

SENATE BILL No. 675

June 30, 2005, Introduced by Senator BISHOP and referred to the Committee on Government Operations.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 4 (MCL 445.904), as amended by 2003 PA 216.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) This act does not apply to ~~either~~ **OR CREATE A**
2 **CAUSE OF ACTION FOR ANY** of the following:

3 (a) A transaction or conduct specifically authorized under
4 laws administered by a regulatory board or officer acting under
5 statutory authority of this state or the United States.

6 (b) An act done by ~~the~~ **A** publisher, owner, agent, or
7 employee of a newspaper, periodical, directory, radio or television
8 station, or other communications medium in the publication or
9 dissemination of an advertisement unless the publisher, owner,

1 agent, or employee knows or, under the circumstances, reasonably
 2 should know of the false, misleading, or deceptive character of the
 3 advertisement or has a direct financial interest in the sale or
 4 distribution of the advertised goods, property, or service.

5 (C) ~~—(2)—~~ Except for the purposes of an action filed by a
 6 person under section 11, ~~this act does not apply to or create a~~
 7 ~~cause of action for~~ an unfair, unconscionable, or deceptive
 8 method, act, or practice that is made unlawful by any of the
 9 following:

10 (i) ~~—(a)—~~ The banking code of 1999, 1999 PA 276, MCL 487.11101
 11 to 487.15105.

12 (ii) ~~—(b)—~~ 1939 PA 3, MCL 460.1 to 460.10cc.

13 (iii) ~~—(c)—~~ The motor carrier act, 1933 PA 254, MCL 475.1 to
 14 479.43.

15 (iv) ~~—(d)—~~ The savings bank act, 1996 PA 354, MCL 487.3101 to
 16 487.3804.

17 (v) ~~—(e)—~~ The credit union act, **2003 PA 215, MCL 490.101 TO**
 18 **490.601.**

19 (D) ~~—(3)— This act does not apply to or create a cause of~~
 20 ~~action for an~~ **AN** unfair, unconscionable, or deceptive method, act,
 21 or practice that is made unlawful by chapter 20 of the insurance
 22 code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093.

23 **(E) A SALES TRANSACTION INVOLVING A PRODUCT THAT IS ALLEGED TO**
 24 **BE DEFECTIVE AND THAT WAS COVERED BY AN EXPRESS OR IMPLIED**
 25 **WARRANTY, OR BOTH, WHEN THE CONSUMER FILING THE ACTION PURCHASED**
 26 **THE PRODUCT UNLESS THE SELLER OF THE PRODUCT EXPRESSLY**
 27 **MISREPRESENTED TO THE CONSUMER FILING THE ACTION A SPECIFIC QUALITY**

1 OR CHARACTERISTIC OF THE PRODUCT. IF A CONSUMER PURCHASED A PRODUCT
2 THAT WAS COVERED BY AN EXPRESS OR IMPLIED WARRANTY, OR BOTH, WHEN
3 THE CONSUMER FILING THE ACTION PURCHASED THE PRODUCT AND THE
4 CONSUMER IS DISSATISFIED WITH THE QUALITY OR PERFORMANCE OF THE
5 PRODUCT, THE CONSUMER MAY BRING AN ACTION UNDER ANY APPLICABLE
6 WARRANTY OR OTHER LAW.

7 (2) A CONSUMER THAT BRINGS A CAUSE OF ACTION UNDER THIS ACT
8 BASED ON AN EXPRESS MISREPRESENTATION DESCRIBED IN SUBSECTION
9 (1) (E) IN THE SALE OF A DEFECTIVE PRODUCT MUST PLEAD WITH
10 SPECIFICITY AND PARTICULARITY FACTS THAT, IF TRUE, WOULD SHOW THAT
11 THE SELLER EXPRESSLY MISREPRESENTED A SPECIFIC QUALITY OR
12 CHARACTERISTIC OF THE PRODUCT AND THAT THE CONSUMER FILING THE
13 ACTION WAS DECEIVED BY THAT MISREPRESENTATION IN PURCHASING THE
14 PRODUCT. TO PROVE A CAUSE OF ACTION BASED ON AN EXPRESS
15 MISREPRESENTATION DESCRIBED IN SUBSECTION (1) (E) MADE IN THE SALE
16 OF A DEFECTIVE PRODUCT, THE CONSUMER FILING THE ACTION HAS THE
17 BURDEN OF PROVING THAT THE SELLER EXPRESSLY MISREPRESENTED A
18 SPECIFIC QUALITY OR CHARACTERISTIC OF THE PRODUCT AND THAT THE
19 CONSUMER WAS DECEIVED BY THAT MISREPRESENTATION IN PURCHASING THE
20 PRODUCT.

21 (3) ~~—(4)—~~ The burden of proving an exemption from this act
22 UNDER THIS SECTION is upon the person claiming the exemption.