

HOUSE BILL No. 5690

March 6, 2018, Introduced by Reps. Camilleri, Faris, Ellison, Elder, Geiss, Singh, Guerra, Greig, Moss, Sowerby, Clemente, Sneller, LaGrand, Neeley, Brinks, Zemke, Hertel, Durhal, Gay-Dagnogo, Wittenberg, Liberati, Byrd, Sabo, Chang, Cambensy, Hammoud, Green, Lasinski, Robinson, Santana, Chirkun, Garrett, Hoadley, Pagan, Yanez, Peterson, Cochran, Dianda, Yancey, Scott, Phelps, Howrylak, Kosowski and Jones 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 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

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
2 consumer's home the health, safety, or lives of the consumer or his
3 or her family are in danger if the product or services are not
4 purchased, when in fact the defect does not exist or the product or
5 services 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~~ **SOCIAL SECURITY**
6 number as a condition to selling or leasing goods or providing a
7 service to the 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~~ **SOCIAL SECURITY**
27 number but provides other information or documentation that can be

1 used by the person to verify his or her identity. The person may
2 inform the consumer that verification through other means than use
3 of the ~~social security~~ **SOCIAL SECURITY** number may cause a delay in
4 providing the service or good 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
4 owner of a federal service mark for that group registered in the
5 United 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) Violating section 3e, 3f, 3g, 3h, ~~or~~ 3i, **OR 3J**.

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

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

1 following:

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

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

9 **SEC. 3J. (1) A MANUFACTURER OF PRESCRIPTION DRUGS THAT IS**
10 **ENGAGED IN THE CONDUCT OF TRADE OR COMMERCE SHALL NOT CHARGE AN**
11 **EXCESSIVE PRICE FOR A PRESCRIPTION DRUG OR CHANGE THE PRICE FOR A**
12 **PRESCRIPTION DRUG IN A MANNER THAT RESULTS IN AN UNCONSCIONABLE**
13 **INCREASE IN THE WHOLESALE ACQUISITION COST OF THAT DRUG.**

14 (2) THE ATTORNEY GENERAL SHALL INVESTIGATE ANY ALLEGATION HE
15 OR SHE RECEIVES FROM THE DRUG CONSUMER PROTECTION COMMISSION UNDER
16 SECTION 17748G OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
17 333.17748G, OF EITHER OF THE FOLLOWING:

18 (A) A MANUFACTURER IS CHARGING AN EXCESSIVE PRICE FOR A
19 PRESCRIPTION DRUG.

20 (B) THERE HAS BEEN AN UNCONSCIONABLE INCREASE IN A
21 MANUFACTURER'S WHOLESALE ACQUISITION COST FOR A PRESCRIPTION DRUG.

22 (3) IF THE ATTORNEY GENERAL BRINGS A CLASS ACTION AGAINST A
23 MANUFACTURER UNDER SECTION 10 FOR DAMAGES CAUSED BY A METHOD, ACT,
24 OR PRACTICE THAT VIOLATES SUBSECTION (1), THE PROCEEDS OF A
25 SETTLEMENT OF THAT CLASS ACTION SHALL BE DEPOSITED INTO A
26 RESTRICTED FUND AND USED FOR THE PAYMENT OF REFUNDS TO CONSUMERS IN
27 THIS STATE.

1 (4) AS USED IN THIS SECTION:

2 (A) "DRUG CONSUMER PROTECTION COMMISSION" MEANS THE DRUG
3 CONSUMER PROTECTION COMMISSION CREATED IN SECTION 17748G OF THE
4 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17748G.

5 (B) "EXCESSIVE PRICE" MEANS A PRICE THAT IS DEFINED AS
6 UNLAWFUL UNDER SECTION 3(1)(Z).

7 (C) "MANUFACTURER" MEANS THAT TERM AS DEFINED IN SECTION 17706
8 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17706.

9 (D) "PRESCRIPTION DRUG" MEANS THAT TERM AS DEFINED IN SECTION
10 17708 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17708.

11 (E) "PROCEEDS" MEANS THAT TERM AS DEFINED IN SECTION 33 OF
12 1846 RS 12, MCL 14.33.

13 (F) "UNCONSCIONABLE INCREASE" MEANS AN INCREASE IN THE
14 WHOLESALE ACQUISITION COST OF A PRESCRIPTION DRUG THAT MEETS ANY OF
15 THE FOLLOWING:

16 (i) IS EXCESSIVE AND NOT JUSTIFIED BY THE COST OF PRODUCING
17 THE DRUG OR THE COST OF THE APPROPRIATE EXPANSION OF ACCESS TO THE
18 DRUG TO PROMOTE PUBLIC HEALTH.

19 (ii) RESULTS IN CONSUMERS FOR WHOM THE DRUG IS PRESCRIBED
20 HAVING NO MEANINGFUL CHOICE ABOUT WHETHER TO PURCHASE THE DRUG
21 BECAUSE OF THE IMPORTANCE OF THE DRUG TO THEIR HEALTH AND
22 INSUFFICIENT COMPETITION IN THE MARKET FOR THE DRUG.

23 (G) "WHOLESALE ACQUISITION COST" MEANS THAT TERM AS DEFINED IN
24 42 USC 1395W-3A.

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

27 Enacting section 2. This amendatory act does not take effect

- 1 unless Senate Bill No. _____ or House Bill No. 5691 (request no.
- 2 03947'17) of the 99th Legislature is enacted into law.