MICHIGAN CONSUMER PROTECTION ACT

Act 331 of 1976

AN ACT to prohibit certain methods, acts, and practices in trade or commerce; to require the disclosure, maintenance, and verification of certain information for consumer protection; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties.

History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 2022, Act 153, Eff. Jan 1, 2023

The People of the State of Michigan enact:

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445.901 Short title.

Sec. 1.

This act shall be known and may be cited as the "Michigan consumer protection act".

History: 1976, Act 331, Eff. Apr. 1, 1977

445.902 Definitions.

Sec. 2.

(1) As used in this act:

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

(i) That the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, or currency operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller.

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

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

(iv) That the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity that exceeds the price paid for the business opportunity. This subparagraph does not apply to the sale of a marketing program made in conjunction with the licensing of a federally registered trademark or a federally registered service mark, or to the sale of a business opportunity for which the purchaser pays

less than $500.00 in total for the business opportunity from any time before the date of sale to any time within 6 months after the date of sale.

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

(c) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(d) "Person" means an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity.

(e) "Recording group" means a vocal or instrumental group that meets both of the following:

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

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

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

(g) "Trade or commerce" means the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity. "Trade or commerce" does not include the purchase or sale of a franchise, as defined in section 2 of the franchise investment law, 1974 PA 269, MCL 445.1502, but does include a pyramid promotional scheme as defined in section 2 of the pyramid promotional scheme act, MCL 445.2582.

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

History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 1984, Act 91, Imd. Eff. Apr. 20, 1984 ;-- Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006 ;-- Am. 2018, Act 189, Eff. Sept. 11, 2018

445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules; applicability of subsection (1)(hh).

Sec. 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(dd) Subject to subdivision (ee), representing as the manufacturer of a product or package that the product or package is 1 or more of the following:

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

(ii) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, degradable contrary to the definition provided in that act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The disclosure is requested from an individual to effect, administer or enforce a specific telephonic or other electronic consumer transaction that is not made in person but is requested or authorized by the individual if it is to be used solely to confirm the identity of the individual through a fraud prevention service database. The consumer good or service must still be provided to the consumer on verification of his or her identity if he or she refuses to provide his or her Social Security number but provides other information or documentation that can be used by the person to verify his or her identity. The person may inform the consumer that verification through other means than use of the Social Security number may cause a delay in providing the service or good to the consumer.

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

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

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

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

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

(i) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.

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

(iii) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is

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not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

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

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

(ll) Violating section 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, or 3o.

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

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

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

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

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History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 1994, Act 46, Imd. Eff. Mar. 23, 1994 ;-- Am. 1994, Act 276, Imd. Eff. July 11, 1994 ;-- Am. 1996, Act 74, Imd. Eff. Feb. 26, 1996 ;-- Am. 1996, Act 226, Imd. Eff. May 30, 1996 ;-- Am. 2000, Act 14, Imd. Eff. Mar. 8, 2000 ;-- Am. 2002, Act 613, Imd. Eff. Dec. 20, 2002 ;-- 2004, Act 455, Eff. Mar. 1, 2005 ;-- 2004, Act 459, Eff. Mar. 1, 2005 ;-- 2004, Act 461, Eff. Mar. 1, 2005 ;-- 2004, Act 462, Eff. Mar. 1, 2005 ;-- Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006 ;-- Am. 2008, Act 211, Eff. Nov. 1, 2008 ;-- Am. 2008, Act 310, Imd. Eff. Dec. 18, 2008 ;-- Am. 2010, Act 195, Imd. Eff. Oct. 5, 2010 ;-- Am. 2018, Act 211, Eff. Sept. 24, 2018 ;-- Am. 2020, Act 296, Eff. April 1, 2021 ;-- Am. 2021, Act 46, Eff. Mar. 30, 2022 ;-- Am. 2022, Act 152, Eff. Jan. 1, 2023

Admin Rule: R 14.51 et seq. of the Michigan Administrative Code.

445.903a Home appliance; contents of service contract.

Sec. 3a.

(1) As used in this section, "company" means a person engaged in trade or commerce who provides a service contract to consumers.

(2) A service contract for the repair or maintenance of a home appliance shall contain the following provision:

If performance of the service contract is interrupted because of a strike or work stoppage at the company's place of business, the effective period of the service contract shall be extended for the period of the strike or work stoppage.

History: Add. 1979, Act 150, Imd. Eff. Nov. 19, 1979

445.903b Failure of seller to file notice unlawful; form and contents of notice; notice of change in information; reference to MCL 445.903 includes reference to this section.

Sec. 3b.

(1) In addition to the unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce defined in section 3, it is unlawful for the seller of a business opportunity to fail to file a notice with the attorney general on or before the first sale of a

business opportunity in this state if the purchaser pays more than $500.00 in total for the business opportunity from anytime before the date of sale to anytime within 6 months after the date of sale. The form of the notice shall be prescribed by the attorney general. The attorney general shall not require the seller to file more than the following information:

(a) The name of the seller.

(b) The name under which the seller intends to do business.

(c) The seller's principal business address.

(d) If the seller is not domiciled in Michigan, a consent to service of process.

(2) The seller shall immediately notify the attorney general of a change in the information contained in the notice.

(3) A reference to section 3 in this act shall be considered to include a reference to this section.

History: Add. 1984, Act 91, Imd. Eff. Apr. 20, 1984

445.903c Advertising or listing in telephone directory; misrepresenting name or location prohibited; violation; penalty; applicability to telephone service provider, publisher, or distributor.

Sec. 3c.

(1) A person shall not advertise or cause to be listed in a telephone directory an assumed or fictitious business name that intentionally misrepresents where the business is actually located or operating or falsely states that the business is located or operating in the same area covered by the telephone directory.

(2) A person who violates this section is subject to a civil fine of not less than $100.00 or more than $10,000.00.

(3) This section does not apply to a telephone service provider or to the publisher or distributor of a telephone service directory, unless the conduct proscribed in this section is on behalf of that telephone service provider or that publisher or distributor.

History: Add. 1998, Act 229, Eff. Mar. 23, 1999

445.903d Advertising or listing in telephone directory; misrepresenting name or location prohibited; violation; penalty; applicability to telephone service provider, publisher, or distributor.

Sec. 3d.

(1) A person shall not advertise or cause to be listed in a telephone directory a business address or local telephone number that intentionally misrepresents where the business is actually located or operating or that falsely states that the business is located or operating in the same area covered by the telephone directory.

(2) A person who violates this section is subject to a civil fine of not less than $100.00 or more than $10,000.00.

(3) This section does not apply to a telephone service provider or to the publisher or distributor of a telephone directory, unless the conduct proscribed in this section is on behalf of that telephone service provider or that publisher or distributor.

(4) This section does not apply to a telephone service provider that lists, in a telephone directory, a local telephone number that forwards calls to provide customer service.

History: Add. 1998, Act 230, Eff. Mar. 23, 1999

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445.903e Issuance of gift certificate; prohibited conduct; definitions.

Sec. 3e.

(1) A person engaged in the retail sale of goods or services shall not do any of the following in connection with a gift certificate issued for retail goods or services:

(a) Refuse to accept a gift certificate in payment for goods or services used or bought for use primarily for personal, family, or household purposes, including, but not limited to, goods or services advertised on sale or pursuant to a liquidation or closeout. This subdivision does not apply if the gift certificate has an expiration date that does not violate section 3g and it is presented for redemption after that expiration date.

(b) In any manner restrict the holder of a gift certificate from using the gift certificate in a manner consistent with the stated terms and conditions of the gift certificate.

(c) Alter any term or condition of a gift certificate after it is issued.

(d) If a gift certificate has any terms or conditions, fail to disclose the terms and conditions to a prospective purchaser by doing any of the following:

(i) If a gift certificate is offered for sale by mail, conspicuously stating in the offer that "terms and conditions are applied to gift certificates and gift cards".

(ii) If a gift certificate is offered for sale by electronic, computer, or telephonic means, including a statement that "terms and conditions are applied to gift certificates or gift cards" before the prospective purchaser is able to purchase the gift certificate or conspicuously including that statement in the electronic message offering the gift certificate for purchase.

(e) If a gift certificate has any terms or conditions, fail to disclose the terms and conditions by conspicuously printing the terms and conditions on 1 of the following:

(i) The gift certificate.

(ii) The envelope or packaging containing the gift certificate, if a toll-free telephone number to access the terms and conditions is printed on the gift certificate.

(iii) A separate printed document delivered to the purchaser, if a toll-free telephone number to access the terms and conditions is printed on the gift certificate.

(f) If a gift certificate has any terms or conditions, fail to include in any advertisement or promotion for the gift certificate a notice that states that "terms and conditions are applied to gift certificates and gift cards".

(g) If the value of the gift certificate or remaining balance of the gift certificate is less than the purchase price of goods or services, refuse to accept the gift certificate and apply it to the purchase price of the goods or services.

(2) As used in this section and sections 3f and 3g:

(a) "Person engaged in the retail sale of goods" includes a person conducting a closeout, liquidation, or going-out-of-business sale on behalf of the person engaged in the retail sale of goods or that person's creditors.

(b) Subject to subsection (3), "gift certificate" means a written promise or a gift card or other electronic payment device that meets all of the following:

(i) Is usable at a single retailer, is usable at an affiliated group of retailers that share the same name, mark, or logo, or is usable at multiple, unaffiliated retailers or service providers.

(ii) Is issued in a specified amount.

(iii) May or may not be increased in value or reloaded.

(iv) Is purchased or loaded on a prepaid basis for the future purchase or delivery of goods or services.

(v) Is honored upon presentation.

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(c) "Terms and conditions" includes, but is not limited to, an expiration date or a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

(d) "Use" of a gift certificate includes making purchases with or adding value to the gift certificate.

(3) As used in this section, "gift certificate" does not include any of the following:

(a) A general use, prepaid card or other electronic payment device that is issued or sponsored by a financial institution in a predetermined amount and is usable at multiple, unaffiliated retailers or at automated teller machines. As used in this subdivision, "financial institution" means a bank, bank and trust, national bank, savings bank, savings and loan association, credit union, or money transmitter organized under the laws of this state, another state, the District of Columbia, the United States, or any territory or protectorate of the United States and their respective subsidiaries, affiliates, or holding companies.

(b) An electronic payment device linked to a deposit account.

(c) A prepaid telephone calling card regulated under state or federal law or a card used in connection with prepaid wireless telephone service.

(d) An electronic payment device used to access an account from which an individual may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis under the internal revenue code, 26 USC 1 to 1789, or regulations adopted pursuant to the internal revenue code.

(e) A prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price, if any expiration date of the prepaid discount card or program is clearly and conspicuously disclosed.

(f) A payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered.

(g) A gift certificate sold below face value or at a volume discount to an employee, to a nonprofit or charitable organization, or to an educational institution for fund-raising purposes.

(h) A gift certificate distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program, if the consumer or employee is not required to give consideration for the gift certificate.

(i) An electronic credit voucher issued by a person that holds a certificate issued under chapter 411 of title 49 of the United States Code, 49 USC 41101 to 41113, or a permit issued under chapter 413 of title 49 of the United States Code, 49 USC 41301 to 41313.

History: Add. 2008, Act 210, Eff. Nov. 1, 2008

445.903f Possession or use of gift certificate; charging service fee prohibited; "service fee" defined.

Sec. 3f.

A person engaged in the retail sale of goods or services shall not charge an inactivity fee or other service fee to a consumer for the possession or use of a gift certificate. As used in this section, "service fee" does not include any fee charged to and paid by a consumer in connection with the sale of a gift certificate, unless the fee is deducted or debited from the face value of the gift certificate.

History: Add. 2008, Act 211, Eff. Nov. 1, 2008

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445.903g Expiration of gift certificate; limitation.

Sec. 3g.

A person engaged in the retail sale of goods or services shall not sell a gift certificate to a consumer that expires within a period of less than 5 years.

History: Add. 2008, Act 209, Eff. Nov. 1, 2008

445.903h Vehicle rental transaction; inclusion of vehicle license cost recovery fee; amount; fee in excess of costs; duties of car rental company; definitions.

Sec. 3h.

(1) At the time a car rental company provides a consumer with a price quote or estimate for a vehicle rental transaction, and in the rental agreement, the car rental company shall do either of the following:

(a) Provide an estimated total price for the vehicle rental transaction.

(b) Disclose the existence of any vehicle license cost recovery fee and any other separately stated mandatory fee.

(2) If a vehicle license cost recovery fee is included as a separately stated mandatory fee in a vehicle rental transaction, the amount of the fee shall be based on the car rental company's good-faith estimate of the car rental company's average per vehicle portion of the total annual costs to license, title, and register its vehicles. If the total amount of the vehicle license recovery fees collected by a car rental company under this section in any calendar year exceeds the car rental company's actual costs to license, title, and register rental vehicles for that calendar year, the car rental company shall do both of the following:

(a) Retain the excess amount.

(b) Adjust the vehicle license recovery fees for the following calendar year by reducing the fees by an amount equal to the excess amount collected in the preceding calendar year.

(3) As used in this section:

(a) "Car rental company" means a person whose primary business is renting vehicles to consumers under rental agreements for periods of 90 days or less.

(b) "Estimated total price" means an estimated total for a vehicle rental transaction based on the duration of the vehicle rental transaction, the rental rate, and any mandatory fees.

(c) "Mandatory fee" means a fee, charge, or surcharge that a car rental company includes in every vehicle rental transaction. A fee, charge, or surcharge associated with optional products and services available for purchase by a consumer at the time of rental is not a mandatory fee.

(d) "Vehicle" means a motor vehicle as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

(e) "Vehicle license cost recovery fee" means a charge that may be included in a vehicle rental transaction originating in this state to recover costs incurred by a car rental company to license, title, and register rental vehicles.

History: Add. 2008, Act 310, Imd. Eff. Dec. 18, 2008

445.903i Ownership or operation of clothing donation box; definitions.

Sec. 3i.

(1) A person that engages in the conduct of trade or commerce and owns or operates a clothing donation box shall not do any of the following:

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(a) Mark the clothing donation box or any sign near the clothing donation box in any manner that represents or implies that any personal property placed in the clothing donation box, or the proceeds of that personal property, is donated to 1 or more charitable organizations if it is not.

(b) Display the name, logo, trademark, or service mark of a charitable organization on a clothing donation box or on any sign near the clothing donation box if that charitable organization does not receive any of the personal property placed in the clothing donation box or any of the proceeds of that personal property.

(c) If charitable organizations receive some but not all of the personal property placed in the clothing donation box or the proceeds of that personal property, fail to clearly and conspicuously disclose on the donation box or on a sign at the donation box the name, address, and telephone number of each charitable organization that receives any of that property or those proceeds; what percentage of that property or those proceeds that charitable organization receives; the name, address, and telephone number of any other person that receives any of that property or those proceeds; and what percentage of that property or those proceeds that person receives.

(2) As used in this section:

(a) "Charitable organization" means a benevolent, educational, philanthropic, humane, patriotic, religious, or eleemosynary organization of persons organized for any lawful purpose or purposes not involving pecuniary profit or gain for its officers or members.

(b) "Clothing donation box" means a receptacle in which a person may place clothing or other items of personal property he or she intends to donate to a charitable organization and that has a capacity of at least 27 cubic feet.

History: Add. 2010, Act 195, Imd. Eff. Oct. 5, 2010

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445.903k Providing, offering, or receiving compensation for providing or offering of veterans' benefit service; advertising or promoting event regarding veterans' pension or medical benefits; limitations; definitions.

Sec. 3k.

(1) A person that is engaged in trade or commerce shall not engage in any of the following acts or practices:

(a) Providing, or offering to provide, a veterans' benefit service to a veteran or family member of a veteran unless the person is any of the following:

(i) Employed by a government agency that is authorized to provide the veterans' benefit service.

(ii) An accredited individual under the federal laws and regulations applicable to the administration of veterans' benefits.

(iii) An employee or authorized representative of a recognized veterans' services organization.

(b) Receiving compensation for providing or offering to provide a veterans' benefit service to a veteran or family member of a veteran unless all of the following are met:

(i) The person is permitted to receive compensation for providing or offering to provide that service to the veteran or family member under the federal laws and regulations applicable to the administration of veterans' benefits.

(ii) Before providing or offering to provide that service, the person discloses all of the following to the veteran or family member:

(A) That the person is not affiliated with a government agency or recognized veterans' services organization.

(B) If applicable, that the veterans' benefit service is available free of charge from a government agency or recognized veterans' services organization.

(C) That the veteran may qualify for benefits other than or in addition to the benefits the veteran or family member may obtain if the person is engaged to provide the veterans' benefit service.

(D) That receipt of a certain level of veterans' benefits is not guaranteed if the person is engaged to provide the veterans' benefit service.

(c) Using financial or other personal information gathered for insurance or other purposes in providing or offering to provide a veterans' benefit service, unless the requirements of this section are met.

(d) Receiving compensation for referring a veteran or a family member of a veteran to an individual who is accredited by the United States Department of Veterans Affairs.

(e) Representing, either directly or by implication, either orally or in writing, that the receipt of a certain level of veterans' benefits is guaranteed.

(2) A person engaged in trade or commerce shall not advertise or promote any event, presentation, seminar, workshop, or other public gathering regarding veterans' pension or medical benefits or entitlements that does not include the following disclosure: "This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the Michigan Department of Military and Veterans Affairs, the Michigan Veterans Affairs Agency, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States or any of their auxiliaries. Products or services that may be discussed at this event are not necessarily endorsed by those organizations. You may qualify for benefits other than or in addition to the benefits discussed at this event.".

(3) All of the following apply to the disclosure required under subsection (2):

(a) The disclosure must be in the same type size and font as the term "veteran" or any variation of that term as used in the event advertisement or promotional materials.

(b) The disclosure must be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements.

(c) The disclosure does not apply if the United States Department of Veterans Affairs, the department of military and veterans affairs, the Michigan veterans affairs agency, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to advertise or promote events, presentations, seminars, workshops, or other public gatherings described in this subsection. The disclosure also does not apply if the event, presentation, seminar, workshop, or gathering is part of an accredited continuing legal education course.

(4) This section does not apply to officers, employees, or volunteers of this state, of any county, city, or other political subdivision of this state, or of a federal agency of the United States, who are acting in their official capacity.

(5) As used in this section:

(a) "Compensation" means money, property, or anything else of value, including, but not limited to, exclusive arrangements or agreements for the provision of services or the purchase of products.

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(b) "Recognized veterans' services organization" means a veterans' services organization that is recognized under the federal laws and regulations applicable to the administration of veterans' benefits.

(c) "Veterans' benefit service" means any of the following:

(i) The preparation, presentation, or prosecution of a claim affecting an individual who has filed or has expressed an intention to file an application for veteran, dependent, or survivor pension or medical benefits under laws administered by the United States Department of Veterans Affairs or the department of military and veterans affairs pertaining to veterans, dependents, and survivors.

(ii) Advice or representation concerning the preparation, presentation, or prosecution of a claim described in subparagraph (i).

History: Add. 2018, Act 211, Eff. Sept. 24, 2018

445.903l Third-party delivery service; prohibition on use of likeness, trademark, or other property of restaurant; written agreement; definitions.

Sec. 3l. (1) A third-party delivery service shall not use a likeness, trademark, or other intellectual property belonging to a restaurant without obtaining written consent from the restaurant to use the likeness, trademark, or other intellectual property. Written consent under this subsection must be reflected in a valid agreement.

(2) To enter into a valid agreement under this section, the third-party delivery service must be registered to do business in this state.

(3) An agreement under this section must not require the restaurant to indemnify the third-party delivery service, an independent contractor acting on behalf of the third-party delivery service, or a registered agent of the third-party delivery service for damages or harm that may occur after a product leaves the restaurant's place of business. A provision of an agreement that is contrary to this section is void and unenforceable. This subsection applies only to an agreement that takes effect or is extended, renewed, or modified after the effective date of the amendatory act that added this section.

(4) As used in this section:

(a) "Agreement" means a written contractual agreement between a restaurant and a third-party delivery service.

(b) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(c) "Customer" means a person that places an order for a restaurant's product through a marketplace.

(d) "Likeness" means an identifiable symbol attributed and easily identified as belonging to a specific restaurant.

(e) "Marketplace" means a third-party delivery service's proprietary online communication platform where customers can view and search the menus of restaurants or place an order for restaurants' products, or both, via the third-party delivery service's website or mobile application for delivery by the third-party delivery service to the customer.

(f) "Restaurant" means a food service establishment defined and licensed under the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

(g) "Third-party delivery service" means a business entity, other than a restaurant, that provides limited delivery services to customers.

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History: Add. 2020, Act 296, Eff. April 1, 2021

445.903m Online state services by unaffiliated third party; requirements.

Sec. 3m.

(1) If a third party charges customers a fee or requires customers to disclose personal information for online services that are similar to online services performed by a governmental agency in this state and the third party is not affiliated with that governmental agency or under contract with that governmental agency to provide those online services, the third party shall do all of the following:

(a) Have a conspicuous notification on the website offering those online services stating that the third party is not a governmental agency of this state.

(b) Have a conspicuous notification on the website offering those online services stating that the third party's services are not endorsed or approved by a governmental agency of this state.

(c) Have a conspicuous notification on the website offering those online services stating that the third party is not affiliated with a governmental agency of this state or under contract with a governmental agency of this state to provide those online services.

(d) Provide a link on the website offering those online services to the website of the governmental agency of this state on which a person may utilize the governmental agency's online service.

(e) Before a transaction for an online service is completed, ensure that a conspicuous notification of any fee it will charge for the online service occurs.

(2) A person that is not part of or associated with a governmental entity shall not do any of the following:

(a) Simulate a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.

(b) Represent, imply, or otherwise engage in an action that may reasonably cause confusion that the person using or employing the action is a part of or associated with a governmental entity.

(c) Represent, imply, or otherwise reasonably cause confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.

(d) Use or employ language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or email addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.

(3) As used in this section:

(a) "Conspicuous notification" means, at a minimum, for a notification that is on a website, a notification that is on the opening page of that website, is in a type size that is the same or larger than the largest type size on that website, and is in boldface, capital letters.

(b) "Governmental agency" means this state or a political subdivision of this state.

(c) "Online services performed by a governmental agency in this state" means any service that a governmental agency in this state offers to members of the public on a website, including processes for booking appointments, completing or filing forms, downloading documents, and making payments.

(d) "Third party" means a person that is not an agency, department, or division of this state.

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History: Add. 2021, Act 46, Eff. Mar. 30, 2022 ;-- Am. 2022, Act 22, Eff. Mar. 30, 2022

445.903n Definitions for MCL 445.903o.

Sec. 3n.

As used in section 3o:

(a) "Consumer product" means any tangible personal property that is distributed in trade or commerce and that is normally used for personal, family, or household purposes regardless of whether the property is attached to or installed in, or intended to be attached to or installed in, real property.

(b) "High-volume third-party seller" means a participant on an online marketplace's platform that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products through the online marketplace, and for which payment was processed by the online marketplace, either directly or through its payment processor, with an aggregate total of $5,000.00 or more in gross revenues.

(c) "Online marketplace" means a person that operates a consumer-directed electronically based or accessed platform that meets all of the following criteria:

(i) It includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in this state.

(ii) It is used by 1 or more third-party sellers for the purposes in subparagraph (i).

(iii) It has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(d) "Political subdivision" means a county, city, village, township, or other political subdivision, public corporation, authority, or district in this state.

(e) "Seller" means a person that sells, offers to sell, or contracts to sell a consumer product through an online marketplace platform. Seller does not include a new motor vehicle dealer licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(f) "Third-party seller" means a seller that is independent of an online marketplace and that sells, offers to sell, or contracts to sell a consumer product in this state through an online marketplace's platform. Third-party seller does not include either of the following:

(i) A seller that operates the online marketplace's platform.

(ii) A business entity to which all of the following apply:

(A) It has made available to the general public the entity's name, business address, and working contact information.

(B) It has an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products.

(C) It has provided to the online marketplace identifying information, as described in section 3o(1), that has been verified in accordance with section 3o(4).

(g) "Verify" means to confirm information provided to an online marketplace under section 3o(1). Verify may include the use of 1 or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, correspond to the seller or an individual acting on the seller's behalf, are not misappropriated, and are not falsified.

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History: Add. 2022, Act 153, Eff. Jan. 1, 2023

445.903o Regulation and verification of online marketplace and third-party sellers; information for consumers; requirements; failure to comply; suspension; enforcement.

Sec. 3o.

(1) An online marketplace shall require a high-volume third-party seller on the online marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third-party seller on the platform, all of the following information to the online marketplace:

(a) A bank account number, or if the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller. The bank account or payee information required under this subdivision may be provided by the high-volume third-party seller in either of the following ways:

(i) To the online marketplace.

(ii) To a payment processor or other third party contracted by the online marketplace to maintain the bank account or payee information, if the online marketplace ensures that it can obtain that information on demand from the payment processor or other third party.

(b) Contact information for the high-volume third-party seller that includes all of the following, as applicable:

(i) If the high-volume third-party seller is an individual, the individual's name.

(ii) If the high-volume third-party seller is not an individual, 1 of the following:

(A) A copy of a valid government-issued identification for an individual acting on behalf of the high-volume third-party seller that includes the individual's name.

(B) A copy of a valid government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller.

(iii) A business tax identification number, or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.

(iv) A current working email address and telephone number of the high-volume third-party seller.

(2) An online marketplace shall do both of the following:

(a) Periodically, but not less than annually, notify any high-volume third-party seller on the online marketplace's platform of the requirement to keep any information collected under subsection (1) current.

(b) Require any high-volume third-party seller on the online marketplace's platform to, not later than 10 days after receiving the notice under subdivision (a), electronically certify 1 of the following:

(i) The high-volume third-party seller has provided any changes to the information in subsection (1) to the online marketplace, if any changes have occurred.

(ii) There have been no changes to the high-volume third-party seller's information.

(3) If a high-volume third-party seller does not provide the information under subsection (1) or certification required under subsection (2), the online marketplace shall, after providing the high-volume third-party seller with written or electronic notice and an opportunity to provide that information or certification not later than 10 days after the issuance of the notice described in this subsection, suspend any future sales activity of the high-volume third-party seller until the high-volume third-party seller provides the required information or certification.

(4) An online marketplace shall do both of the following:

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(a) Verify the information collected under subsection (1) not later than 10 days after the information was collected.

(b) Verify any change to the information under subsection (1) not later than 10 days after being notified of a change in that information by a high-volume third-party seller under subsection (2).

(5) If a high-volume third-party seller provides a copy of a valid government-issued tax document under this section, any information contained in that document is presumed to be verified as of the date of issuance of that document.

(6) Information collected solely to comply with the requirements of this section must not be used for any other purpose unless required by law.

(7) An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards that are appropriate to the nature of the information and the purposes for which the information will be used, to protect the information collected to comply with the requirements of this section from unauthorized use, disclosure, access, destruction, or modification.

(8) An online marketplace shall do both of the following:

(a) Require any high-volume third-party seller described in subsection (9) to provide the information described in subsection (9) to the online marketplace.

(b) Disclose the information described in subsection (9) to consumers in a clear and conspicuous manner in the order confirmation message or other document or communication made to a consumer after a purchase is finalized and in the consumer's account transaction history.

(9) A high-volume third-party seller that uses an online marketplace's platform and that has an aggregate total of $20,000.00 or more in annual gross revenues on the online marketplace shall provide and disclose both of the following to the online marketplace:

(a) Except as provided in subsection (10), the identity of the high-volume third-party seller, including all of the following:

(i) The full name of the high-volume third-party seller that may include the high-volume third-party seller name or company name, or the name by which the high-volume third-party seller or company operates on the online marketplace.

(ii) The physical address of the high-volume third-party seller.

(iii) The contact information of the high-volume third-party seller, to allow for the direct, unhindered communication with the high-volume third-party seller by users of the online marketplace, including any of the following:

(A) A current working telephone number.

(B) A current working email address.

(C) Other means of direct electronic messaging that may be provided to the high-volume third-party seller by the online marketplace.

(b) Whether the high-volume third-party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in subdivision (a) relating to any seller that supplied the consumer product to the purchaser, if that seller is different from the high-volume third-party seller listed on the product listing prior to purchase.

(10) Subject to subsection (11), on the request of a high-volume third-party seller described in subsection (9), an online marketplace may provide for partial disclosure of the identity information required under subsection (9)(a) in the following situations:

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(a) If the high-volume third-party seller certifies to the online marketplace that it does not have a business address and has only a residential street address, or has a combined business and residential address, the online marketplace may do both of the following:

(i) Disclose only the country, and if applicable, the state in which the high-volume third-party seller resides.

(ii) Inform consumers that there is no business address available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by telephone, email, or other means of electronic messaging provided to the high-volume third-party seller by the online marketplace.

(b) If the high-volume third-party seller certifies to the online marketplace that it is a business that has a physical address for product returns, the online marketplace may disclose the high-volume third-party seller's physical address for product returns.

(c) If the high-volume third-party seller certifies to the online marketplace that it does not have a telephone number other than a personal telephone number, the online marketplace shall inform consumers that there is no telephone number available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by email or other means of electronic messaging provided to the high-volume third-party seller by the online marketplace.

(11) If an online marketplace becomes aware that a high-volume third-party seller described in subsection (9) has made a false representation to the online marketplace to justify the provision for partial disclosure under subsection (10) or that a high-volume third-party seller that has requested and received a provision for partial disclosure under subsection (10) has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the high-volume third-party seller by telephone, email, or other means of electronic messaging provided to the high-volume third-party seller by the online marketplace, the online marketplace shall, after providing the high-volume third-party seller with written or electronic notice and an opportunity to respond not later than 10 days after the issuance of the notice described in this subsection, suspend any future sales activity of the high-volume third-party seller unless the high-volume third-party seller consents to the disclosure of the identity information required under subsection (9)(a).

(12) An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of a high-volume third-party seller a reporting mechanism that allows for electronic and telephone reporting of suspicious marketplace activity to the online marketplace.

(13) If a high-volume third-party seller does not comply with the requirements to provide and disclose information under subsections (9) and (10), the online marketplace shall, after providing the high-volume third-party seller with written or electronic notice and an opportunity to provide or disclose that information not later than 10 days after the issuance of the notice described in this subsection, suspend any future sales activity of the high-volume third-party seller until the seller complies with the requirements under subsections (9) and (10).

(14) Notwithstanding anything in this act to the contrary, this section may be enforced only by the attorney general. A person other than the attorney general, including, but not limited, to a prosecuting attorney, shall not bring an action under section 11 or 15 in relation to a violation of this section.

(15) A political subdivision shall not establish, mandate, or otherwise require an online marketplace or seller to undertake different or additional measures to verify or disclose the

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same information or information that is similar to the information that is subject to this section.

History: Add. 2022, Act 153, Eff. Jan. 1, 2023

445.904 Exemptions; burden of proof.

Sec. 4.

(1) This act does not apply to either of the following:

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

(b) An act done by the publisher, owner, agent, or employee of a newspaper, periodical, directory, radio or television station, or other communications medium in the publication or dissemination of an advertisement unless the publisher, owner, agent, or employee knows or, under the circumstances, reasonably should know of the false, misleading, or deceptive character of the advertisement or has a direct financial interest in the sale or distribution of the advertised goods, property, or service.

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

(a) The banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(b) 1939 PA 3, MCL 460.1 to 460.11.

(c) The motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(d) The savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804.

(e) The credit union act, 2003 PA 215, MCL 490.101 to 490.601.

(3) This act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, if either of the following is met:

(a) The method, act, or practice occurred on or after March 28, 2001.

(b) The method, act, or practice occurred before March 28, 2001. However, this subdivision does not apply to or limit a cause of action filed with a court concerning a method, act, or practice if the cause of action was filed in a court of competent jurisdiction on or before June 5, 2014.

(4) The burden of proving an exemption from this act is upon the person claiming the exemption.

History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 1993, Act 10, Imd. Eff. Mar. 31, 1993 ;-- Am. 2000, Act 432, Eff. Mar. 28, 2001 ;-- Am. 2003, Act 216, Imd. Eff. Dec. 2, 2003 ;-- Am. 2014, Act 251, Eff. Mar. 31, 2015

Compiler's Notes: Enacting section 1 of Act 251 of 2014 provides:"Enacting section 1. This amendatory act is retroactive and is effective March 28, 2001."Enacting section 2 of Act 251 of 2014 provides:"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation that this act applies to or creates a cause of action for an unfair, unconscionable, or deceptive method, act, or practice occurring before March 28, 2001 that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, that may result from the decision of the Michigan supreme court in Converse v Auto Club Group Ins Co, No. 142917, October 26, 2012. "

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445.905 Action to restrain defendant by temporary or permanent injunction; venue; costs; civil penalty; notice to defendant; notice to attorney general; violation of injunction, order, decree, or judgment; civil fine; retention of jurisdiction, continuation of cause, and petition for recovery of civil fine.

Sec. 5.

(1) If the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice that is unlawful under section 3, and gives notice pursuant to this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham County. The court may award costs to the prevailing party. Except as otherwise provided in this section, for persistent and knowing violation of section 3 the court may assess the defendant a civil fine of not more than $25,000.00. For a violation of section 3(1)(kk), each performance or production is a separate violation. For a violation of section 3l, the court may assess the defendant a civil fine of not more than $1,000.00 per violation. Each day a violation of section 3l occurs counts as a separate violation.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the attorney general shall notify the person of his or her intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given to the person by mail, postage prepaid, to his or her usual place of business or, if the person does not have a usual place of business, to his or her last known address, or, if the person is a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

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

(4) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued under this section shall forfeit and pay to the state a civil fine of not more than $5,000.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil fine as provided by this section.

History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006 ;-- Am. 2020, Act 296, Eff. April 1, 2021

445.906 Assurance of discontinuance of method, act, or practice.

Sec. 6.

(1) When the attorney general has authority to institute an action or proceeding pursuant to section 5, he may accept an assurance of discontinuance of a method, act, or practice which is

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alleged to be unlawful under section 3 from the person who is alleged to have engaged, be engaging, or be about to engage in the method, act, or practice. The assurance shall not constitute an admission of guilt nor be introduced in any other proceeding. The assurance may include a stipulation for any or all of the following:

(a) The voluntary payment by the person for the costs of investigation.

(b) An amount to be held in escrow pending the outcome of an action.

(c) An amount for restitution to an aggrieved person.

(2) An assurance of discontinuance shall be in writing and may be filed with the circuit court of Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by a court for good cause.

History: 1976, Act 331, Eff. Apr. 1, 1977

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445.907 Subpoena; notice; confidentiality; penalty.

Sec. 7.

(1) Upon the ex parte application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after an ex parte hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act. A person served with a subpoena may be accompanied by counsel when he appears before the attorney general. The subpoena may compel a person to produce the books, records, papers, documents, or things relating to an alleged violation of this act. During the examination of documentary material under the subpoena, the court may require a person having knowledge of the documentary material or the matters contained therein to attend and give testimony under oath or acknowledgment with respect to the documentary material.

(2) The subpoena shall include the notice of the time, place, and cause of the taking of testimony, the examination, or the attendance and shall allow not less than 10 days before the date of the taking of testimony or examination, unless for good cause shown the court shortens that period of time.

(3) Service of the notice shall be in the manner provided and subject to the provisions that apply to service of process upon a defendant in a civil action commenced in the circuit court.

(4) The notice shall:

(a) State the time and place for the taking of testimony or the examination and the name and address of the person to be examined. If the name is not known, the notice shall give a general description sufficient to identify the person or the particular class or group to which the person belongs.

(b) State a reference to this section and the general subject matter under investigation.

(c) Describe the documentary material to be produced with reasonable specificity so as to indicate fairly the material demanded.

(d) Prescribe a return date within which the documentary material shall be produced.

(e) Identify the members of the attorney general's staff to whom the documentary material shall be made available for inspection and copying.

(5) At any time before the date specified in the notice, upon motion for good cause shown, the court may extend the reporting date or modify or set aside the notice and subpoena.

(6) The documentary material or other information obtained by the attorney general pursuant to an investigation under this section shall be confidential records of the office of the attorney general and shall not be available for public inspection or copying or divulged to any person except as provided in this section. The attorney general may disclose documentary material or other information as follows:

(a) To other law enforcement officials.

(b) In connection with an enforcement action brought pursuant to this act.

(c) Upon order of the court, to a party in a private action brought pursuant to this act.

(7) A person who discloses information designated confidential by this section, except as permitted by subsection (6) or under court order, is guilty of a misdemeanor and may be fined not more than $2,500.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.908 Compliance with notice; conduct requiring assessment of civil penalty; petition for order to enforce compliance; violation of final order; injunction.

Sec. 8.

(1) A person upon whom a notice is served pursuant to section 7 shall comply with the terms of the notice unless otherwise provided by the order of the circuit court.

(2) A person who does any of the following shall be assessed a civil penalty of not more than $5,000.00.

(a) Knowingly without good cause fails to appear when served with a notice.

(b) Knowingly avoids, evades, or prevents compliance, in whole or in part, with an investigation, including the removal from any place, concealment, destruction, mutilation, alteration, or falsification of documentary material in the possession, custody, or control of a person subject to the notice.

(c) Knowingly conceals relevant information.

(3) The attorney general may file a petition in the circuit court of the county in which the person is established or conducts business or, if the person is not established in this state, in the circuit court of Ingham county for an order to enforce compliance with a subpoena or this section. A violation of a final order entered pursuant to this section shall be punished as civil contempt.

(4) Upon the petition of the attorney general, the circuit court may enjoin a person from doing business in this state if the person persistently and knowingly evades or prevents compliance with an injunction issued pursuant to this act.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.909 Publication, public inspection and copying, and distribution of rules, final judgments, assurance of discontinuance, and other matters; request; fee.

Sec. 9.

(1) The attorney general shall publish, make available for public inspection and copying during business hours, and distribute by subscription upon the request of any person:

(a) Rules promulgated under section 3 (2).

(b) Copies of final judgments rendered under this act provided to the attorney general by clerks of the courts pursuant to section 12 (1).

(c) Any other matter as required by Act No. 306 of the Public Acts of 1969, as amended.

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(d) An assurance of discontinuance entered into pursuant to section 6.

(2) The attorney general may charge a reasonable fee to cover the expense of copying or distribution.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.909a List of consumer complaints.

Sec. 9a.

After each calendar quarter, the attorney general shall by electronic mail provide to the better business bureau of western Michigan, inc., better business bureau of Michiana, inc., better business bureau of Detroit and eastern Michigan, inc., and better business bureau serving NW Ohio and SE Michigan, inc., a list of complaints made by consumers to the attorney general during that calendar quarter of violations of section 3(1)(gg) in connection with a telephone solicitation. The list shall contain the name of each person against whom 1 or more complaints were made and the number of complaints against that person.

History: Add. 2002, Act 613, Imd. Eff. Dec. 20, 2002

445.910 Class action by attorney general for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 10.

(1) The attorney general may bring a class action on behalf of persons residing in or injured in this state for the actual damages caused by any of the following:

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

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3 (1) by a final judgment of the circuit court or an appellate court of this state which is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

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

(2) On motion of the attorney general and without bond in an action under this section the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the

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satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his assets to the detriment of members of the class.

(3) If at any stage of the proceedings the court requires that notice be sent to the class, the attorney general may petition the court to require the defendant to bear the cost of the notice. In determining whether to impose the cost on the defendant or the state, the court shall consider the probability that the attorney general will succeed on the merits of the action.

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

(5) An action shall not be brought by the attorney general under this section more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends on a later date.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.911 Action by person for declaratory judgment, injunction, or actual damages; class action by person for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 11.

(1) Whether or not a person seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following:

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

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

(2) Except in a class action or as otherwise provided in subsection (3), a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorney fees.

(3) Except in a class action, a person who suffers a loss as a result of a violation of section 3l may bring an action to recover actual damages or $5,000.00, whichever is greater, together with reasonable attorney fees. In an action brought under this subsection, the court may, in its discretion, award punitive damages.

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

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

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3(1) by a final judgment of the circuit court or an appellate court of this state that is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

(c) A method, act, or practice in trade or commerce declared by a circuit court of appeals or the United States Supreme Court to be an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 USC 45(a)(1), in a decision that affirms or directs the affirmance of a cease and desist order issued by the Federal Trade Commission if the order is final within the meaning of section 5(g) of the federal trade commission act, 15 USC 45(g), and that is officially reported not less than 30 days before the method, act, or practice on which the action is based occurs. For purposes of this subdivision,

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a method, act, or practice is not unfair or deceptive within the meaning of section 5(a)(1) of the federal trade commission act, 15 USC 45(a)(1), solely because the method, act, or practice is made unlawful by another federal statute that refers to or incorporates section 5(a)(1) of the federal trade commission act, 15 USC 45(a)(1).

(5) On motion of a person and without bond in an action brought under subsection (4), the court may make an appropriate order to do 1 or more of the following:

(a) Reimburse persons who have suffered damages.

(b) Carry out a transaction in accordance with the aggrieved persons' reasonable expectations.

(c) Strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result.

(d) Grant other appropriate relief.

(6) In an action brought under subsection (4), the court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of the defendant's assets to the detriment of members of the class.

(7) If at any stage of proceedings brought under subsection (4) the court requires that notice be sent to the class, a person may petition the court to require the defendant to bear the cost of notice. In determining whether to impose the cost on the defendant or the plaintiff, the court shall consider the probability that the person will succeed on the merits of the person's action.

(8) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery is limited to actual damages.

(9) An action under this section must not be brought more than 6 years after the occurrence of the method, act, or practice that is the subject of the action or more than 1 year after the last payment in a transaction involving the method, act, or practice that is the subject of the action, whichever period of time ends at a later date. However, if a person commences an action against another person, the defendant may assert, as a defense or counterclaim, any claim under this act arising out of the transaction on which the action is brought.

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History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 2020, Act 296, Eff. April 1, 2021

445.912 Mailing copy of complaint, judgment, decree, or order to attorney general; violation of injunction as evidence.

Sec. 12.

(1) Upon commencement of an action brought pursuant to section 11 or section 15, the clerk of the court shall mail a copy of the complaint to the attorney general, and upon entry of a judgment or decree in the action, the clerk of the court shall mail a copy of the judgment, decree, or order to the attorney general.

(2) In a subsequent action by the attorney general brought pursuant to section 10 proof of a violation of a permanent injunction issued pursuant to section 5 is conclusive evidence that the defendant engaged in a method, act, or practice which is unlawful under this act.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.913 Filing fees for commencing action or filing voluntary assurance.

Sec. 13.

When the attorney general or prosecuting attorney commences an action or files a voluntary assurance pursuant to this act, filing fees shall not be required to be paid.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.914 Investigation by law enforcement officer.

Sec. 14.

A law enforcement officer in the state, if requested by the attorney general or a prosecuting attorney, shall aid and assist in an investigation of an alleged or actual violation of this act.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.915 Investigation and prosecution by prosecuting attorney.

Sec. 15.

A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.916 Other causes of action not affected; inconsistent ordinance or regulation prohibited.

Sec. 16.

This act shall not affect any other cause of action which is available. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated pursuant to this act.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.917 Investigation of financial institutions; subpoena; report.

Sec. 17.

(1) The commissioner of the financial institutions bureau may investigate, in the manner set forth in section 7, a state or federally chartered bank, savings and loan association, or credit union, or a regulatory loan licensee which the commissioner believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commissioner requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commissioner in accordance with section 7.

(3) Upon conclusion of an investigation, the commissioner shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.918 Investigation of public utilities; subpoena; report.

Sec. 18.

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(1) The public service commission may investigate, in the manner set forth in section 7, a public utility subject to its jurisdiction pursuant to Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws, the motor carrier act, Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.20 of the Michigan Compiled Laws, and the Michigan telecommunication act, Act No. 179 of the Public Acts of 1991, being sections 484.2101 to 484.2605 of the Michigan Compiled Laws, which the commission believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commission requires the use of the subpoena power provided in this act, an application shall be made to the attorney general who shall procure a subpoena on behalf of the commission in accordance with section 7.

(3) Upon conclusion of an investigation, the commission shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 1993, Act 10, Imd. Eff. Mar. 31, 1993

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445.919 Investigation of certain persons by cemetery commission; subpoena; report.

Sec. 19.

(1) The cemetery commission may investigate, in the manner set forth in section 7, a person subject to Act No. 251 of the Public Acts of 1968, as amended, being sections 456.521 to 456.543 of the Michigan Compiled Laws, who the commission believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commission requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commission in accordance with section 7.

(3) Upon conclusion of an investigation, the commission shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.920 Investigation of certain persons by director of department of energy, labor, and economic growth; subpoena; report.

Sec. 20.

(1) The director of the department of energy, labor, and economic growth may investigate, in the manner set forth in section 7, a person subject to the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818; the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703; the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098; or the franchise investment law, 1974 PA 269, MCL 445.1501 to 445.1546, who the director believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the director requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the director in accordance with section 7.

(3) Upon conclusion of an investigation, the director shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977 ;-- Am. 2009, Act 92, Imd. Eff. Sept. 24, 2009

445.921 Investigation of certain persons by commissioner of insurance; subpoena; report.

Sec. 21.

(1) The commissioner of insurance may investigate, in the manner set forth in section 7, a person subject to Act No. 218 of the Public Acts of 1956, as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, who the commissioner believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commissioner requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commissioner in accordance with section 7.

(3) Upon conclusion of an investigation, the commissioner shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977

445.922 Effective date.

Sec. 22.

This act shall take effect April 1, 1977.

History: 1976, Act 331, Eff. Apr. 1, 1977

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