

# HOUSE BILL No. 4501

April 1, 2003, Introduced by Reps. Law, Hopgood, Wojno, Murphy, Elkins, Meisner, Anderson, Sheltroun, Zelenko, Kolb, Jamnick, Spade, Plakas, Tobocman, Smith, Brown, Accavitti, Gielegem, Cheeks, Minore, Reeves, Condino, Clack, Vagnozzi, Dennis, Farrah, Sak, O'Neil, Byrum, Hardman, Woodward, Bieda, Whitmer, Waters and McConico 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 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

HOUSE BILL No. 4501

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) During an emergency period and in an emergency**  
12 **area, a person shall not charge an amount for gasoline that**  
13 **exceeds the average price at which gasoline was readily**  
14 **obtainable within the emergency area during the 7-day period**  
15 **preceding the emergency period. This subsection does not apply**  
16 **to any price increases attributable to increased replacement**  
17 **costs, taxes, transportation costs, or other costs.**

18 (2) The attorney general shall investigate any complaint  
19 alleging a violation of subsection (1). The attorney general  
20 shall make available to the public statistical information  
21 regarding the complaints.

22 (3) As used in this section:

23 (a) "Emergency area" means an area of this state subject to a  
24 state of emergency declared by the governor under the emergency  
25 management act, 1976 PA 390, MCL 30.401 to 30.421, or under 1945  
26 PA 302, MCL 10.31 to 10.33, or a state of energy emergency  
27 declared by the governor under 1982 PA 191, MCL 10.81 to 10.89.

1           (b) "Emergency period" means the period during which a state  
2 of emergency declared by the governor is effective under the  
3 emergency management act, 1976 PA 390, MCL 30.401 to 30.421, or  
4 under 1945 PA 302, MCL 10.31 to 10.33, or a state of energy  
5 emergency declared by the governor under 1982 PA 191, MCL 10.81  
6 to 10.89, is effective. The term also includes the 24-hour  
7 period preceding the declaration of a state of emergency or  
8 energy emergency.

9           (c) "Gasoline" means that term as defined in section 2 of the  
10 motor fuels quality act, 1984 PA 44, MCL 290.642.