

SENATE BILL No. 1504

September 16, 2008, Introduced by Senators SCHAUER, ANDERSON, CLARK-COLEMAN, BARCIA, OLSHOVE, SWITALSKI, SCOTT and JACOBS and referred to the Committee on Judiciary.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending sections 3, 7, and 8 (MCL 445.903, 445.907, and
445.908), section 3 as amended by 2006 PA 508.

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 unlawful
3 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 or
6 services.

7 (b) Using deceptive representations or deceptive designations

1 of geographic origin in connection with goods or services.

2 (c) Representing that goods or services have sponsorship,
3 approval, characteristics, ingredients, uses, benefits, or
4 quantities that they do not have or that a person has sponsorship,
5 approval, status, affiliation, or connection that he or she does
6 not have.

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

9 (e) Representing that goods or services are of a particular
10 standard, quality, or grade, or that goods are of a particular
11 style or model, if they are of another.

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

14 (g) Advertising or representing goods or services with intent
15 not to dispose of those goods or services as advertised or
16 represented.

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

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

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

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

1 (l) Misrepresenting that because of some defect in a consumer's
2 home the health, safety, or lives of the consumer or his or her
3 family are in danger if the product or services are not purchased,
4 when in fact the defect does not exist or the product or services
5 would not remove the danger.

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

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

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

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

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

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

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

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

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

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

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

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

1 by the other party to the transaction who knows or reasonably
2 should know of the consumer's inability.

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

7 (z) Charging the consumer a price that is grossly in excess of
8 the price at which similar property or services are sold. **IT IS**
9 **PRIMA FACIE EVIDENCE THAT A PRICE VIOLATES THIS SUBDIVISION IF**
10 **EITHER OF THE FOLLOWING APPLIES:**

11 (i) **THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY BETWEEN THE**
12 **PRICE OF THE PROPERTY OR SERVICE THAT IS THE SUBJECT OF THE**
13 **TRANSACTION AND THE AVERAGE PRICE AT WHICH THAT PROPERTY OR SERVICE**
14 **WAS RENTED, LEASED, SOLD, OR PROVIDED IN THE USUAL COURSE OF**
15 **BUSINESS DURING THE PRECEDING 30 DAYS, AND THE INCREASE IN THE**
16 **AMOUNT CHARGED IS NOT ATTRIBUTABLE TO ADDITIONAL COSTS INCURRED IN**
17 **CONNECTION WITH THE RENTAL, LEASE, OR SALE OF THE PROPERTY OR WITH**
18 **PROVIDING THE SERVICE OR ATTRIBUTABLE TO NATIONAL OR INTERNATIONAL**
19 **MARKET TRENDS.**

20 (ii) **THE AMOUNT CHARGED GROSSLY EXCEEDS THE AVERAGE PRICE AT**
21 **WHICH THE SAME OR A SIMILAR PROPERTY OR SERVICE WAS READILY**
22 **OBTAINABLE IN THE TRADE AREA DURING THE PRECEDING 30 DAYS, AND THE**
23 **INCREASE IN THE AMOUNT CHARGED IS NOT ATTRIBUTABLE TO ADDITIONAL**
24 **COSTS INCURRED IN CONNECTION WITH THE RENTAL, LEASE, OR SALE OF THE**
25 **PROPERTY OR WITH PROVIDING THE SERVICE OR ATTRIBUTABLE TO NATIONAL**
26 **OR INTERNATIONAL MARKET TRENDS.**

27 (aa) Causing coercion and duress as the result of the time and

1 nature of a sales presentation.

2 (bb) Making a representation of fact or statement of fact
3 material to the transaction such that a person reasonably believes
4 the represented or suggested state of affairs to be other than it
5 actually is.

6 (cc) Failing to reveal facts that are material to the
7 transaction in light of representations of fact made in a positive
8 manner.

9 (dd) Subject to subdivision (ee), representations by the
10 manufacturer of a product or package that the product or package is
11 1 or more of the following:

12 (i) Except as provided in subparagraph (ii), recycled,
13 recyclable, degradable, or is of a certain recycled content, in
14 violation of guides for the use of environmental marketing claims,
15 16 CFR part 260.

16 (ii) For container holding devices regulated under part 163 of
17 the natural resources and environmental protection act, 1994 PA
18 451, MCL 324.16301 to 324.16303, representations by a manufacturer
19 that the container holding device is degradable contrary to the
20 definition provided in that act.

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

27 (ff) Offering a consumer a prize if in order to claim the

1 prize the consumer is required to submit to a sales presentation,
2 unless a written disclosure is given to the consumer at the time
3 the consumer is notified of the prize and the written disclosure
4 meets all of the following requirements:

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

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

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

12 (iv) Fully describes the product, real estate, investment,
13 service, membership, or other item that is or will be offered for
14 sale, including the price of the least expensive item and the most
15 expensive item.

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

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

26 (i) The selling, leasing, providing, terms of payment, or
27 transaction includes an application for or an extension of credit

1 to the consumer.

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

4 (iii) The disclosure is requested by a person to obtain a
5 consumer report for a permissible purpose described in section 604
6 of the fair credit reporting act, 15 USC 1681b.

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

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

23 (ii) If a credit card or debit card is used for payment in a
24 consumer transaction, issuing or delivering a receipt to the
25 consumer that displays any part of the expiration date of the card
26 or more than the last 4 digits of the consumer's account number.
27 This subdivision does not apply if the only receipt issued in a

1 consumer transaction is a credit card or debit card receipt on
2 which the account number or expiration date is handwritten,
3 mechanically imprinted, or photocopied. This subdivision applies to
4 any consumer transaction that occurs on or after March 1, 2005,
5 except that if a credit or debit card receipt is printed in a
6 consumer transaction by an electronic device, this subdivision
7 applies to any consumer transaction that occurs using that device
8 only after 1 of the following dates, as applicable:

9 (i) If the electronic device is placed in service after March
10 1, 2005, July 1, 2005 or the date the device is placed in service,
11 whichever is later.

12 (ii) If the electronic device is in service on or before March
13 1, 2005, July 1, 2006.

14 (jj) Violating section 11 of the identity theft protection
15 act, 2004 PA 452, MCL 445.71.

16 (kk) Advertising or conducting a live musical performance or
17 production in this state through the use of a false, deceptive, or
18 misleading affiliation, connection, or association between a
19 performing group and a recording group. This subdivision does not
20 apply if any of the following are met:

21 (i) The performing group is the authorized registrant and owner
22 of a federal service mark for that group registered in the United
23 States patent and trademark office.

24 (ii) At least 1 member of the performing group was a member of
25 the recording group and has a legal right to use the recording
26 group's name, by virtue of use or operation under the recording
27 group's name without having abandoned the name or affiliation with

1 the recording group.

2 (iii) The live musical performance or production is identified
3 in all advertising and promotion as a salute or tribute and the
4 name of the vocal or instrumental group performing is not so
5 closely related or similar to that used by the recording group that
6 it would tend to confuse or mislead the public.

7 (iv) The advertising does not relate to a live musical
8 performance or production taking place in this state.

9 (v) The performance or production is expressly authorized by
10 the recording group.

11 (2) The attorney general may promulgate rules to implement
12 this act under the administrative procedures act of 1969, 1969 PA
13 306, MCL 24.201 to 24.328. The rules shall not create an additional
14 unfair trade practice not already enumerated by this section.
15 However, to assure national uniformity, rules shall not be
16 promulgated to implement subsection (1)(dd) or (ee).

17 (3) Subsection (1)(hh) does not apply to either of the
18 following:

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

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

26 ~~Sec. 7. (1) Upon the ex parte application of the attorney~~
27 ~~general to the circuit court in the county where the defendant is~~

1 ~~established or conducts business or, if the defendant is not~~
2 ~~established in this state, in Ingham county, the circuit court, if~~
3 ~~it finds probable cause to believe a person has engaged, is~~
4 ~~engaging, or is about to engage in a method, act, or practice which~~
5 ~~is unlawful under this act, may, after an ex parte hearing, issue a~~
6 ~~subpoena compelling a person to appear before the attorney general~~
7 ~~and answer under oath questions relating to an alleged violation of~~
8 ~~this act. A person served with a subpoena may be accompanied by~~
9 ~~counsel when he appears before the attorney general. The subpoena~~
10 ~~may compel a person to produce the books, records, papers,~~
11 ~~documents, or things relating to an alleged violation of this act.~~
12 ~~During the examination of documentary material under the subpoena,~~
13 ~~the court may require a person having knowledge of the documentary~~
14 ~~material or the matters contained therein to attend and give~~
15 ~~testimony under oath or acknowledgment with respect to the~~
16 ~~documentary material.~~

17 ~~—— (2) The subpoena shall include the notice of the time, place,~~
18 ~~and cause of the taking of testimony, the examination, or the~~
19 ~~attendance and shall allow not less than 10 days before the date of~~
20 ~~the taking of testimony or examination, unless for good cause shown~~
21 ~~the court shortens that period of time.~~

22 ~~—— (3) Service of the notice shall be in the manner provided and~~
23 ~~subject to the provisions that apply to service of process upon a~~
24 ~~defendant in a civil action commenced in the circuit court.~~

25 ~~—— (4) The notice shall:~~

26 ~~—— (a) State the time and place for the taking of testimony or~~
27 ~~the examination and the name and address of the person to be~~

1 ~~examined. If the name is not known, the notice shall give a general~~
2 ~~description sufficient to identify the person or the particular~~
3 ~~class or group to which the person belongs.~~

4 ~~—— (b) State a reference to this section and the general subject~~
5 ~~matter under investigation.~~

6 ~~—— (c) Describe the documentary material to be produced with~~
7 ~~reasonable specificity so as to indicate fairly the material~~
8 ~~demand.~~

9 ~~—— (d) Prescribe a return date within which the documentary~~
10 ~~material shall be produced.~~

11 ~~—— (e) Identify the members of the attorney general's staff to~~
12 ~~whom the documentary material shall be made available for~~
13 ~~inspection and copying.~~

14 ~~—— (5) At any time before the date specified in the notice, upon~~
15 ~~motion for good cause shown, the court may extend the reporting~~
16 ~~date or modify or set aside the notice and subpoena.~~

17 ~~—— (6) The documentary material or other information obtained by~~
18 ~~the attorney general pursuant to an investigation under this~~
19 ~~section shall be confidential records of the office of the attorney~~
20 ~~general and shall not be available for public inspection or copying~~
21 ~~or divulged to any person except as provided in this section. The~~
22 ~~attorney general may disclose documentary material or other~~
23 ~~information as follows:~~

24 ~~—— (a) To other law enforcement officials.~~

25 ~~—— (b) In connection with an enforcement action brought pursuant~~
26 ~~to this act.~~

27 ~~—— (c) Upon order of the court, to a party in a private action~~

1 ~~brought pursuant to this act.~~

2 ~~—— (7) A person who discloses information designated confidential~~
3 ~~by this section, except as permitted by subsection (6) or under~~
4 ~~court order, is guilty of a misdemeanor and may be fined not more~~
5 ~~than \$2,500.00, or imprisoned for not more than 1 year, or both.~~

6 (1) IF THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT A
7 PERSON HAS INFORMATION OR IS IN POSSESSION, CUSTODY, OR CONTROL OF
8 ANY DOCUMENT OR OTHER TANGIBLE OBJECT RELEVANT TO AN INVESTIGATION
9 FOR VIOLATION OF THIS ACT, THE ATTORNEY GENERAL MAY SERVE ON THE
10 PERSON, BEFORE BRINGING ANY ACTION IN THE CIRCUIT COURT, A WRITTEN
11 DEMAND TO APPEAR AND BE EXAMINED UNDER OATH, AND TO PRODUCE THE
12 DOCUMENT OR OBJECT FOR INSPECTION AND COPYING. THE DEMAND MUST MEET
13 ALL OF THE FOLLOWING:

14 (A) BE SERVED ON THE PERSON IN THE MANNER REQUIRED FOR SERVICE
15 OF PROCESS IN THIS STATE.

16 (B) DESCRIBE THE NATURE OF THE CONDUCT CONSTITUTING THE
17 VIOLATION UNDER INVESTIGATION.

18 (C) DESCRIBE THE DOCUMENT OR OBJECT WITH SUFFICIENT
19 DEFINITENESS TO PERMIT IT TO BE FAIRLY IDENTIFIED.

20 (D) IF DEMANDED, CONTAIN A COPY OF THE WRITTEN
21 INTERROGATORIES.

22 (E) PRESCRIBE A REASONABLE TIME AT WHICH THE PERSON MUST
23 APPEAR TO TESTIFY, WITHIN WHICH TO ANSWER THE WRITTEN
24 INTERROGATORIES, AND WITHIN WHICH THE DOCUMENT OR OBJECT MUST BE
25 PRODUCED, AND ADVISE THE PERSON THAT OBJECTIONS TO OR REASONS FOR
26 NOT COMPLYING WITH THE DEMAND MAY BE FILED WITH THE ATTORNEY
27 GENERAL ON OR BEFORE THAT TIME.

1 (F) SPECIFY A PLACE FOR THE TAKING OF TESTIMONY OR FOR
2 PRODUCTION AND DESIGNATE THE PERSON WHO SHALL BE CUSTODIAN OF THE
3 DOCUMENT OR OBJECT.

4 (G) CONTAIN A COPY OF SUBSECTION (2).

5 (2) IF A PERSON OBJECTS TO OR OTHERWISE FAILS TO COMPLY WITH
6 THE WRITTEN DEMAND SERVED UPON HIM OR HER UNDER SUBSECTION (1), THE
7 ATTORNEY GENERAL MAY FILE A PETITION TO ENFORCE THE DEMAND IN THE
8 CIRCUIT COURT OF THE COUNTY IN THIS STATE IN WHICH THE PERSON
9 RESIDES, IN WHICH THE PERSON MAINTAINS A PRINCIPAL PLACE OF
10 BUSINESS, OR IN WHICH THE PERSON CONDUCTS BUSINESS OR IN THE
11 CIRCUIT COURT OF INGHAM COUNTY IF THE PERSON IS NOT A RESIDENT OF
12 THIS STATE OR DOES NOT MAINTAIN A PRINCIPAL OFFICE OR CONDUCT
13 BUSINESS IN THIS STATE. THE ATTORNEY GENERAL SHALL SERVE NOTICE OF
14 THE HEARING ON THE PETITION AND A COPY OF ALL PLEADINGS ON THE
15 PERSON, WHO MAY APPEAR IN OPPOSITION. IF THE COURT FINDS THAT THE
16 DEMAND IS PROPER, THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT
17 THERE MAY HAVE BEEN OR IS PRESENTLY OCCURRING A VIOLATION OF THIS
18 ACT, AND THAT THE INFORMATION SOUGHT OR DOCUMENT OR OBJECT DEMANDED
19 IS RELEVANT TO THE INVESTIGATION, THE COURT SHALL ORDER THE PERSON
20 TO COMPLY WITH THE DEMAND, SUBJECT TO ANY MODIFICATION PRESCRIBED
21 BY THE COURT. UPON MOTION BY THE PERSON AND FOR GOOD CAUSE SHOWN,
22 THE COURT MAY MAKE ANY FURTHER ORDER IN THE PROCEEDINGS THAT
23 JUSTICE REQUIRES TO PROTECT THE PERSON FROM UNREASONABLE ANNOYANCE,
24 EMBARRASSMENT, OPPRESSION, BURDEN, OR EXPENSE.

25 (3) THE ATTORNEY GENERAL SHALL KEEP ANY PROCEDURE, TESTIMONY
26 TAKEN, OR MATERIAL PRODUCED PURSUANT TO A DEMAND UNDER SUBSECTION
27 (1) CONFIDENTIAL BEFORE BRINGING AN ACTION AGAINST A PERSON UNDER

1 THIS ACT FOR THE VIOLATION UNDER INVESTIGATION, UNLESS
2 CONFIDENTIALITY IS WAIVED BY THE PERSON BEING INVESTIGATED AND THE
3 PERSON WHO HAS TESTIFIED, ANSWERED INTERROGATORIES, OR PRODUCED
4 MATERIAL OR DISCLOSURE IS AUTHORIZED BY THE COURT.

5 Sec. 8. (1) A person ~~upon whom a notice~~ **ON WHICH A WRITTEN**
6 **DEMAND** is served ~~pursuant to~~ **UNDER** section 7 shall comply with the
7 terms of the ~~notice~~ **DEMAND** unless otherwise ~~provided by the~~
8 **DIRECTED BY AN** order of the circuit court.

9 (2) A person ~~who~~ **THAT** does any of the following ~~shall be~~
10 ~~assessed a civil penalty~~ **IS SUBJECT TO A CIVIL FINE** of not more
11 than \$5,000.00: -

12 (a) Knowingly **AND** without good cause fails to appear when
13 served with a ~~notice~~ **WRITTEN DEMAND UNDER SECTION 7 OR TO COMPLY**
14 **WITH THAT DEMAND.**

15 (b) Knowingly avoids, evades, or prevents compliance, in whole
16 or in part, with an investigation, including the removal from any
17 place, concealment, destruction, mutilation, alteration, or
18 falsification of documentary material in the possession, custody,
19 or control of a person subject to ~~the notice~~ **A WRITTEN DEMAND UNDER**
20 **SECTION 7.**

21 (c) Knowingly conceals relevant information.

22 (3) ~~The~~ **IF A PERSON VIOLATES THIS SECTION, THE** attorney
23 general may file a petition in the circuit court of the county in
24 which the person is established, **RESIDES, MAINTAINS A PRINCIPAL**
25 **OFFICE,** or conducts business or, if the person ~~is not established~~
26 **DOES NOT RESIDE, MAINTAIN A PRINCIPAL OFFICE, OR CONDUCT BUSINESS**
27 in this state, in the circuit court of Ingham county for an order

1 to enforce compliance with a ~~subpoena~~ or this section.

2 (4) A violation of a final order entered ~~pursuant to this~~
3 ~~section shall be punished as~~ **UNDER SUBSECTION (3) OR SECTION 7(2)**
4 **IS CONSIDERED** civil contempt.

5 (5) ~~(4)~~ Upon the petition of the attorney general, ~~the~~ **A**
6 circuit court may enjoin a person from doing business in this state
7 if the person persistently and knowingly evades or prevents
8 compliance with an injunction issued ~~pursuant to~~ **UNDER** this act.