

SENATE BILL No. 236

February 17, 2009, Introduced by Senators PATTERSON, JANSEN, BASHAM and BIRKHOLZ and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1976 PA 331, entitled "Michigan consumer protection act," by amending sections 3 and 5 (MCL 445.903 and 445.905), section 3 as amended by 2008 PA 310 and section 5 as amended by 2006 PA 508.

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

1 of geographic origin in connection with goods or services.

2 (c) Representing that goods or services have sponsorship,
3 approval, characteristics, ingredients, uses, benefits, or
4 quantities that they do not have or that a person has sponsorship,
5 approval, status, affiliation, or connection that he or she does
6 not have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (r) Representing that a consumer will receive goods or
23 services "free" or "without charge", or using words of similar
24 import in the representation, without clearly and conspicuously
25 disclosing with equal prominence in immediate conjunction with the
26 use of those words the conditions, terms, or prerequisites to the
27 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

1 by the other party to the transaction who knows or reasonably
2 should know of the consumer's inability.

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

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

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

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

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

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

21 (i) Except as provided in subparagraph (ii), recycled,
22 recyclable, degradable, or is of a certain recycled content, in
23 violation of guides for the use of environmental marketing claims,
24 16 CFR part 260.

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

1 that the container holding device is degradable contrary to the
2 definition provided in that act.

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

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

1 service or other third party pick up a consumer's payment on a home
2 solicitation sale during the period the consumer is entitled to
3 cancel the sale.

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

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

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

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

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

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

1 to verify his or her identity. The person may inform the consumer
2 that verification through other means than use of the social
3 security number may cause a delay in providing the service or good
4 to the consumer.

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

18 (i) If the electronic device is placed in service after March
19 1, 2005, July 1, 2005 or the date the device is placed in service,
20 whichever is later.

21 (ii) If the electronic device is in service on or before March
22 1, 2005, July 1, 2006.

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

25 (kk) Advertising or conducting a live musical performance or
26 production in this state through the use of a false, deceptive, or
27 misleading affiliation, connection, or association between a

1 performing group and a recording group. This subdivision does not
2 apply if any of the following are met:

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

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

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

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

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

20 **(II) IF A CONSUMER NOTIFIES A CONSUMER REPORTING AGENCY THAT HE**
21 **OR SHE DISPUTES AN ERROR IN A CREDIT REPORT, FAILING TO INVESTIGATE**
22 **AND RESOLVE THAT DISPUTE WITHIN 30 DAYS AFTER RECEIVING WRITTEN**
23 **NOTICE OF THE DISPUTE. AS USED IN THIS SUBDIVISION:**

24 (i) "CONSUMER REPORT" MEANS THAT TERM AS DEFINED IN SECTION 603
25 OF THE FAIR CREDIT REPORTING ACT, 15 USC 1681A.

26 (ii) "CONSUMER REPORTING AGENCY" MEANS A PERSON THAT FOR
27 MONETARY FEES OR DUES, OR ON A COOPERATIVE NONPROFIT BASIS,

1 REGULARLY ENGAGES IN WHOLE OR IN PART IN THE PRACTICE OF ASSEMBLING
2 OR EVALUATING CONSUMER CREDIT INFORMATION OR OTHER INFORMATION ON
3 CONSUMERS FOR THE PURPOSE OF FURNISHING CONSUMER REPORTS TO THIRD
4 PARTIES, AND THAT USES ANY MEANS OR FACILITY OF INTERSTATE COMMERCE
5 FOR THE PURPOSE OF PREPARING OR FURNISHING CONSUMER REPORTS.

6 (MM) ~~(H)~~—Violating section 3e, 3f, 3g, or 3h.

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

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

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

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

22 Sec. 5. (1) If the attorney general has probable cause to
23 believe that a person has engaged, is engaging, or is about to
24 engage in a method, act, or practice that ~~is unlawful pursuant to~~
25 **VIOLATES** section 3, and gives ~~notice in accordance with~~ **AS PROVIDED**
26 **IN** this section, the attorney general may bring an action in
27 accordance with principles of equity to restrain the defendant by

1 temporary or permanent injunction from engaging in the method, act,
2 or practice. **ALL OF THE FOLLOWING APPLY TO AN ACTION UNDER THIS**
3 **SUBSECTION:**

4 (A) The action may be brought in the circuit court of the
5 county where the defendant is established or conducts business or,
6 if the defendant is not established in this state, in the circuit
7 court of Ingham county.

8 (B) The court may award costs to the prevailing party.

9 (C) **FOR A VIOLATION OF SECTION 3(1)(ll), THE COURT MAY ASSESS A**
10 **DEFENDANT A CIVIL FINE OF NOT MORE THAN \$10,000.00.**

11 (D) For persistent and knowing violation of section 3, the
12 court may assess the defendant a civil fine of not more than
13 \$25,000.00.

14 (E) For a violation of section 3(1)(kk), each performance or
15 production is a separate violation.

16 (2) Unless waived by the court on good cause shown not less
17 than 10 days before the commencement of an action under this
18 section, the attorney general shall notify the person of his or her
19 intended action and give the person an opportunity to cease and
20 desist from the alleged unlawful method, act, or practice or to
21 confer with the attorney general in person, by counsel, or by other
22 representative as to the proposed action before the proposed filing
23 date. The notice may be given the person by mail, postage prepaid,
24 to his or her usual place of business or, if the person does not
25 have a usual place of business, to his or her last known address,
26 or, if the person is a corporation, only to a resident agent who is
27 designated to receive service of process or to an officer of the

1 corporation.

2 (3) A prosecuting attorney or law enforcement officer
3 receiving notice of an alleged violation of this act, or of a
4 violation of an injunction, order, decree, or judgment issued in an
5 action brought pursuant to this section, or of an assurance under
6 this act, shall immediately forward written notice of the violation
7 together with any information he or she may have to the office of
8 the attorney general.

9 (4) A person who knowingly violates the terms of an
10 injunction, order, decree, or judgment issued pursuant to this
11 section shall forfeit and pay to the state a civil fine of not more
12 than \$5,000.00 for each violation. For the purposes of this
13 section, the court issuing an injunction, order, decree, or
14 judgment shall retain jurisdiction, the cause shall be continued,
15 and the attorney general may petition for recovery of a civil fine
16 as provided by this section.