

HOUSE BILL No. 6140

September 22, 1998, Introduced by Rep. Law and referred to the Committee on Consumer Protection.

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 1996 PA
226.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

6 (i) That the seller will provide locations or assist the
7 purchaser in finding locations for the use or operation of
8 vending machines, racks, display cases, or other similar devices,

1 or currency operated amusement machines or devices, on premises
2 neither owned nor leased by the purchaser or seller.

3 (ii) That the seller may, in the ordinary course of busi-
4 ness, purchase any or all products made, produced, fabricated,
5 grown, bred, or modified by the purchaser using whole or in part
6 the supplies, services, or chattels sold to the purchaser.

7 (iii) The seller guarantees that the purchaser will derive
8 income from the business opportunity which exceeds the price paid
9 for the business opportunity; or that the seller will refund all
10 or part of the price paid for the business opportunity, or repur-
11 chase any of the products, equipment, supplies, or chattels sup-
12 plied by the seller, if the purchaser is unsatisfied with the
13 business opportunity. As used in this subparagraph, "guarantee"
14 means a written or oral representation that would cause a reason-
15 able person in the purchaser's position to believe that income is
16 assured.

17 (iv) That the seller will provide a sales program or market-
18 ing program which will enable the purchaser to derive income from
19 the business opportunity which exceeds the price paid for the
20 business opportunity. This subparagraph does not apply to the
21 sale of a marketing program made in conjunction with the licens-
22 ing of a federally registered trademark or a federally registered
23 service mark, or to the sale of a business opportunity for which
24 the purchaser pays less than \$500.00 in total for the business
25 opportunity from anytime before the date of sale to anytime
26 within 6 months after the date of sale.

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

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

12 (C) "GOODS" MEANS TANGIBLE CHATTELS BOUGHT OR LEASED PRIMAR-
13 ILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, AND INCLUDES
14 BOTH OF THE FOLLOWING:

15 (i) A CERTIFICATE OR COUPON EXCHANGEABLE FOR A TANGIBLE
16 CHATTEL DESCRIBED IN THIS SUBDIVISION.

17 (ii) A TANGIBLE CHATTEL DESCRIBED IN THIS SUBDIVISION THAT
18 IS OR BECOMES A FIXTURE ATTACHED TO REAL PROPERTY OF A CONSUMER.

19 (D) "HOME SOLICITATION SALE" MEANS THAT TERM AS DEFINED IN
20 SECTION 1 OF 1971 PA 227, MCL 445.111.

21 (E) ~~-(c)-~~ "Person" means a natural person, corporation,
22 trust, partnership, incorporated or unincorporated association,
23 or other legal entity.

24 (F) "SENIOR CITIZEN" MEANS AN INDIVIDUAL AT LEAST 65 YEARS
25 OF AGE.

26 (G) "SERVICES" MEANS WORK FOR A CONSUMER, AND INCLUDES LABOR
27 IN THE REPAIR OR SALE OF GOODS.

1 (H) ~~-(d)-~~ "Trade or commerce" means the conduct of a
2 business providing goods, property, or service primarily for per-
3 sonal, family, or household purposes and includes the advertis-
4 ing, solicitation, offering for sale or rent, sale, lease, or
5 distribution of a service or property, tangible or intangible,
6 real, personal, or mixed, or any other article, or a business
7 opportunity. "Trade or commerce" does not include the purchase
8 or sale of a franchise, but does include pyramid and chain promo-
9 tions, as "franchise", "pyramid", and "chain promotions" are
10 defined in ~~Act No. 269 of the Public Acts of 1974, being sec-~~
11 ~~tions 445.1501 to 445.1545 of the Michigan Compiled Laws~~ THE
12 FRANCHISE INVESTMENT LAW, 1974 PA 269, MCL 445.1501 TO 445.1546.

13 Sec. 3. (1) Unfair, unconscionable, or deceptive methods,
14 acts, or practices in the conduct of trade or commerce are unlaw-
15 ful and are defined as follows:

16 (a) Causing a probability of confusion or misunderstanding
17 as to the source, sponsorship, approval, or certification of
18 goods or services.

19 (b) Using deceptive representations or deceptive designa-
20 tions of geographic origin in connection with goods or services.

21 (c) Representing that goods or services have sponsorship,
22 approval, characteristics, ingredients, uses, benefits, or quan-
23 tities that they do not have or that a person has sponsorship,
24 approval, status, affiliation, or connection that he or she does
25 not have.

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

1 (e) Representing that goods or services are of a particular
2 standard, quality, or grade, or that goods are of a particular
3 style or model, if they are of another.

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

6 (g) Advertising or representing goods or services with
7 intent not to dispose of those goods or services as advertised or
8 represented.

9 (h) Advertising goods or services with intent not to supply
10 reasonably expectable public demand, unless the advertisement
11 discloses a limitation of quantity in immediate conjunction with
12 the advertised goods or services.

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

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

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

21 (l) Misrepresenting that because of some defect in a
22 consumer's home the health, safety, or lives of the consumer or
23 his or her family are in danger if the product or services are
24 not purchased, when in fact the defect does not exist or the pro-
25 duct or services would not remove the danger.

26 (m) Causing a probability of confusion or of
27 misunderstanding with respect to the authority of a salesperson,

1 representative, or agent to negotiate the final terms of a
2 transaction.

3 (n) Causing a probability of confusion or of misunderstand-
4 ing as to the legal rights, obligations, or remedies of a party
5 to a transaction.

6 (o) Causing a probability of confusion or of misunderstand-
7 ing as to the terms or conditions of credit if credit is extended
8 in a transaction.

9 (p) Disclaiming or limiting the implied warranty of mer-
10 chantability and fitness for use, unless a disclaimer is clearly
11 and conspicuously disclosed.

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

16 (r) Representing that a consumer will receive goods or serv-
17 ices "free", "without charge", or words of similar import without
18 clearly and conspicuously disclosing with equal prominence in
19 immediate conjunction with the use of those words the conditions,
20 terms, or prerequisites to the use or retention of the goods or
21 services advertised.

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

25 (t) Entering into a consumer transaction in which the con-
26 sumer waives or purports to waive a right, benefit, or immunity

1 provided by law, unless the waiver is clearly stated and the
2 consumer has specifically consented to it.

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

12 (v) Taking or arranging for the consumer to sign an acknowl-
13 edgment, certificate, or other writing affirming acceptance,
14 delivery, compliance with a requirement of law, or other per-
15 formance, if the merchant knows or has reason to know that the
16 statement is not true.

17 (w) Representing that a consumer will receive a rebate, dis-
18 count, or other benefit as an inducement for entering into a
19 transaction, if the benefit is contingent on an event to occur
20 subsequent to the consummation of the transaction.

21 (x) Taking advantage of the consumer's inability reasonably
22 to protect his or her interests by reason of disability, illiter-
23 acy, or inability to understand the language of an agreement
24 presented by the other party to the transaction who knows or rea-
25 sonably should know of the consumer's inability.

26 (y) Gross discrepancies between the oral representations of
27 the seller and the written agreement covering the same

1 transaction or failure of the other party to the transaction to
2 provide the promised benefits.

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

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

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

11 (cc) Failing to reveal facts that are material to the trans-
12 action in light of representations of fact made in a positive
13 manner.

14 (dd) Subject to subdivision (ee), representations by the
15 manufacturer of a product or package that the product or package
16 is 1 or more of the following:

17 (i) Except as provided in subparagraph (ii), recycled, recy-
18 clable, degradable, or is of a certain recycled content, in vio-
19 lation of guides for the use of environmental marketing claims
20 published by the federal trade commission, ~~57 F.R. p 36363~~
21 ~~(August 13, 1992)~~ 16 C.F.R. PART 260.

22 (ii) For container holding devices regulated under part 163
23 ~~-(plastic degradable containers)-~~ of the natural resources and
24 environmental protection act, ~~Act No. 451 of the Public Acts of~~
25 ~~1994, being sections 324.16301 to 324.16303 of the Michigan~~
26 ~~Compiled Laws~~ 1994 PA 451, MCL 324.16301 TO 324.16303,
27 representations by a manufacturer that the container holding

1 device is degradable contrary to the definition provided in that
2 act.

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

10 (ff) Offering a consumer a prize if in order to claim the
11 prize the consumer is required to submit to a sales presentation,
12 unless a written disclosure is given to the consumer at the time
13 the consumer is notified of the prize and the written disclosure
14 meets all of the following requirements:

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

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

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

22 (iv) Fully describes the product, real estate, investment,
23 service, membership, or other item that is or will be offered for
24 sale, including the price of the least expensive item and the
25 most expensive item.

26 (GG) A HOME SOLICITATION SALE TO AN INDIVIDUAL WHO IS A
27 SENIOR CITIZEN IF BOTH OF THE FOLLOWING CONDITIONS EXIST:

1 (i) A CONDITION OF THE SALE IS THE ENCUMBRANCE OF THE
2 INDIVIDUAL'S PRIMARY RESIDENCE TO SECURE THE SELLER'S INTEREST IN
3 RECEIVING PAYMENT FOR A HOME IMPROVEMENT SERVICE.

4 (ii) THE SALE IS PART OF A PATTERN OR PRACTICE THAT VIOLATES
5 SECTION 129(h) OR (i) OF CHAPTER 2 OF THE TRUTH IN LENDING ACT,
6 TITLE I OF THE CONSUMER CREDIT PROTECTION ACT, PUBLIC LAW 90-321,
7 15 U.S.C. 1639, OR 12 C.F.R. 226.32(e).

8 (2) A PERSON WHO DOES NOT MAKE A HOME SOLICITATION SALE TO A
9 SENIOR CITIZEN BUT WHO RECEIVES AN INTEREST IN THE PRIMARY RESI-
10 DENCE OF THAT SENIOR CITIZEN AS A RESULT OF A HOME SOLICITATION
11 SALE DESCRIBED IN SUBSECTION (1)(GG) IS NOT LIABLE FOR AN UNFAIR,
12 UNCONSCIONABLE, OR DECEPTIVE METHOD, ACT, OR PRACTICE IN THE CON-
13 DUCT OF TRADE OR COMMERCE UNLESS 1 OF THE FOLLOWING CONDITIONS IS
14 MET:

15 (A) A PRINCIPAL-AGENT RELATIONSHIP EXISTED BETWEEN THE
16 PERSON AND THE PERSON WHO MADE THE HOME SOLICITATION SALE.

17 (B) THE PERSON HAD ACTUAL KNOWLEDGE THAT THE HOME SOLICITA-
18 TION SALE WAS PROHIBITED UNDER THIS ACT.

19 (C) THE PERSON PARTICIPATED IN THE HOME SOLICITATION SALE.

20 (3) ~~-(2)-~~ The attorney general may promulgate rules to
21 implement this act under the administrative procedures act of
22 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
23 ~~24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA 306, MCL
24 24.201 TO 24.328. The rules shall not create an additional
25 unfair trade practice not already enumerated by this section.
26 However, to assure national uniformity, rules shall not be
27 promulgated to implement subsection (1)(dd) or (ee).