

HOUSE BILL No. 4801

June 26, 2019, Introduced by Reps. Reilly and Maddock and referred to the Committee on Communications and Technology.

A bill to amend 1976 PA 331, entitled "Michigan consumer protection act," by amending section 3 (MCL 445.903), as amended by 2018 PA 211, and by adding section 3j.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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.

(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.

(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), representations by 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, representations by a manufacturer that the container holding device is 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 in order to claim the prize the consumer is required to submit to a sales presentation, 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 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 shall still be provided to the consumer upon 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 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, 3J, or 3k.

(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 shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall 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.

SEC. 3J. (1) SUBJECT TO SUBSECTION (2), A PERSON THAT IS ENGAGED IN TRADE OR COMMERCE AS A PROVIDER OF AN INTERACTIVE COMPUTER SERVICE AND THAT REPRESENTS THE SERVICE AS VIEWPOINT NEUTRAL, IMPARTIAL, OR NONBIASED SHALL NOT, ON THE BASIS OF THE CONTENT OR VIEWPOINT EXPRESSED, DO ANY OF THE FOLLOWING:

(A) BLOCK A USER'S SPEECH.

(B) CENSOR A USER'S SPEECH.

(C) BAN A USER.

(D) REMOVE A USER'S SPEECH.

(E) SHADOW BAN A USER.

(F) DEPLATFORM A USER.

(G) DEBOOST A USER.

(H) DEMONETIZE A USER.

(I) OTHERWISE RESTRICT THE SPEECH OF A USER.

(2) UNDER 47 USC 230(C), IT IS A DEFENSE TO LIABILITY UNDER THIS SECTION THAT AN INTERACTIVE COMPUTER SERVICE DID ANY OF THE FOLLOWING:

(A) VOLUNTARILY AND IN GOOD FAITH ACTED TO RESTRICT ACCESS TO OR AVAILABILITY OF CONTENT THAT THE INTERACTIVE COMPUTER SERVICE REASONABLY CONSIDERS TO BE OBSCENE, LEWD, LASCIVIOUS, FILTHY,

EXCESSIVELY VIOLENT, HARASSING, OR OTHERWISE OBJECTIONABLE, WHETHER OR NOT THAT CONTENT IS CONSTITUTIONALLY PROTECTED.

(B) ACTED TO ENABLE OR MAKE AVAILABLE THE TECHNICAL MEANS TO RESTRICT ACCESS TO CONTENT DESCRIBED IN SUBDIVISION (A).

(3) THIS SECTION DOES NOT APPLY TO A TELECOMMUNICATION PROVIDER.

(4) AS USED IN THIS SECTION:

(A) "DEBOOST" MEANS TO PROHIBIT A USER FROM USING A GENERALLY AVAILABLE OPTION TO PURCHASE EXPOSURE FOR USER-SUBMITTED CONTENT TO OTHER USERS, OR TO REVERSE A PURCHASE DESCRIBED IN THIS SUBDIVISION.

(B) "DEMONETIZE" MEANS TO EXCLUDE A USER, IN WHOLE OR IN PART, FROM A GENERALLY AVAILABLE ADVERTISING REVENUE-SHARING AGREEMENT.

(C) "DEPLATFORM" MEANS TO DISABLE A USER'S ACCOUNT PERMANENTLY OR FOR A PERIOD LONGER THAN 1 MONTH, OR TO PROHIBIT A USER FROM USING THE SERVICE WITH AN ALTERNATE ACCOUNT.

(D) "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE, SYSTEM, OR ACCESS SOFTWARE PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A SERVER, INCLUDING, BUT NOT LIMITED TO, A SERVICE, SYSTEM, WEBSITE, WEB APPLICATION, OR WEB PORTAL THAT PROVIDES A SOCIAL MEDIA PLATFORM FOR USERS TO ENGAGE IN EXPRESSIVE ACTIVITY.

(E) "SHADOW BAN" MEANS TO SUPPRESS THE APPEARANCE OF USER-SUBMITTED CONTENT, WHOLLY OR IN PART, TO OTHER USERS OF THE SERVICE WITHOUT NOTICE TO THE AUTHOR OF THE CONTENT.

(F) "TELECOMMUNICATION PROVIDER" MEANS THAT TERM AS DEFINED IN SECTION 102 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179,

MCL 484.2102.

(G) "USER" MEANS ANY PERSON THAT POSTS, UPLOADS, TRANSMITS, OR OTHERWISE PUBLISHES CONTENT THROUGH A SOCIAL MEDIA PLATFORM OR OTHER INTERACTIVE COMPUTER SERVICE.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.