

HOUSE BILL No. 5867

June 7, 1990, Introduced by Rep. Ciaramitaro and referred to the Committee on Consumers.

A bill to require certain entities to deliver merchandise or begin service and repair within a specified time period under certain circumstances; to create certain evidentiary presumptions and defenses; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Consumer" means a purchaser of merchandise from a
3 retailer or a customer or potential customer of a utility.

4 (b) "Delivery period" means a specific 4-hour time period
5 within which a retailer or its agent shall deliver the merchan-
6 dise to the consumer.

7 (c) "Retailer" means a retail merchant with 25 or more
8 employees.

1 (d) "Service period" means a specific 4-hour time period
2 within which a utility shall begin the service connection or
3 repair.

4 (e) "Utility" means a public utility or a cable television
5 company.

6 Sec. 2. (1) If a consumer and retailer contract for the
7 sale of merchandise that the retailer or its agent is to deliver
8 to the consumer, and the consumer and retailer agree that the
9 consumer's presence is required at delivery, the retailer shall
10 specify the delivery period either at the time of sale or not
11 less than 1 week before delivery.

12 (2) The retailer or its agent shall deliver the merchandise
13 to the consumer within the delivery period.

14 (3) Except as otherwise provided in this act, if the
15 retailer or its agent does not deliver the merchandise to the
16 consumer within the delivery period, except for delays caused by
17 unforeseen or unavoidable occurrences beyond the control of the
18 retailer or its agent, the consumer may file an action in the
19 small claims division of the district court against the retailer
20 for the consumer's lost wages, actual expenses, or other actual
21 damages, not exceeding a total amount of \$500.00.

22 Sec. 3. (1) A utility shall inform a consumer of his or her
23 right to have a service connection or repair begun within a serv-
24 ice period by offering the service period when a consumer
25 requests a service connection or repair that requires the
26 consumer's presence.

1 (2) If a consumer contracts with a utility for a service
2 connection or repair, and the consumer and utility agree that the
3 consumer's presence is required, the utility shall specify a
4 service period if the consumer requests.

5 (3) The utility shall begin the service connection or repair
6 within the service period.

7 (4) Except as otherwise provided in this act, if the utility
8 does not begin the service connection or repair within the serv-
9 ice period, except for delays caused by unforeseen or unavoidable
10 occurrences beyond the utility's control, the consumer may file
11 an action in the small claims division of the district court
12 against the utility for lost wages, actual expenses, or other
13 actual damages, not exceeding a total amount of \$500.00.

14 Sec. 4. (1) A consumer shall not file an action under
15 section 2 if the consumer was not present during the delivery
16 period when the retailer or its agent attempted to deliver the
17 merchandise or diligently attempted to notify the consumer of its
18 inability to deliver because of delays caused by unforeseen or
19 unavoidable occurrences beyond its control.

20 (2) A consumer shall not file an action under section 3 if
21 the consumer was not present during the service period when the
22 utility attempted to begin the service connection or repair or
23 diligently attempted to notify the consumer of its inability to
24 begin because of delays caused by unforeseen or unavoidable
25 occurrences beyond its control.

26 Sec. 5. The logs and other business records kept by the
27 retailer or its agent or the utility in the ordinary course of

1 its business shall be prima facie evidence of the following in an
2 action under section 2 or 3:

3 (a) The delivery or service period.

4 (b) The time when delivery of the merchandise or beginning
5 the service connection or repair was attempted.

6 (c) A diligent attempt to notify the consumer of delays
7 caused by unforeseen or unavoidable occurrences beyond the con-
8 trol of the retailer or its agent or the utility.

9 Sec. 6. It is a defense to an action under section 2 or 3
10 if the retailer or its agent or the utility diligently attempted
11 to notify the consumer before the delivery or service period of
12 delay caused by unforeseen or unavoidable occurrences beyond the
13 control of the retailer or its agent or the utility.

14 Sec. 7. (1) If a consumer pursues a remedy for delay in
15 beginning a service connection or repair provided by local ordi-
16 nance or the utility's franchise or tariffs, the consumer shall
17 not file an action under section 3.

18 (2) If a consumer pursues a remedy against the utility under
19 section 3, the franchising or state or local regulating authority
20 shall not impose any additional sanction against the utility for
21 the same incident.