, approval, or certification of goods
6 or services.

7 (b) Using deceptive representations or deceptive designations
8 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 deteriorated,
5 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 intent
12 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
3 product or services would not remove the danger.

4 (m) Causing a probability of confusion or of misunderstanding
5 with respect to the authority of a salesperson, representative,
6 or agent to negotiate the final terms of a transaction.

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

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

13 (p) Disclaiming or limiting the implied warranty of
14 merchantability and fitness for use, unless a disclaimer is
15 clearly 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
21 services "free" or "without charge", or using words of similar
22 import in the representation, without clearly and conspicuously
23 disclosing with equal prominence in immediate conjunction with
24 the use of those words the conditions, terms, or prerequisites to
25 the use or retention of the goods or services advertised.

26 (s) Failing to reveal a material fact, the omission of which
27 tends to mislead or deceive the consumer, and which fact could

1 not reasonably be known by the consumer.

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

6 (u) Failing, in a consumer transaction that is rescinded,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

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

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

24 (x) Taking advantage of the consumer's inability reasonably
25 to protect his or her interests by reason of disability,
26 illiteracy, or inability to understand the language of an
27 agreement presented by the other party to the transaction who

1 knows or reasonably should know of the consumer's inability.

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

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

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

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

14 (cc) Failing to reveal facts that are material to the
15 transaction in light of representations of fact made in a
16 positive manner.

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

20 (i) Except as provided in subparagraph (ii), recycled,
21 recyclable, degradable, or is of a certain recycled content, in
22 violation of guides for the use of environmental marketing
23 claims, 16 C.F.R. part 260.

24 (ii) For container holding devices regulated under part 163
25 of the natural resources and environmental protection act, 1994
26 PA 451, MCL 324.16301 to 324.16303, representations by a
27 manufacturer that the container holding device is degradable

1 contrary to the definition provided in that act.

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

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

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

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

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

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

25 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in
26 connection with a home solicitation sale or telephone
27 solicitation, including, but not limited to, having an

1 independent courier service 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.

4 **(hh) Violating section 3e.**

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

11 **Sec. 3e. (1) During an emergency period and in an emergency**
12 **area, a person shall not charge an amount for gasoline that**
13 **exceeds the average price at which gasoline was readily**
14 **obtainable within the emergency area during the 7-day period**
15 **preceding the emergency period. This subsection does not apply**
16 **to any price increases attributable to increased replacement**
17 **costs, taxes, or transportation costs.**

18 (2) The attorney general shall investigate any complaint
19 alleging a violation of subsection (1). The attorney general
20 shall make available to the public statistical information
21 regarding the complaints.

22 (3) As used in this section:

23 (a) "Emergency area" means an area of this state subject to a
24 state of emergency declared by the governor under the emergency
25 management act, 1976 PA 390, MCL 30.401 to 30.421, or under 1945
26 PA 302, MCL 10.31 to 10.33.

27 (b) "Emergency period" means the period during which a state

1 of emergency declared by the governor is effective under the
2 emergency management act, 1976 PA 390, MCL 30.401 to 30.421, or
3 under 1945 PA 302, MCL 10.31 to 10.33. The term also includes
4 the 24-hour period preceding the declaration of a state of
5 emergency.

6 (c) "Gasoline" means that term as defined in section 2 of the
7 motor fuels quality act, 1984 PA 44, MCL 290.642.