

SENATE BILL No. 1125

March 9, 2006, Introduced by Senators SCOTT, CLARK-COLEMAN, JOHNSON, TOY, CLARKE, THOMAS, BARCIA, LELAND and HARDIMAN and referred to the Committee on Judiciary.

A bill to amend 1976 PA 331, entitled "Michigan consumer protection act," by amending sections 2, 3, and 5 (MCL 445.902, 445.903, and 445.905), 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:

7 (i) That the seller will provide locations or assist the

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

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

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

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

1 6 months after the date of sale.

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

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

12 (C) "PERFORMING GROUP" MEANS A VOCAL OR INSTRUMENTAL GROUP
13 SEEKING TO USE THE NAME OF ANOTHER GROUP THAT HAS PREVIOUSLY
14 RELEASED A COMMERCIAL SOUND RECORDING UNDER THAT NAME.

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

18 (E) "RECORDING GROUP" MEANS A VOCAL OR INSTRUMENTAL GROUP THAT
19 MEETS BOTH OF THE FOLLOWING:

20 (i) AT LEAST 1 OF THE MEMBERS OF THE GROUP HAS PREVIOUSLY
21 RELEASED A COMMERCIAL SOUND RECORDING UNDER THE GROUP'S NAME.

22 (ii) AT LEAST 1 OF THE MEMBERS OF THE GROUP HAS A LEGAL RIGHT
23 TO USE THE GROUP'S NAME, BY VIRTUE OF USE OR OPERATION UNDER THE
24 GROUP'S NAME WITHOUT ABANDONING THE NAME OF OR AFFILIATION WITH THE
25 GROUP.

26 (F) "SOUND RECORDING" MEANS A WORK THAT RESULTS FROM THE
27 FIXATION ON A MATERIAL OBJECT OF A SERIES OF MUSICAL, SPOKEN, OR

1 OTHER SOUNDS REGARDLESS OF THE NATURE OF THE MATERIAL OBJECT, SUCH
2 AS A DISK, TAPE, OR OTHER PHONO-RECORD, IN WHICH THE SOUNDS ARE
3 EMBODIED.

4 (G) ~~—(d)—~~ "Trade or commerce" means the conduct of a business
5 providing goods, property, or service primarily for personal,
6 family, or household purposes and includes the advertising,
7 solicitation, offering for sale or rent, sale, lease, or
8 distribution of a service or property, tangible or intangible,
9 real, personal, or mixed, or any other article, or a business
10 opportunity. "Trade or commerce" does not include the purchase or
11 sale of a franchise, but does include pyramid and chain promotions,
12 as "franchise", "pyramid", and "chain promotions" are defined in
13 ~~Act No. 269 of the Public Acts of 1974, being sections 445.1501 to~~
14 ~~445.1545 of the Michigan Compiled Laws~~ **THE FRANCHISE INVESTMENT**
15 **LAW, 1974 PA 269, MCL 445.1501 TO 445.1546.**

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

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

24 (a) Causing a probability of confusion or misunderstanding as
25 to the source, sponsorship, approval, or certification of goods or
26 services.

27 (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.

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

11 (bb) Making a representation of fact or statement of fact
12 material to the transaction such that a person reasonably believes
13 the represented or suggested state of affairs to be other than it
14 actually is.

15 (cc) Failing to reveal facts that are material to the
16 transaction in light of representations of fact made in a positive
17 manner.

18 (dd) Subject to subdivision (ee), representations by the
19 manufacturer of a product or package that the product or package is
20 1 or more of the following:

21 (i) Except as provided in subparagraph (ii), recycled,
22 recyclable, degradable, or is of a certain recycled content, in
23 violation of guides for the use of environmental marketing claims,
24 16 CFR part 260.

25 (ii) For container holding devices regulated under part 163 of
26 the natural resources and environmental protection act, 1994 PA
27 451, MCL 324.16301 to 324.16303, representations by a manufacturer

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

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

25 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in
26 connection with a home solicitation sale or telephone solicitation,
27 including, but not limited to, having an independent courier

1 service or other third party pick up a consumer's payment on a home
2 solicitation sale during the period the consumer is entitled to
3 cancel the sale.

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

8 (i) The selling, leasing, providing, terms of payment, or
9 transaction includes an application for or an extension of credit
10 to the consumer.

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

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

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

19 (v) The disclosure is requested from an individual to effect,
20 administer or enforce a specific telephonic or other electronic
21 consumer transaction that is not made in person but is requested or
22 authorized by the individual if it is to be used solely to confirm
23 the identity of the individual through a fraud prevention service
24 database. The consumer good or service shall still be provided to
25 the consumer upon verification of his or her identity if he or she
26 refuses to provide his or her social security number but provides
27 other information or documentation that can be used by the person

1 to verify his or her identity. The person may inform the consumer
2 that verification through other means than use of the social
3 security number may cause a delay in providing the service or good
4 to the consumer.

5 (ii) If a credit card or debit card is used for payment in a
6 consumer transaction, issuing or delivering a receipt to the
7 consumer that displays any part of the expiration date of the card
8 or more than the last 4 digits of the consumer's account number.
9 This subdivision does not apply if the only receipt issued in a
10 consumer transaction is a credit card or debit card receipt on
11 which the account number or expiration date is handwritten,
12 mechanically imprinted, or photocopied. This subdivision applies to
13 any consumer transaction that occurs on or after March 1, 2005,
14 except that if a credit or debit card receipt is printed in a
15 consumer transaction by an electronic device, this subdivision
16 applies to any consumer transaction that occurs using that device
17 only after 1 of the following dates, as applicable:

18 (i) If the electronic device is placed in service after March
19 1, 2005, July 1, 2005 or the date the device is placed in service,
20 whichever is later.

21 (ii) If the electronic device is in service on or before March
22 1, 2005, July 1, 2006.

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

25 **(KK) ADVERTISING OR CONDUCTING A LIVE MUSICAL PERFORMANCE OR**
26 **PRODUCTION IN THIS STATE THROUGH THE USE OF A FALSE, DECEPTIVE, OR**
27 **MISLEADING AFFILIATION, CONNECTION, OR ASSOCIATION BETWEEN A**

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1 PERFORMING GROUP AND A RECORDING GROUP. THIS SUBDIVISION DOES NOT
2 APPLY IF ANY OF THE FOLLOWING ARE MET:

3 (i) THE PERFORMING GROUP IS THE AUTHORIZED REGISTRANT AND OWNER
4 OF A FEDERAL SERVICE MARK FOR THAT GROUP REGISTERED IN THE UNITED
5 STATES PATENT AND TRADEMARK OFFICE.

6 (ii) AT LEAST 1 MEMBER OF THE PERFORMING GROUP WAS A MEMBER OF
7 THE RECORDING GROUP AND HAS A LEGAL RIGHT TO USE THE <<RECORDING>>
GROUP'S NAME,

8 BY VIRTUE OF USE OR OPERATION UNDER THE <<RECORDING>> GROUP'S NAME
WITHOUT HAVING

9 ABANDONED THE NAME OR AFFILIATION WITH THE <<RECORDING>> GROUP.

10 (iii) THE LIVE MUSICAL PERFORMANCE OR PRODUCTION IS IDENTIFIED
11 IN ALL ADVERTISING AND PROMOTION AS A SALUTE OR TRIBUTE <<AND THE NAME
OF THE VOCAL OR INSTRUMENTAL GROUP PERFORMING IS NOT SO CLOSELY RELATED
OR SIMILAR TO THAT USED BY THE RECORDING GROUP THAT IT WOULD TEND TO
CONFUSE OR MISLEAD THE PUBLIC>>.

12 (iv) THE ADVERTISING DOES NOT RELATE TO A LIVE MUSICAL
13 PERFORMANCE OR PRODUCTION TAKING PLACE IN THIS STATE.

14 (v) THE PERFORMANCE OR PRODUCTION IS EXPRESSLY AUTHORIZED BY
15 THE RECORDING GROUP.

16 (2) The attorney general may promulgate rules to implement
17 this act under the administrative procedures act of 1969, 1969 PA
18 306, MCL 24.201 to 24.328. The rules shall not create an additional
19 unfair trade practice not already enumerated by this section.

20 However, to assure national uniformity, rules shall not be
21 promulgated to implement subsection (1)(dd) or (ee).

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

24 (a) Providing a service related to the administration of
25 health-related or dental-related benefits or services to patients,
26 including provider contracting or credentialing. This subdivision
27 is intended to limit the application of subsection (1)(hh) and is

1 not intended to imply that this act would otherwise apply to
2 health-related or dental-related benefits.

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

4 Sec. 5. (1) ~~When~~ **IF** the attorney general has probable cause
5 to believe that a person has engaged, is engaging, or is about to
6 engage in a method, act, or practice ~~which~~ **THAT** is unlawful
7 pursuant to section 3, and ~~upon~~ **GIVES** notice ~~given~~ in
8 accordance with this section, the attorney general may bring an
9 action in accordance with principles of equity to restrain the
10 defendant by temporary or permanent injunction from engaging in the
11 method, act, or practice. The action may be brought in the circuit
12 court of the county where the defendant is established or conducts
13 business or, if the defendant is not established in this state, in
14 the circuit court of Ingham county. The court may award costs to
15 the prevailing party. For persistent and knowing violation of
16 section 3 the court may assess the defendant a civil ~~penalty~~ **FINE**
17 of not more than \$25,000.00. **FOR A VIOLATION OF SECTION 3 (1) (KK),**
18 **EACH PERFORMANCE OR PRODUCTION IS A SEPARATE VIOLATION.**

19 (2) Unless waived by the court on good cause shown not less
20 than 10 days before the commencement of an action under this
21 section, the attorney general shall notify the person of his **OR HER**
22 intended action and give the person an opportunity to cease and
23 desist from the alleged unlawful method, act, or practice or to
24 confer with the attorney general in person, by counsel, or by other
25 representative as to the proposed action before the proposed filing
26 date. The notice may be given the person by mail, postage prepaid,
27 to his **OR HER** usual place of business or, if the person does not

1 have a usual place of business, to his **OR HER** last known address,
2 or, ~~with respect to~~ **IF THE PERSON IS** a corporation, only to a
3 resident agent who is designated to receive service of process or
4 to an officer of the corporation.

5 (3) A prosecuting attorney or law enforcement officer
6 receiving notice of an alleged violation of this act, or of a
7 violation of an injunction, order, decree, or judgment issued in an
8 action brought pursuant to this section, or of an assurance under
9 this act, shall immediately forward written notice of the violation
10 together with any information he **OR SHE** may have to the office of
11 the attorney general.

12 (4) A person who knowingly violates the terms of an
13 injunction, order, decree, or judgment issued pursuant to this
14 section shall forfeit and pay to the state a civil ~~penalty~~ **FINE**
15 of not more than \$5,000.00 for each violation. For the purposes of
16 this section, the court issuing an injunction, order, decree, or
17 judgment shall retain jurisdiction, the cause shall be continued,
18 and the attorney general may petition for recovery of a civil
19 ~~penalty~~ **FINE** as provided by this section.