

Act No. 276
Public Acts of 1994
Approved by the Governor
July 10, 1994
Filed with the Secretary of State
July 11, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senator Bouchard

ENROLLED SENATE BILL No. 187

AN ACT to amend section 3 of Act No 331 of the Public Acts of 1976 entitled An act to prohibit certain methods acts and practices in trade or commerce to prescribe certain powers and duties to provide for certain remedies damages and penalties to provide for the promulgation of rules to provide for certain investigations and to prescribe penalties as amended by Act No 46 of the Public Acts of 1994 being section 445 903 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 3 of Act No 331 of the Public Acts of 1976 as amended by Act No 46 of the Public Acts of 1994 being section 445 903 of the Michigan Compiled Laws is amended to read as follows

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

(a) Causing a probability of confusion or misunderstanding as to the source sponsorship approval or certification of goods or services

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

(c) Representing that goods or services have sponsorship approval characteristics ingredients uses benefits or quantities which they do not have or that a person has sponsorship approval status affiliation or connection which he or she does not have

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Representing that a consumer will receive goods or services free without charge or words of similar import without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised

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

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

(u) Failing in a consumer transaction which is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law to promptly restore to the person or persons entitled thereto any deposit, down payment, or other payment or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property or to cancel within a specified time or an otherwise reasonable time an acquired security interest

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

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

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

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

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

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

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

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

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

(i) Except as provided in subparagraph (ii), recycled, recyclable, degradable, or is of a certain recycled content in violation of guidelines regarding environmental guides for the use of environmental marketing claims published by the federal trade commission, 16 C.F.R. part 260 P 36363 (August 13, 1992)

(ii) For container holding devices regulated pursuant to Act No. 145 of the Public Acts of 1988, being sections 445 581 to 445 584 of the Michigan Compiled Laws, 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

(2) The attorney general may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24 201 to 24 328 of the Michigan Compiled

I aws The rules shall not create any additional unfair trade practices not already enumerated by this section However to assure national uniformity rules shall not be promulgated to implement subsection (1)(dd) or (ee)

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor