

HOUSE BILL NO. 5109

October 15, 2019, Introduced by Reps. Pohutsky, Brixie, Hood, Kennedy, Chirkun, Stone, Rabhi, Sowerby, LaGrand, Liberati, Cherry, Ellison, Haadsma, Yancey, Tyrone Carter, Garrett, Garza, Hoadley, Bolden, Sabo, Robinson, Pagan, Manoogian, Brenda Carter, Hertel, Cynthia Johnson, Hope, Wittenberg, Shannon, Clemente and Love and referred to the Committee on Health Policy.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2018 PA 211, 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:



1 (a) Causing a probability of confusion or misunderstanding as
2 to the source, sponsorship, approval, or certification of goods or
3 services.

4 (b) Using deceptive representations or deceptive designations
5 of geographic origin in connection with goods or services.

6 (c) Representing that goods or services have sponsorship,
7 approval, characteristics, ingredients, uses, benefits, or
8 quantities that they do not have or that a person has sponsorship,
9 approval, status, affiliation, or connection that he or she does
10 not have.

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

13 (e) Representing that goods or services are of a particular
14 standard, quality, or grade, or that goods are of a particular
15 style or model, if they are of another.

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

18 (g) Advertising or representing goods or services with intent
19 not to dispose of those goods or services as advertised or
20 represented.

21 (h) Advertising goods or services with intent not to supply
22 reasonably expectable public demand, unless the advertisement
23 discloses a limitation of quantity in immediate conjunction with
24 the advertised goods or services.

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

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

29 (k) Representing to a party to whom goods or services are



1 supplied that the goods or services are being supplied in response
2 to a request made by or on behalf of the party, when they are not.

3 (l) Misrepresenting that because of some defect in a consumer's
4 home the health, safety, or lives of the consumer or his or her
5 family are in danger if the product or services are not purchased,
6 when in fact the defect does not exist or the product or services
7 would not remove the danger.

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

11 (n) Causing a probability of confusion or of misunderstanding
12 as to the legal rights, obligations, or remedies of a party to a
13 transaction.

14 (o) Causing a probability of confusion or of misunderstanding
15 as to the terms or conditions of credit if credit is extended in a
16 transaction.

17 (p) Disclaiming or limiting the implied warranty of
18 merchantability and fitness for use, unless a disclaimer is clearly
19 and conspicuously disclosed.

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

24 (r) Representing that a consumer will receive goods or
25 services "free" or "without charge", or using words of similar
26 import in the representation, without clearly and conspicuously
27 disclosing with equal prominence in immediate conjunction with the
28 use of those words the conditions, terms, or prerequisites to the
29 use or retention of the goods or 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 not
3 reasonably be known by the consumer.

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

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

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

25 (x) Taking advantage of the consumer's inability reasonably to
26 protect his or her interests by reason of disability, illiteracy,
27 or inability to understand the language of an agreement presented
28 by the other party to the transaction who knows or reasonably
29 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.

28 (ee) Representing that a product or package is degradable,
29 biodegradable, or photodegradable unless it can be substantiated by



evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

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

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

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

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

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

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

(hh) Except as provided in subsection (3), requiring a consumer to disclose his or her Social Security number as a condition to selling or leasing goods or providing a service to the



1 consumer, unless any of the following apply:

2 (i) The selling, leasing, providing, terms of payment, or
3 transaction includes an application for or an extension of credit
4 to the consumer.

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

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

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

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

26 (ii) If a credit card or debit card is used for payment in a
27 consumer transaction, issuing or delivering a receipt to the
28 consumer that displays any part of the expiration date of the card
29 or more than the last 4 digits of the consumer's account number.

1 This subdivision does not apply if the only receipt issued in a
2 consumer transaction is a credit card or debit card receipt on
3 which the account number or expiration date is handwritten,
4 mechanically imprinted, or photocopied. This subdivision applies to
5 any consumer transaction that occurs on or after March 1, 2005,
6 except that if a credit or debit card receipt is printed in a
7 consumer transaction by an electronic device, this subdivision
8 applies to any consumer transaction that occurs using that device
9 only after 1 of the following dates, as applicable:

10 (i) If the electronic device is placed in service after March
11 1, 2005, July 1, 2005 or the date the device is placed in service,
12 whichever is later.

13 (ii) If the electronic device is in service on or before March
14 1, 2005, July 1, 2006.

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

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

22 (i) The performing group is the authorized registrant and owner
23 of a federal service mark for that group registered in the United
24 States Patent and Trademark Office.

25 (ii) At least 1 member of the performing group was a member of
26 the recording group and has a legal right to use the recording
27 group's name, by virtue of use or operation under the recording
28 group's name without having abandoned the name or affiliation with
29 the recording group.



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

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

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

(ll) Violating section 3e, 3f, 3g, 3h, 3i, **3j**, or 3k.

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

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

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

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

Sec. 3j. (1) A manufacturer of prescription drugs that is engaged in the conduct of trade or commerce shall not charge an excessive price for a prescription drug or change the price for a prescription drug in a manner that results in an unconscionable

1 increase in the wholesale acquisition cost of that drug.

2 (2) The attorney general shall investigate any allegation he
3 or she receives from the drug consumer protection commission under
4 section 17748g of the public health code, 1978 PA 368, MCL
5 333.17748g, of either of the following:

6 (a) A manufacturer is charging an excessive price for a
7 prescription drug.

8 (b) There has been an unconscionable increase in a
9 manufacturer's wholesale acquisition cost for a prescription drug.

10 (3) If the attorney general brings a class action against a
11 manufacturer under section 10 for damages caused by a method, act,
12 or practice that violates subsection (1), the proceeds of a
13 settlement of that class action shall be deposited into a
14 restricted fund and used for the payment of refunds to consumers in
15 this state.

16 (4) As used in this section:

17 (a) "Drug consumer protection commission" means the drug
18 consumer protection commission created in section 17748g of the
19 public health code, 1978 PA 368, MCL 333.17748g.

20 (b) "Excessive price" means a price that is defined as
21 unlawful under section 3(1)(z).

22 (c) "Manufacturer" means that term as defined in section 17706
23 of the public health code, 1978 PA 368, MCL 333.17706.

24 (d) "Prescription drug" means that term as defined in section
25 17708 of the public health code, 1978 PA 368, MCL 333.17708.

26 (e) "Proceeds" means that term as defined in section 33 of
27 1846 RS 12, MCL 14.33.

28 (f) "Unconscionable increase" means an increase in the
29 wholesale acquisition cost of a prescription drug that meets any of



1 the following:

2 (i) Is excessive and not justified by the cost of producing the
3 drug or the cost of the appropriate expansion of access to the drug
4 to promote public health.

5 (ii) Results in consumers for whom the drug is prescribed
6 having no meaningful choice about whether to purchase the drug
7 because of the importance of the drug to their health and
8 insufficient competition in the market for the drug.

9 (g) "Wholesale acquisition cost" means that term as defined in
10 42 USC 1395w-3a.

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

13 Enacting section 2. This amendatory act does not take effect
14 unless Senate Bill No.____ or House Bill No.____ (request no.
15 01147'19) of the 100th Legislature is enacted into law.

