

# SENATE BILL No. 50

January 27, 2009, Introduced by Senators CHERRY, SWITALSKI and JACOBS and referred to the Committee on Commerce and Tourism.

A bill to amend 1976 PA 331, entitled "Michigan consumer protection act," by amending sections 3 and 11 (MCL 445.903 and 445.911), section 3 as amended by 2008 PA 310, and by adding section 3i.

**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  
8 of geographic origin in connection with goods or services.

9           (c) Representing that goods or services have sponsorship,

1 approval, characteristics, ingredients, uses, benefits, or  
2 quantities that they do not have or that a person has sponsorship,  
3 approval, status, affiliation, or connection that he or she does  
4 not have.

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

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

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

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

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

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

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

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

26 (l) Misrepresenting that because of some defect in a consumer's  
27 home the health, safety, or lives of the consumer or his or her

1 family are in danger if the product or services are not purchased,  
2 when in fact the defect does not exist or the product or services  
3 would not remove the danger.

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

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

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

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

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

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

26 (s) Failing to reveal a material fact, the omission of which  
27 tends to mislead or deceive the consumer, and which fact could not

1 reasonably be known by the consumer.

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

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

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

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

23 (x) Taking advantage of the consumer's inability reasonably to  
24 protect his or her interests by reason of disability, illiteracy,  
25 or inability to understand the language of an agreement presented  
26 by the other party to the transaction who knows or reasonably  
27 should know of the consumer's inability.

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

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

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

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

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

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

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

23           (ii) For container holding devices regulated under part 163 of  
24 the natural resources and environmental protection act, 1994 PA  
25 451, MCL 324.16301 to 324.16303, representations by a manufacturer  
26 that the container holding device is degradable contrary to the  
27 definition provided in that act.

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

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

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

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

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

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

23 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in  
24 connection with a home solicitation sale or telephone solicitation,  
25 including, but not limited to, having an independent courier  
26 service or other third party pick up a consumer's payment on a home  
27 solicitation sale during the period the consumer is entitled to

1 cancel the sale.

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

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

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

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

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

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

1 security number may cause a delay in providing the service or good  
2 to the consumer.

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

16 (i) If the electronic device is placed in service after March  
17 1, 2005, July 1, 2005 or the date the device is placed in service,  
18 whichever is later.

19 (ii) If the electronic device is in service on or before March  
20 1, 2005, July 1, 2006.

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

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



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

4 (ii) At least 1 member of the performing group was a member of  
5 the recording group and has a legal right to use the recording  
6 group's name, by virtue of use or operation under the recording  
7 group's name without having abandoned the name or affiliation with  
8 the recording group.

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

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

16 (v) The performance or production is expressly authorized by  
17 the recording group.

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

19 **(MM) VIOLATING SECTION 3I.**

20 (2) The attorney general may promulgate rules to implement  
21 this act under the administrative procedures act of 1969, 1969 PA  
22 306, MCL 24.201 to 24.328. The rules shall not create an additional  
23 unfair trade practice not already enumerated by this section.  
24 However, to assure national uniformity, rules shall not be  
25 promulgated to implement subsection (1)(dd) or (ee).

26 (3) Subsection (1)(hh) does not apply to either of the  
27 following:

1 (a) Providing a service related to the administration of  
2 health-related or dental-related benefits or services to patients,  
3 including provider contracting or credentialing. This subdivision  
4 is intended to limit the application of subsection (1)(hh) and is  
5 not intended to imply that this act would otherwise apply to  
6 health-related or dental-related benefits.

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

8 SEC. 3I. (1) DURING AN EMERGENCY PERIOD AND IN AN EMERGENCY  
9 AREA, A PERSON OR THAT PERSON'S AGENT OR EMPLOYEE SHALL NOT RENT OR  
10 SELL OR OFFER TO RENT OR SELL AT AN UNCONSCIONABLE PRICE ANY  
11 ESSENTIAL COMMODITY, INCLUDING, BUT NOT LIMITED TO, SUPPLIES,  
12 SERVICES, PROVISIONS, OR EQUIPMENT, THAT IS NECESSARY FOR  
13 CONSUMPTION OR USE AS A DIRECT RESULT OF THE EMERGENCY OR IMPOSE AN  
14 UNCONSCIONABLE PRICE FOR THE RENTAL OR LEASE OF ANY DWELLING UNIT  
15 OR SELF-STORAGE FACILITY.

16 (2) A PRICE INCREASE APPROVED BY AN APPROPRIATE GOVERNMENTAL  
17 AGENCY IS NOT A VIOLATION OF THIS SECTION.

18 (3) THIS SECTION DOES NOT APPLY TO A SALE BY A GROWER,  
19 PRODUCER, OR PROCESSOR OF A RAW OR PROCESSED FOOD PRODUCT, EXCEPT  
20 FOR A RETAIL SALE OF THAT PRODUCT TO AN ULTIMATE CONSUMER WITHIN  
21 THE EMERGENCY AREA.

22 (4) FOR PURPOSES OF THIS SECTION, IT IS PRIMA FACIE EVIDENCE  
23 THAT A PRICE IS UNCONSCIONABLE IF EITHER OF THE FOLLOWING APPLIES:

24 (A) THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY BETWEEN  
25 THE PRICE OF THE COMMODITY OR RENTAL OR LEASE OF ANY DWELLING UNIT  
26 OR SELF-STORAGE FACILITY THAT IS THE SUBJECT OF THE OFFER OR  
27 TRANSACTION AND THE AVERAGE PRICE AT WHICH THAT COMMODITY OR

1 DWELLING UNIT OR SELF-STORAGE FACILITY WAS RENTED, LEASED, SOLD, OR  
2 OFFERED FOR RENT OR SALE IN THE USUAL COURSE OF BUSINESS DURING THE  
3 30 DAYS IMMEDIATELY PRECEDING A DECLARATION OF A STATE OF  
4 EMERGENCY, AND THE INCREASE IN THE AMOUNT CHARGED IS NOT  
5 ATTRIBUTABLE TO ADDITIONAL COSTS INCURRED IN CONNECTION WITH THE  
6 RENTAL OR SALE OF THE COMMODITY OR RENTAL OR LEASE OF ANY DWELLING  
7 UNIT OR SELF-STORAGE FACILITY OR NATIONAL OR INTERNATIONAL MARKET  
8 TRENDS.

9 (B) THE AMOUNT CHARGED GROSSLY EXCEEDS THE AVERAGE PRICE AT  
10 WHICH THE SAME OR A SIMILAR COMMODITY WAS READILY OBTAINABLE IN THE  
11 TRADE AREA DURING THE 30 DAYS IMMEDIATELY PRECEDING A DECLARATION  
12 OF A STATE OF EMERGENCY, AND THE INCREASE IN THE AMOUNT CHARGED IS  
13 NOT ATTRIBUTABLE TO ADDITIONAL COSTS INCURRED IN CONNECTION WITH  
14 THE RENTAL OR SALE OF THE COMMODITY OR RENTAL OR LEASE OF ANY  
15 DWELLING UNIT OR SELF-STORAGE FACILITY OR NATIONAL OR INTERNATIONAL  
16 MARKET TRENDS.

17 (5) AS USED IN THIS SECTION:

18 (A) "COMMODITY" MEANS ANY GOODS, SERVICES, MATERIALS,  
19 MERCHANDISE, SUPPLIES, PROVISIONS, EQUIPMENT, RESOURCES, OR OTHER  
20 ARTICLE OF COMMERCE AND INCLUDES, WITHOUT LIMITATION, FOOD, WATER,  
21 ICE, CHEMICALS, PETROLEUM PRODUCTS, AND LUMBER NECESSARY FOR  
22 CONSUMPTION OR USE AS A DIRECT RESULT OF AN EMERGENCY.

23 (B) "EMERGENCY AREA" MEANS AN AREA OF THIS STATE SUBJECT TO A  
24 STATE OF EMERGENCY DECLARED BY THE GOVERNOR UNDER THE EMERGENCY  
25 MANAGEMENT ACT, 1976 PA 390, MCL 30.401 TO 30.421, OR UNDER 1945 PA  
26 302, MCL 10.31 TO 10.33, OR A STATE OF ENERGY EMERGENCY DECLARED BY  
27 THE GOVERNOR UNDER 1982 PA 191, MCL 10.81 TO 10.89.

1 (C) "EMERGENCY PERIOD" MEANS THE PERIOD DURING WHICH A STATE  
2 OF EMERGENCY DECLARED BY THE GOVERNOR IS EFFECTIVE UNDER THE  
3 EMERGENCY MANAGEMENT ACT, 1976 PA 390, MCL 30.401 TO 30.421, OR  
4 UNDER 1945 PA 302, MCL 10.31 TO 10.33, OR A STATE OF ENERGY  
5 EMERGENCY DECLARED BY THE GOVERNOR UNDER 1982 PA 191, MCL 10.81 TO  
6 10.89.

7 Sec. 11. (1) Whether or not he OR SHE seeks damages or has an  
8 adequate remedy at law, a person may bring an action to do either  
9 or both of the following:

10 (a) Obtain a declaratory judgment that a method, act, or  
11 practice is unlawful under section 3.

12 (b) Enjoin in accordance with the principles of equity a  
13 person who is engaging or is about to engage in a method, act, or  
14 practice which is unlawful under section 3.

15 (2) Except in a class action, a person who suffers loss as a  
16 result of a violation of this act may bring an action to recover  
17 actual damages or \$250.00, whichever is greater, together with  
18 reasonable ~~attorneys'~~ ATTORNEY fees.

19 (3) A person who suffers loss as a result of a violation of  
20 this act may bring a class action on behalf of persons residing or  
21 injured in this state for the actual damages caused by any of the  
22 following:

23 (a) A method, act, or practice in trade or commerce defined as  
24 unlawful under section 3.

25 (b) A method, act, or practice in trade or commerce declared  
26 to be unlawful under section 3(1) by a final judgment of the  
27 circuit court or an appellate court of this state which is either

1 reported officially or made available for public dissemination  
2 pursuant to section 9 by the attorney general not less than 30 days  
3 before the method, act, or practice on which the action is based  
4 occurs.

5 (c) A method, act, or practice in trade or commerce declared  
6 by a circuit court of appeals or the supreme court of the United  
7 States to be an unfair or deceptive act or practice within the  
8 meaning of section 5(a)(1) of the federal trade commission act, 15  
9 ~~U.S.C.—USC~~ 45(a)(1), in a decision which affirms or directs the  
10 affirmance of a cease and desist order issued by the federal trade  
11 commission if the order is final within the meaning of section 5(g)  
12 of the federal trade commission act, 15 ~~U.S.C.—USC~~ 45(g), and which  
13 is officially reported not less than 30 days before the method,  
14 act, or practice on which the action is based occurs. For purposes  
15 of this subdivision, a method, act, or practice shall not be deemed  
16 to be unfair or deceptive within the meaning of section 5(a)(1) of  
17 the federal trade commission act solely because the method, act, or  
18 practice is made unlawful by another federal statute that refers to  
19 or incorporates section 5(a)(1) of the federal trade commission  
20 act.

21 (4) On motion of a person and without bond in an action  
22 brought under subsection (3), the court may make an appropriate  
23 order: to reimburse persons who have suffered damages; to carry out  
24 a transaction in accordance with the aggrieved persons' reasonable  
25 expectations; to strike or limit the application of unconscionable  
26 clauses of contracts to avoid an unconscionable result; or to grant  
27 other appropriate relief. The court after a hearing may appoint a

1 receiver or order sequestration of the defendant's assets if it  
2 appears to the satisfaction of the court that the defendant  
3 threatens or is about to remove, conceal, or dispose of his **OR HER**  
4 assets to the detriment of members of the class.

5 (5) If at any stage of proceedings brought under subsection  
6 (3) the court requires that notice be sent to the class, a person  
7 may petition the court to require the defendant to bear the cost of  
8 notice. In determining whether to impose the cost on the defendant  
9 or the plaintiff, the court shall consider the probability that the  
10 person will succeed on the merits of his **OR HER** action.

11 (6) If the defendant shows by a preponderance of the evidence  
12 that a violation of this act resulted from a bona fide error  
13 notwithstanding the maintenance of procedures reasonably adapted to  
14 avoid the error, the amount of recovery shall be limited to actual  
15 damages.

16 (7) An action under this section shall not be brought more  
17 than 6 years after the occurrence of the method, act, or practice  
18 which is the subject of the action ~~nor~~**OR** more than 1 year after  
19 the last payment in a transaction involving the method, act, or  
20 practice which is the subject of the action, whichever period of  
21 time ends at a later date. However, when a person commences an  
22 action against another person, the defendant may assert, as a  
23 defense or counterclaim, any claim under this act arising out of  
24 the transaction on which the action is brought.

25 (8) **THIS SECTION DOES NOT APPLY TO A VIOLATION OF SECTION**  
26 **3(1) (MM) .**