

# HOUSE BILL No. 5071

July 27, 2005, Introduced by Reps. Donigan, Miller, Vagnozzi, Sak and Kathleen Law and referred to the Committee on Commerce.

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending sections 2 and 3 (MCL 445.902 and 445.903), section 2  
as amended by 1984 PA 91 and section 3 as amended by 2004 PA 462.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. **(1)** As used in this act:

2           (a) ~~"Business"~~ **SUBJECT TO SUBSECTION (2), "BUSINESS**  
3 opportunity" means the sale or lease of any products, equipment,  
4 supplies, or services for the purpose of enabling the purchaser to  
5 start a business, and in which the seller represents 1 or more of  
6 the following:

1           (i) That the seller will provide locations or assist the  
2 purchaser in finding locations for the use or operation of vending  
3 machines, racks, display cases, or other similar devices, or  
4 currency operated amusement machines or devices, on premises  
5 neither owned nor leased by the purchaser or seller.

6           (ii) That the seller may, in the ordinary course of business,  
7 purchase any or all products made, produced, fabricated, grown,  
8 bred, or modified by the purchaser using whole or in part the  
9 supplies, services, or chattels sold to the purchaser.

10           (iii) The seller guarantees that the purchaser will derive  
11 income from the business opportunity ~~which~~ **THAT** exceeds the price  
12 paid for the business opportunity; or that the seller will refund  
13 all or part of the price paid for the business opportunity, or  
14 repurchase any of the products, equipment, supplies, or chattels  
15 supplied by the seller, if the purchaser is unsatisfied with the  
16 business opportunity. As used in this subparagraph, "guarantee"  
17 means a written or oral representation that would cause a  
18 reasonable person in the purchaser's position to believe that  
19 income is assured.

20           (iv) That the seller will provide a sales program or marketing  
21 program ~~which~~ **THAT** will enable the purchaser to derive income  
22 from the business opportunity ~~which~~ **THAT** exceeds the price paid  
23 for the business opportunity. This subparagraph does not apply to  
24 the sale of a marketing program made in conjunction with the  
25 licensing of a federally registered trademark or a federally  
26 registered service mark, or to the sale of a business opportunity  
27 for which the purchaser pays less than \$500.00 in total for the

1 business opportunity from anytime before the date of sale to  
2 anytime within 6 months after the date of sale.

3 ~~Business opportunity, as used in this act, does not include~~  
4 ~~the sale of a franchise as defined in section 2 of Act No. 269 of~~  
5 ~~the Public Acts of 1974, being section 445.1502 of the Michigan~~  
6 ~~Compiled Laws, or the sale of an ongoing business if the owner of~~  
7 ~~that business sells and intends to sell only that single business~~  
8 ~~opportunity.~~

9 (b) "Documentary material" includes the original or copy of a  
10 book, record, report, memorandum, paper, communication, tabulation,  
11 map, chart, photograph, mechanical transcription, or other tangible  
12 document or recording, wherever situated.

13 (C) **"GOODS" INCLUDES A LEGAL PHARMACEUTICAL PRODUCT.**

14 (D) ~~(e)~~ "Person" means a natural person, corporation,  
15 **LIMITED LIABILITY COMPANY**, trust, partnership, incorporated or  
16 unincorporated association, or other legal entity.

17 (E) ~~(d)~~ "Trade or commerce" means the conduct of a business  
18 providing goods, property, or service primarily for personal,  
19 family, or household purposes and includes the advertising,  
20 solicitation, offering for sale or rent, sale, lease, or  
21 distribution of a service or property, tangible or intangible,  
22 real, personal, or mixed, or any other article, or a business  
23 opportunity. "Trade or commerce" does not include the purchase or  
24 sale of a franchise, but does include pyramid and chain promotions,  
25 as "franchise", "pyramid", and "chain promotions" are defined in  
26 ~~Act No. 269 of the Public Acts of 1974, being sections 445.1501 to~~  
27 ~~445.1545 of the Michigan Compiled Laws~~ **THE FRANCHISE INVESTMENT**

1 LAW, 1974 PA 269, MCL 445.1501 TO 445.1546.

2 (2) AS USED IN THIS ACT, "BUSINESS OPPORTUNITY" DOES NOT  
3 INCLUDE THE SALE OF A FRANCHISE AS DEFINED IN SECTION 2 OF THE  
4 FRANCHISE INVESTMENT LAW, 1974 PA 269, MCL 445.1502, OR THE SALE OF  
5 AN ONGOING BUSINESS IF THE OWNER OF THAT BUSINESS SELLS AND INTENDS  
6 TO SELL ONLY THAT SINGLE BUSINESS OPPORTUNITY.

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

10 (a) Causing a probability of confusion or misunderstanding as  
11 to the source, sponsorship, approval, or certification of goods or  
12 services.

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

15 (c) Representing that goods or services have sponsorship,  
16 approval, characteristics, ingredients, uses, benefits, or  
17 quantities that they do not have or that a person has sponsorship,  
18 approval, status, affiliation, or connection that he or she does  
19 not have.

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

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

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

27 (g) Advertising or representing goods or services with intent

1 not to dispose of those goods or services as advertised or  
2 represented.

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

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

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

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

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

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

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

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

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

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

8           (r) Representing that a consumer will receive goods or  
9 services "free" or "without charge", or using words of similar  
10 import in the representation, without clearly and conspicuously  
11 disclosing with equal prominence in immediate conjunction with the  
12 use of those words the conditions, terms, or prerequisites to the  
13 use or retention of the goods or services advertised.

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

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

21           (u) Failing, in a consumer transaction that is rescinded,  
22 canceled, or otherwise terminated in accordance with the terms of  
23 an agreement, advertisement, representation, or provision of law,  
24 to promptly restore to the person or persons entitled to it a  
25 deposit, down payment, or other payment, or in the case of property  
26 traded in but not available, the greater of the agreed value or the  
27 fair market value of the property, or to cancel within a specified

1 time or an otherwise reasonable time an acquired security interest.

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

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

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

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

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

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

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

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

4           (dd) Subject to subdivision (ee), representations by the  
5 manufacturer of a product or package that the product or package is  
6 1 or more of the following:

7           (i) Except as provided in subparagraph (ii), recycled,  
8 recyclable, degradable, or is of a certain recycled content, in  
9 violation of guides for the use of environmental marketing claims,  
10 16 CFR part 260.

11           (ii) For container holding devices regulated under part 163 of  
12 the natural resources and environmental protection act, 1994 PA  
13 451, MCL 324.16301 to 324.16303, representations by a manufacturer  
14 that the container holding device is degradable contrary to the  
15 definition provided in that act.

16           (ee) Representing that a product or package is degradable,  
17 biodegradable, or photodegradable unless it can be substantiated by  
18 evidence that the product or package will completely decompose into  
19 elements found in nature within a reasonably short period of time  
20 after consumers use the product and dispose of the product or the  
21 package in a landfill or composting facility, as appropriate.

22           (ff) Offering a consumer a prize if in order to claim the  
23 prize the consumer is required to submit to a sales presentation,  
24 unless a written disclosure is given to the consumer at the time  
25 the consumer is notified of the prize and the written disclosure  
26 meets all of the following requirements:

27           (i) Is written or printed in a bold type that is not smaller

1 than 10-point.

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

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

7 (iv) Fully describes the product, real estate, investment,  
8 service, membership, or other item that is or will be offered for  
9 sale, including the price of the least expensive item and the most  
10 expensive item.

11 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in  
12 connection with a home solicitation sale or telephone solicitation,  
13 including, but not limited to, having an independent courier  
14 service or other third party pick up a consumer's payment on a home  
15 solicitation sale during the period the consumer is entitled to  
16 cancel the sale.

17 (hh) Except as provided in subsection (3), requiring a  
18 consumer to disclose his or her social security number as a  
19 condition to selling or leasing goods or providing a service to the  
20 consumer, unless any of the following apply:

21 (i) The selling, leasing, providing, terms of payment, or  
22 transaction includes an application for or an extension of credit  
23 to the consumer.

24 (ii) The disclosure is required or authorized by applicable  
25 state or federal statute, rule, or regulation.

26 (iii) The disclosure is requested by a person to obtain a  
27 consumer report for a permissible purpose described in section 604

1 of the fair credit reporting act, 15 USC 1681b.

2 (iv) The disclosure is requested by a landlord, lessor, or  
3 property manager to obtain a background check of the individual in  
4 conjunction with the rent or leasing of real property.

5 (v) The disclosure is requested from an individual to effect,  
6 administer or enforce a specific telephonic or other electronic  
7 consumer transaction that is not made in person but is requested or  
8 authorized by the individual if it is to be used solely to confirm  
9 the identity of the individual through a fraud prevention service  
10 database. The consumer good or service shall still be provided to  
11 the consumer upon verification of his or her identity if he or she  
12 refuses to provide his or her social security number but provides  
13 other information or documentation that can be used by the person  
14 to verify his or her identity. The person may inform the consumer  
15 that verification through other means than use of the social  
16 security number may cause a delay in providing the service or good  
17 to the consumer.

18 (ii) If a credit card or debit card is used for payment in a  
19 consumer transaction, issuing or delivering a receipt to the  
20 consumer that displays any part of the expiration date of the card  
21 or more than the last 4 digits of the consumer's account number.  
22 This subdivision does not apply if the only receipt issued in a  
23 consumer transaction is a credit card or debit card receipt on  
24 which the account number or expiration date is handwritten,  
25 mechanically imprinted, or photocopied. This subdivision applies to  
26 any consumer transaction that occurs on or after March 1, 2005,  
27 except that if a credit or debit card receipt is printed in a

1 consumer transaction by an electronic device, this subdivision  
2 applies to any consumer transaction that occurs using that device  
3 only after 1 of the following dates, as applicable:

4 (i) If the electronic device is placed in service after March  
5 1, 2005, July 1, 2005 or the date the device is placed in service,  
6 whichever is later.

7 (ii) If the electronic device is in service on or before March  
8 1, 2005, July 1, 2006.

9 (jj) Violating section 11 of the identity theft protection  
10 act.

11 **(KK) FAILING TO ACCURATELY REPRESENT THE RISKS INVOLVED IN THE**  
12 **INTENDED USE OF A PRESCRIPTION OR OVER-THE-COUNTER DRUG OR**  
13 **MEDICATION OR AN HERBAL PRODUCT, DIETARY SUPPLEMENT, OR BOTANICAL**  
14 **EXTRACT.**

15 (2) The attorney general may promulgate rules to implement  
16 this act under the administrative procedures act of 1969, 1969 PA  
17 306, MCL 24.201 to 24.328. The rules shall not create an additional  
18 unfair trade practice not already enumerated by this section.  
19 However, to assure national uniformity, rules shall not be  
20 promulgated to implement subsection (1)(dd) or (ee).

21 (3) Subsection (1)(hh) does not apply to either of the  
22 following:

23 (a) Providing a service related to the administration of  
24 health-related or dental-related benefits or services to patients,  
25 including provider contracting or credentialing. This subdivision  
26 is intended to limit the application of subsection (1)(hh) and is  
27 not intended to imply that this act would otherwise apply to

1 health-related or dental-related benefits.

2 (b) An employer providing benefits or services to an employee.