

HOUSE BILL No. 4318

February 17, 2009, Introduced by Reps. Slavens, Donigan, Switalski, Lisa Brown, Tlaib, Simpson, Scripps, Miller, Young, Bledsoe, Mayes, Sheltroun, Haugh, Lipton, Haase, Roberts, Durhal, Byrum, Barnett and Dean and referred to the Committee on Judiciary.

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 2006 PA 508 and section 3 as amended by 2008 PA 310.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) Subject to subsection (2), "business opportunity" means
3 the sale or lease of any products, equipment, supplies, or services
4 for the purpose of enabling the purchaser to start a business, and
5 in which the 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 vending
8 machines, racks, display cases, or other similar devices, or

1 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 business,
4 purchase any or all products made, produced, fabricated, grown,
5 bred, or modified by the purchaser using whole or in part the
6 supplies, services, or chattels sold to the purchaser.

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

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

26 (b) "Documentary material" includes the original or copy of a
27 book, record, report, memorandum, paper, communication, tabulation,

1 map, chart, photograph, mechanical transcription, or other tangible
2 document or recording, wherever situated.

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

4 (D) ~~(e)~~—"Performing group" means a vocal or instrumental group
5 seeking to use the name of another group that has previously
6 released a commercial sound recording under that name.

7 (E) ~~(d)~~—"Person" means a natural person, corporation, limited
8 liability company, trust, partnership, incorporated or
9 unincorporated association, or other legal entity.

10 (F) ~~(e)~~—"Recording group" means a vocal or instrumental group
11 that meets both of the following:

12 (i) At least 1 of the members of the group has previously
13 released a commercial sound recording under the group's name.

14 (ii) At least 1 of the members of the group has a legal right
15 to use the group's name, by virtue of use or operation under the
16 group's name without abandoning the name of or affiliation with the
17 group.

18 (G) ~~(f)~~—"Sound recording" means a work that results from the
19 fixation on a material object of a series of musical, spoken, or
20 other sounds regardless of the nature of the material object, such
21 as a disk, tape, or other phono-record, in which the sounds are
22 embodied.

23 (H) ~~(g)~~—"Trade or commerce" means the conduct of a business
24 providing goods, property, or service primarily for personal,
25 family, or household purposes and includes the advertising,
26 solicitation, offering for sale or rent, sale, lease, or
27 distribution of a service or property, tangible or intangible,

1 real, personal, or mixed, or any other article, or a business
2 opportunity. "Trade or commerce" does not include the purchase or
3 sale of a franchise, but does include pyramid and chain promotions,
4 as "franchise", "pyramid", and "chain promotions" are defined in
5 the franchise investment law, 1974 PA 269, MCL 445.1501 to
6 445.1546.

7 (2) As used in this act, "business opportunity" does not
8 include a sale of a franchise as defined in section 2 of the
9 franchise investment law, 1974 PA 269, MCL 445.1502, or the sale of
10 an ongoing business if the owner of the business sells and intends
11 to sell only that single business opportunity.

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

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

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

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

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

27 (e) Representing that goods or services are of a particular

1 standard, quality, or grade, or that goods are of a particular
2 style or model, if they are of another.

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

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

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

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

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

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

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

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

27 (n) Causing a probability of confusion or of misunderstanding

1 as to the legal rights, obligations, or remedies of a party to a
2 transaction.

3 (o) Causing a probability of confusion or of misunderstanding
4 as to the terms or conditions of credit if credit is extended in a
5 transaction.

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

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

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

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

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

26 (u) Failing, in a consumer transaction that is rescinded,
27 canceled, or otherwise terminated in accordance with the terms of

1 an agreement, advertisement, representation, or provision of law,
2 to promptly restore to the person or persons entitled to it a
3 deposit, down payment, or other payment, or in the case of property
4 traded in but not available, the greater of the agreed value or the
5 fair market value of the property, or to cancel within a specified
6 time or an otherwise reasonable time an acquired security interest.

7 (v) Taking or arranging for the consumer to sign an
8 acknowledgment, certificate, or other writing affirming acceptance,
9 delivery, compliance with a requirement of law, or other
10 performance, if the merchant knows or has reason to know that the
11 statement is not true.

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

16 (x) Taking advantage of the consumer's inability reasonably to
17 protect his or her interests by reason of disability, illiteracy,
18 or inability to understand the language of an agreement presented
19 by the other party to the transaction who knows or reasonably
20 should know of the consumer's inability.

21 (y) Gross discrepancies between the oral representations of
22 the seller and the written agreement covering the same transaction
23 or failure of the other party to the transaction to provide the
24 promised benefits.

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

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 (ll) Violating section 3e, 3f, 3g, or 3h.

12 **(MM) FAILURE, ON THE PART OF A MANUFACTURER OR PRODUCER, TO**
13 **ACCURATELY REPRESENT THE RISKS INVOLVED IN THE INTENDED USE OF A**
14 **PRESCRIPTION OR OVER-THE-COUNTER DRUG OR MEDICATION OR AN HERBAL**
15 **PRODUCT, DIETARY SUPPLEMENT, OR BOTANICAL EXTRACT.**

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.