

HOUSE BILL No. 5193

October 31, 2017, Introduced by Reps. Cochran, Faris, Green, Liberati, Chirkun, Howrylak, Lucido, Elder, Gay-Dagnogo and Brinks and referred to the Committee on Commerce and Trade.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2010 PA 195, and
by adding section 3j.

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 unlawful
3 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 or
6 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,

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

5 (d) Representing that goods are new if they are deteriorated,
6 altered, reconditioned, used, or secondhand.

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

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

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

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

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

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

23 (k) Representing to a party to whom goods or services are
24 supplied that the goods or services are being supplied in response
25 to a request made by or on behalf of the party, when 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 his

1 or her family are in danger if the product or services are not
2 purchased, when in fact the defect does not exist or the product or
3 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, or
6 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 a
12 transaction.

13 (p) Disclaiming or limiting the implied warranty of
14 merchantability 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
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 the
24 use of those words the conditions, terms, or prerequisites to the
25 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 not

1 reasonably be known by the consumer.

2 (t) Entering into a consumer transaction in which the consumer
3 waives or purports to waive a right, benefit, or immunity provided
4 by law, unless the waiver is clearly stated and the consumer has
5 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 property
11 traded in but not available, the greater of the agreed value or the
12 fair market value of the property, or to cancel within a specified
13 time or an otherwise reasonable time an acquired security interest.

14 (v) Taking or arranging for the consumer to sign an
15 acknowledgment, certificate, or other writing affirming acceptance,
16 delivery, compliance with a requirement of law, or other
17 performance, 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,
20 discount, 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 to
24 protect his or her interests by reason of disability, illiteracy,
25 or inability to understand the language of an agreement presented
26 by the other party to the transaction who knows or reasonably
27 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 transaction
3 or failure of the other party to the transaction to provide the
4 promised benefits.

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

7 (aa) Causing coercion and duress as the result of the time and
8 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 believes
11 the represented or suggested state of affairs to be other than it
12 actually is.

13 (cc) Failing to reveal facts that are material to the
14 transaction 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 is
18 1 or more of the following:

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

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

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

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

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

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

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

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

23 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in
24 connection with a home solicitation sale or telephone solicitation,
25 including, but not limited to, having an independent courier
26 service or other third party pick up a consumer's payment on a home
27 solicitation sale during the period the consumer is entitled to

1 cancel the sale.

2 (hh) Except as provided in subsection (3), requiring a
3 consumer to disclose his or her social security number as a
4 condition to selling or leasing goods or providing a service to the
5 consumer, unless any of the following apply:

6 (i) The selling, leasing, providing, terms of payment, or
7 transaction includes an application for or an extension of credit
8 to the consumer.

9 (ii) The disclosure is required or authorized by applicable
10 state or federal statute, rule, or regulation.

11 (iii) The disclosure is requested by a person to obtain a
12 consumer report for a permissible purpose described in section 604
13 of the fair credit reporting act, 15 USC 1681b.

14 (iv) The disclosure is requested by a landlord, lessor, or
15 property manager to obtain a background check of the individual in
16 conjunction with the rent or leasing of real property.

17 (v) The disclosure is requested from an individual to effect,
18 administer or enforce a specific telephonic or other electronic
19 consumer transaction that is not made in person but is requested or
20 authorized by the individual if it is to be used solely to confirm
21 the identity of the individual through a fraud prevention service
22 database. The consumer good or service shall still be provided to
23 the consumer upon verification of his or her identity if he or she
24 refuses to provide his or her social security number but provides
25 other information or documentation that can be used by the person
26 to verify his or her identity. The person may inform the consumer
27 that verification through other means than use of the social

1 security number may cause a delay in providing the service or good
2 to the consumer.

3 (ii) If a credit card or debit card is used for payment in a
4 consumer transaction, issuing or delivering a receipt to the
5 consumer that displays any part of the expiration date of the card
6 or more than the last 4 digits of the consumer's account number.
7 This subdivision does not apply if the only receipt issued in a
8 consumer transaction is a credit card or debit card receipt on
9 which the account number or expiration date is handwritten,
10 mechanically imprinted, or photocopied. This subdivision applies to
11 any consumer transaction that occurs on or after March 1, 2005,
12 except that if a credit or debit card receipt is printed in a
13 consumer transaction by an electronic device, this subdivision
14 applies to any consumer transaction that occurs using that device
15 only after 1 of the following dates, as applicable:

16 (i) If the electronic device is placed in service after March
17 1, 2005, July 1, 2005 or the date the device is placed in service,
18 whichever is later.

19 (ii) If the electronic device is in service on or before March
20 1, 2005, July 1, 2006.

21 (jj) Violating section 11 of the identity theft protection
22 act, 2004 PA 452, MCL 445.71.

23 (kk) Advertising or conducting a live musical performance or
24 production in this state through the use of a false, deceptive, or
25 misleading affiliation, connection, or association between a
26 performing group and a recording group. This subdivision does not
27 apply if any of the following are met:

1 (i) The performing group is the authorized registrant and
2 owner of a federal service mark for that group registered in the
3 United States patent and trademark office.

4 (ii) At least 1 member of the performing group was a member of
5 the recording group and has a legal right to use the recording
6 group's name, by virtue of use or operation under the recording
7 group's name without having abandoned the name or affiliation with
8 the recording group.

9 (iii) The live musical performance or production is identified
10 in all advertising and promotion as a salute or tribute and the
11 name of the vocal or instrumental group performing is not so
12 closely related or similar to that used by the recording group that
13 it would tend to confuse or mislead the public.

14 (iv) The advertising does not relate to a live musical
15 performance or production taking place in this state.

16 (v) The performance or production is expressly authorized by
17 the recording group.

18 (ll) Violating section 3e, 3f, 3g, 3h, ~~or~~ 3i, **OR 3J**.

19 (2) The attorney general may promulgate rules to implement
20 this act under the administrative procedures act of 1969, 1969 PA
21 306, MCL 24.201 to 24.328. The rules shall not create an additional
22 unfair trade practice not already enumerated by this section.
23 However, to assure national uniformity, rules shall not be
24 promulgated to implement subsection (1)(dd) or (ee).

25 (3) Subsection (1)(hh) does not apply to either of the
26 following:

27 (a) Providing a service related to the administration of

1 health-related or dental-related benefits or services to patients,
2 including provider contracting or credentialing. This subdivision
3 is intended to limit the application of subsection (1)(hh) and is
4 not intended to imply that this act would otherwise apply to
5 health-related or dental-related benefits.

6 (b) An employer providing benefits or services to an employee.

7 **SEC. 3J. (1) SUBJECT TO SUBSECTION (3), A PERSON ENGAGED IN**
8 **THE CONDUCT OF TRADE OR COMMERCE SHALL NOT DO ANY OF THE FOLLOWING:**

9 (A) INCLUDE IN A CONTRACT OR PROPOSED CONTRACT FOR THE SALE OR
10 LEASE OF CONSUMER GOODS OR SERVICES A PROVISION THAT WAIVES THE
11 CONSUMER'S RIGHT TO MAKE A STATEMENT CONCERNING ANY OF THE
12 FOLLOWING:

13 (i) THE SELLER OR LESSOR.

14 (ii) EMPLOYEES OR AGENTS OF THE SELLER OR LESSOR.

15 (iii) THE CONSUMER GOODS OR SERVICES.

16 (B) THREATEN OR SEEK ENFORCEMENT OF A CONTRACT PROVISION
17 PROHIBITED UNDER SUBDIVISION (A).

18 (C) PENALIZE A CONSUMER FOR MAKING ANY STATEMENT PROTECTED
19 UNDER SUBDIVISION (A).

20 (2) A WAIVER PROVISION THAT VIOLATES SUBSECTION (1) IS
21 CONTRARY TO PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.

22 (3) THIS SECTION DOES NOT PROHIBIT OR LIMIT ANY OF THE
23 FOLLOWING:

24 (A) A PERSON THAT HOSTS ONLINE CONSUMER REVIEWS OR COMMENTS
25 FROM REMOVING A STATEMENT THAT IS OTHERWISE LAWFUL TO REMOVE.

26 (B) A PERSON FROM INCLUDING IN A CONTRACT OR A PROPOSED
27 CONTRACT FOR THE SALE OR LEASE OF CONSUMER GOODS OR SERVICES A

1 PROVISION PROHIBITING A CONSUMER FROM DISCLOSING PROPRIETARY
2 INFORMATION, TECHNIQUES, OR PROCESSES.

3 (C) A PERSON FROM BRINGING AN ACTION ALLEGING THAT A STATEMENT
4 MADE BY A CONSUMER IS DEFAMATORY.

5 (4) AS USED IN THIS SECTION:

6 (A) "CONSUMER" MEANS AN ACTUAL OR A PROSPECTIVE PURCHASER,
7 LESSEE, OR RECIPIENT OF CONSUMER GOODS OR SERVICES.

8 (B) "CONSUMER GOODS OR SERVICES" MEANS GOODS OR SERVICES THAT
9 ARE PRIMARILY FOR PERSONAL, HOUSEHOLD, OR FAMILY PURPOSES.

10 Enacting section 1. This amendatory act takes effect 90 days
11 after the date it is enacted into law.