

# HOUSE BILL No. 4188

February 11, 2003, Introduced by Reps. Shulman, Meyer, Shaffer, Nofs, Hoogendyk, Stewart, Tabor, Vander Veen, Woronchak, Hager, Shackleton, Woodward, Anderson, Emmons, Middaugh, Gleason, Stahl, Jamnick, DeRoche, DeRossett, Walker, Murphy, Brandenburg, Farhat, Amos and Taub and referred to the Committee on Energy and Technology.

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending section 3 (MCL 445.903), as amended by 2002 PA 613,  
and by adding section 3e.

**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  
3 unlawful 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  
6 or services.

7       (b) Using deceptive representations or deceptive designations  
8 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

1 quantities that they do not have or that a person has  
2 sponsorship, approval, status, affiliation, or connection that he  
3 or she does not have.

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

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

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

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

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

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

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

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

26 (l) Misrepresenting that because of some defect in a  
27 consumer's home the health, safety, or lives of the consumer or

1 his or her family are in danger if the product or services are  
2 not purchased, when in fact the defect does not exist or the  
3 product or services would not remove the danger.

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

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

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

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

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

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

26 (s) Failing to reveal a material fact, the omission of which  
27 tends to mislead or deceive the consumer, and which fact could

1 not reasonably be known by the consumer.

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

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

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

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

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

1 knows or reasonably should know of the consumer's inability.

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

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

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

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

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

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

20 (i) Except as provided in subparagraph (ii), recycled,  
21 recyclable, degradable, or is of a certain recycled content, in  
22 violation of guides for the use of environmental marketing  
23 claims, 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  
27 manufacturer that the container holding device is degradable

1 contrary to the definition provided in that act.

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

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

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

4 **(hh) Violating section 3e.**

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

11 **Sec. 3e. (1) A person shall not initiate the transmission,**  
12 **or conspire with another to initiate the transmission, of a**  
13 **commercial electronic mail message, either from a computer**  
14 **located in this state or to an electronic mail address that the**  
15 **sender knows or has reason to know is held by a resident of this**  
16 **state, that meets either of the following:**

17 (a) Uses a third party's internet domain name without  
18 permission of the third party, or otherwise misrepresents or  
19 obscures any information identifying the point of origin or the  
20 transmission path of a commercial electronic mail message.

21 (b) Contains false or misleading information in the subject  
22 line.

23 (2) A person shall not assist in the transmission of a  
24 commercial electronic mail message if the person knows or  
25 consciously avoids knowing that the initiator of the commercial  
26 electronic mail message is engaged or intends to engage in an act  
27 or practice that violates subsection (1) or any other provision

1 of this act.

2 (3) For purposes of this section, a person is considered to  
3 know that the intended recipient of a commercial electronic mail  
4 message is a resident of this state if that information is  
5 available, upon request, from the registrant of the internet  
6 domain name contained in the recipient's electronic mail  
7 address.

8 (4) An interactive computer service may, upon its own  
9 initiative, block the receipt or transmission through its service  
10 of a commercial electronic mail message that it reasonably  
11 believes is or will be sent in violation of this section.

12 (5) An interactive computer service may not be held liable  
13 for any action voluntarily taken in good faith to block the  
14 receipt or transmission through its service of a commercial  
15 electronic mail message that it reasonably believes is or will be  
16 sent in violation of this section.

17 (6) As used in this section:

18 (a) "Assist in the transmission" of a commercial electronic  
19 mail message means to act to provide substantial assistance or  
20 support that enables another person to formulate, compose, send,  
21 originate, initiate, or transmit a commercial electronic mail  
22 message.

23 (b) "Commercial electronic mail message" means an electronic  
24 mail message sent for the purpose of promoting the sale or lease  
25 of real property, goods, or services. The term does not include  
26 an electronic mail message to which an interactive computer  
27 service provider has attached an advertisement in exchange for

1 free use of an electronic mail account if the sender has agreed  
2 to that arrangement.

3 (c) "Electronic mail address" means a destination, commonly  
4 expressed as a string of characters, to which electronic mail may  
5 be sent or delivered.

6 (d) "Initiate the transmission" of a commercial electronic  
7 mail message means the action by the original sender to send,  
8 originate, initiate, or transmit a commercial electronic mail  
9 message. The term does not include an action by an intervening  
10 interactive computer service that may handle or retransmit the  
11 message, unless the intervening interactive computer service  
12 assists in the transmission of an electronic mail message when it  
13 knows or consciously avoids knowing that the person initiating  
14 the transmission is engaged or intends to engage in an act or  
15 practice that violates subsection (1) or another provision of  
16 this act.

17 (e) "Interactive computer service" means an information  
18 service, system, or access software provider that provides or  
19 enables computer access by multiple users to a computer server,  
20 including, but not limited to, an information service or system  
21 that provides access to the internet, and an information system  
22 operated or service offered by a library or educational  
23 institution.

24 (f) "Internet domain name" means a globally unique,  
25 hierarchical reference to an internet host or service, assigned  
26 through centralized internet naming authorities, comprising a  
27 series of character strings separated by periods, with the

1 right-most string specifying the top of the hierarchy.