

HOUSE BILL No. 6173

June 5, 2002, Introduced by Reps. Bernero, Spade, Gielegem, Daniels, Basham, Stallworth, Quarles, Rison, Garza, Zelenko, Lipsey and Lemmons and referred to the Committee on Commerce.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2000 PA 14.

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 unlaw-
3 ful and are defined as follows:

4 (a) Causing a probability of confusion or misunderstanding
5 as to the source, sponsorship, approval, or certification of
6 goods or services.

7 (b) Using deceptive representations or deceptive designa-
8 tions of geographic origin in connection with goods or services.

9 (c) Representing that goods or services have sponsorship,
10 approval, characteristics, ingredients, uses, benefits, or
11 quantities that they do not have or that a person has

1 sponsorship, approval, status, affiliation, or connection that he
2 or she does not have.

3 (d) Representing that goods are new if they are deterio-
4 rated, altered, reconditioned, used, or secondhand.

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

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

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

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

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

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

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

25 (l) Misrepresenting that because of some defect in a
26 consumer's home the health, safety, or lives of the consumer or
27 his or her family are in danger if the product or services are

1 not purchased, when in fact the defect does not exist or the
2 product or services would not remove the danger.

3 (m) Causing a probability of confusion or of misunderstand-
4 ing with respect to the authority of a salesperson, representa-
5 tive, or agent to negotiate the final terms of a transaction.

6 (n) Causing a probability of confusion or of misunderstand-
7 ing as to the legal rights, obligations, or remedies of a party
8 to a transaction.

9 (o) Causing a probability of confusion or of misunderstand-
10 ing as to the terms or conditions of credit if credit is extended
11 in a transaction.

12 (p) Disclaiming or limiting the implied warranty of mer-
13 chantability and fitness for use, unless a disclaimer is clearly
14 and conspicuously disclosed.

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

19 (r) Representing that a consumer will receive goods or serv-
20 ices "free" ~~—~~ OR "without charge", or USING words of similar
21 import IN THE REPRESENTATION, without clearly and conspicuously
22 disclosing with equal prominence in immediate conjunction with
23 the use of those words the conditions, terms, or prerequisites to
24 the use or retention of the goods or services advertised.

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

1 (t) Entering into a consumer transaction in which the
2 consumer waives or purports to waive a right, benefit, or immu-
3 nity provided by law, unless the waiver is clearly stated and the
4 consumer has specifically consented to it.

5 (u) Failing, in a consumer transaction that is rescinded,
6 canceled, or otherwise terminated in accordance with the terms of
7 an agreement, advertisement, representation, or provision of law,
8 to promptly restore to the person or persons entitled to it a
9 deposit, down payment, or other payment, or in the case of prop-
10 erty traded in but not available, the greater of the agreed value
11 or the fair market value of the property, or to cancel within a
12 specified time or an otherwise reasonable time an acquired secur-
13 ity interest.

14 (v) Taking or arranging for the consumer to sign an acknowl-
15 edgment, certificate, or other writing affirming acceptance,
16 delivery, compliance with a requirement of law, or other per-
17 formance, if the merchant knows or has reason to know that the
18 statement is not true.

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

23 (x) Taking advantage of the consumer's inability reasonably
24 to protect his or her interests by reason of disability, illiter-
25 acy, or inability to understand the language of an agreement
26 presented by the other party to the transaction who knows or
27 reasonably 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 transac-
3 tion or failure of the other party to the transaction to provide
4 the promised benefits.

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

7 (aa) Causing coercion and duress as the result of the time
8 and 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
11 believes the represented or suggested state of affairs to be
12 other than it actually is.

13 (cc) Failing to reveal facts that are material to the trans-
14 action 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
18 is 1 or more of the following:

19 (i) Except as provided in subparagraph (ii), recycled, recy-
20 clable, degradable, or is of a certain recycled content, in vio-
21 lation of guides for the use of environmental marketing claims,
22 ~~published by the federal trade commission, 57 F.R. p 36363~~
23 ~~(August 13, 1992)~~ 16 C.F.R. PART 260.

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

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

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

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

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

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

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

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

26 (gg) Having an independent courier service or other third
27 party pick up a consumer's payment on a home solicitation sale

1 during the period the consumer is entitled to cancel the sale
2 under 1971 PA 227, MCL 445.111 to 445.117.

3 (HH) FOR A PERSON ENGAGED IN THE RETAIL SALE OF GOODS, DOING
4 ANY OF THE FOLLOWING IN CONNECTION WITH A GIFT CERTIFICATE FOR
5 RETAIL GOODS:

6 (i) ISSUING A GIFT CERTIFICATE TO A CONSUMER THAT EXPIRES
7 WITHIN A PERIOD OF LESS THAN 1 YEAR.

8 (ii) FAILING TO HONOR A GIFT CERTIFICATE POSSESSED BY A CON-
9 SUMER THAT WAS ISSUED WITHIN 1 YEAR OR THE TIME PERIOD SPECIFIED
10 IN THE GIFT CERTIFICATE, WHICHEVER IS GREATER.

11 (iii) ISSUING A GIFT CERTIFICATE TO A CONSUMER ON OR AFTER
12 THE DATE OF FILING OF A BANKRUPTCY PETITION BY THE ISSUER OR THE
13 CREDITORS OF THE ISSUER.

14 (iv) ISSUING A GIFT CERTIFICATE TO A CONSUMER AFTER THE
15 ISSUER HAS DECIDED TO GO OUT OF BUSINESS, OR KNOWS IT IS LIKELY
16 THAT THE ISSUER WILL GO OUT OF BUSINESS, WITHIN 1 YEAR OR THE
17 TIME PERIOD SPECIFIED IN THE GIFT CERTIFICATE, WHICHEVER IS
18 GREATER.

19 (II) FOR A PERSON WHO ACQUIRES ALL OR SUBSTANTIALLY ALL OF
20 THE ASSETS LOCATED IN THIS STATE OF A PERSON ENGAGED IN THE
21 RETAIL SALE OF GOODS AND WHO ENGAGES IN THE RETAIL SALE OF GOODS
22 IN THIS STATE, FAILING TO HONOR AN UNEXPIRED GIFT CERTIFICATE FOR
23 RETAIL GOODS ISSUED BY THE ASSET TRANSFEROR AND TENDERED TO THE
24 PERSON BY A CONSUMER.

25 (2) The attorney general may promulgate rules to implement
26 this act under the administrative procedures act of 1969, 1969
27 PA 306, MCL 24.201 to 24.328. The rules shall not create an

1 additional unfair trade practice not already enumerated by this
2 section. However, to assure national uniformity, rules shall not
3 be promulgated to implement subsection (1)(dd) or (ee).