

HOUSE BILL NO. 4043

January 15, 2019, Introduced by Rep. Whiteford and referred to the Committee on Health Policy.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending sections 2 and 3 (MCL 445.902 and 445.903), section 2
as amended by 2018 PA 189 and section 3 as amended by 2018 PA 211.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. (1) As used in this act:
- 2 (a) Subject to subsection (2), "business opportunity" means
- 3 the sale or lease of any products, equipment, supplies, or services
- 4 for the purpose of enabling the purchaser to start a business, and



1 in which the seller represents 1 or more of the following:

2 (i) That the seller will provide locations or assist the
3 purchaser in finding locations for the use or operation of vending
4 machines, racks, display cases, or other similar devices, or
5 currency operated amusement machines or devices, on premises
6 neither owned nor leased by the purchaser or seller.

7 (ii) That the seller may, in the ordinary course of business,
8 purchase any or all products made, produced, fabricated, grown,
9 bred, or modified by the purchaser using whole or in part the
10 supplies, services, or chattels sold to the purchaser.

11 (iii) The seller guarantees that the purchaser will derive
12 income from the business opportunity that exceeds the price paid
13 for the business opportunity; or that the seller will refund all or
14 part of the price paid for the business opportunity, or repurchase
15 any of the products, equipment, supplies, or chattels supplied by
16 the seller, if the purchaser is unsatisfied with the business
17 opportunity. As used in this subparagraph, "guarantee" means a
18 written or oral representation that would cause a reasonable person
19 in the purchaser's position to believe that income is assured.

20 (iv) That the seller will provide a sales program or marketing
21 program which will enable the purchaser to derive income from the
22 business opportunity that exceeds the price paid for the business
23 opportunity. This subparagraph does not apply to the sale of a
24 marketing program made in conjunction with the licensing of a
25 federally registered trademark or a federally registered service
26 mark, or to the sale of a business opportunity for which the
27 purchaser pays less than \$500.00 in total for the business
28 opportunity from any time before the date of sale to any time
29 within 6 months after the date of sale.



(b) "Documentary material" includes the original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(c) "Goods" includes prescription drugs.

(d) ~~(e)~~—"Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(e) ~~(d)~~—"Person" means an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity.

(f) ~~(e)~~—"Recording group" means a vocal or instrumental group that meets both of the following:

(i) At least 1 of the members of the group has previously released a commercial sound recording under the group's name.

(ii) At least 1 of the members of the group has a legal right to use the group's name, by virtue of use or operation under the group's name without abandoning the name of or affiliation with the group.

(g) ~~(f)~~—"Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

(h) ~~(g)~~—"Trade or commerce" means the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible,



1 real, personal, or mixed, or any other article, or a business
2 opportunity. "Trade or commerce" does not include the purchase or
3 sale of a franchise, as defined in section 2 of the franchise
4 investment law, 1974 PA 269, MCL 445.1502, but does include a
5 pyramid promotional scheme as defined in section 2 of the pyramid
6 promotional scheme act, **2018 PA 186**, MCL 445.2582.

7 (2) As used in this act, "business opportunity" does not
8 include a sale of a franchise as defined in section 2 of the
9 franchise investment law, 1974 PA 269, MCL 445.1502, or the sale of
10 an ongoing business if the owner of the business sells and intends
11 to sell only that single business opportunity.

12 Sec. 3. (1) Unfair, unconscionable, or deceptive methods,
13 acts, or practices in the conduct of trade or commerce are unlawful
14 and are defined as follows:

15 (a) Causing a probability of confusion or misunderstanding as
16 to the source, sponsorship, approval, or certification of goods or
17 services.

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

20 (c) Representing that goods or services have sponsorship,
21 approval, characteristics, ingredients, uses, benefits, or
22 quantities that they do not have or that a person has sponsorship,
23 approval, status, affiliation, or connection that he or she does
24 not have.

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

27 (e) Representing that goods or services are of a particular
28 standard, quality, or grade, or that goods are of a particular
29 style or model, if they are of another.



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

3 (g) Advertising or representing goods or services with intent
4 not to dispose of those goods or services as advertised or
5 represented.

6 (h) Advertising goods or services with intent not to supply
7 reasonably expectable public demand, unless the advertisement
8 discloses a limitation of quantity in immediate conjunction with
9 the advertised goods or services.

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

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

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

17 (l) Misrepresenting that because of some defect in a consumer's
18 home the health, safety, or lives of the consumer or his or her
19 family are in danger if the product or services are not purchased,
20 when in fact the defect does not exist or the product or services
21 would not remove the danger.

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

25 (n) Causing a probability of confusion or of misunderstanding
26 as to the legal rights, obligations, or remedies of a party to a
27 transaction.

28 (o) Causing a probability of confusion or of misunderstanding
29 as to the terms or conditions of credit if credit is extended in a



1 transaction.

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

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

9 (r) Representing that a consumer will receive goods or
10 services "free" or "without charge", or using words of similar
11 import in the representation, without clearly and conspicuously
12 disclosing with equal prominence in immediate conjunction with the
13 use of those words the conditions, terms, or prerequisites to the
14 use or retention of the goods or services advertised.

15 (s) Failing to reveal a material fact, the omission of which
16 tends to mislead or deceive the consumer, and which fact could not
17 reasonably be known by the consumer.

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

22 (u) Failing, in a consumer transaction that is rescinded,
23 canceled, or otherwise terminated in accordance with the terms of
24 an agreement, advertisement, representation, or provision of law,
25 to promptly restore to the person or persons entitled to it a
26 deposit, down payment, or other payment, or in the case of property
27 traded in but not available, the greater of the agreed value or the
28 fair market value of the property, or to cancel within a specified
29 time or an otherwise reasonable time an acquired security interest.



1 (v) Taking or arranging for the consumer to sign an
2 acknowledgment, certificate, or other writing affirming acceptance,
3 delivery, compliance with a requirement of law, or other
4 performance, if the merchant knows or has reason to know that the
5 statement is not true.

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

10 (x) Taking advantage of the consumer's inability reasonably to
11 protect his or her interests by reason of disability, illiteracy,
12 or inability to understand the language of an agreement presented
13 by the other party to the transaction who knows or reasonably
14 should know of the consumer's inability.

15 (y) Gross discrepancies between the oral representations of
16 the seller and the written agreement covering the same transaction
17 or failure of the other party to the transaction to provide the
18 promised benefits.

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

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

23 (bb) Making a representation of fact or statement of fact
24 material to the transaction such that a person reasonably believes
25 the represented or suggested state of affairs to be other than it
26 actually is.

27 (cc) Failing to reveal facts that are material to the
28 transaction in light of representations of fact made in a positive
29 manner.



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

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

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

(ee) Representing that a product or package is degradable, 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



1 submit to a sales presentation.

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

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

12 (hh) Except as provided in subsection (3), requiring a
13 consumer to disclose his or her Social Security number as a
14 condition to selling or leasing goods or providing a service to the
15 consumer, unless any of the following apply:

16 (i) The selling, leasing, providing, terms of payment, or
17 transaction includes an application for or an extension of credit
18 to the consumer.

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

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

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

27 (v) The disclosure is requested from an individual to effect,
28 administer or enforce a specific telephonic or other electronic
29 consumer transaction that is not made in person but is requested or



1 authorized by the individual if it is to be used solely to confirm
2 the identity of the individual through a fraud prevention service
3 database. The consumer good or service shall still be provided to
4 the consumer upon verification of his or her identity if he or she
5 refuses to provide his or her Social Security number but provides
6 other information or documentation that can be used by the person
7 to verify his or her identity. The person may inform the consumer
8 that verification through other means than use of the Social
9 Security number may cause a delay in providing the service or good
10 to the consumer.

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

24 (i) If the electronic device is placed in service after March
25 1, 2005, July 1, 2005 or the date the device is placed in service,
26 whichever is later.

27 (ii) If the electronic device is in service on or before March
28 1, 2005, July 1, 2006.

29 (jj) Violating section 11 of the identity theft protection



1 act, 2004 PA 452, MCL 445.71.

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

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

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

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

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

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

24 **(ll) Selling, marketing, promoting, advertising, or otherwise**
25 **distributing any card or other purchasing mechanism or device that**
26 **is not insurance that purports to offer discounts or access to**
27 **discounts from pharmacies for prescription drug purchases unless**
28 **all of the following are met:**

29 **(i) The card or other purchasing mechanism or device expressly**



1 states in bold and prominent type, prominently placed, that the
2 discounts are not insurance.

3 (ii) The discounts are specifically authorized by an individual
4 and separate contract with each pharmacy listed in conjunction with
5 the card or other purchasing mechanism or device.

6 (iii) The discounts or access to discounts offered, or the range
7 of discounts or access to the range of discounts offered, are not
8 misleading, deceptive, or fraudulent.

9 (mm) Without his or her written consent, selling or otherwise
10 distributing to any third party any personal identifying
11 information about a consumer obtained in connection with the
12 distribution of a card or other purchasing mechanism or device
13 described in subdivision (ll).

14 (nn) ~~(ll)~~ Violating section 3e, 3f, 3g, 3h, 3i, or 3k.

15 (2) The attorney general may promulgate rules to implement
16 this act under the administrative procedures act of 1969, 1969 PA
17 306, MCL 24.201 to 24.328. The rules shall not create an additional
18 unfair trade practice not already enumerated by this section.
19 However, to assure national uniformity, rules shall not be
20 promulgated to implement subsection (1)(dd) or (ee).

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

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

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

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

