

Consumer Protection

BACKGROUND

Federal, state, and local governments regulate businesses to protect consumers from unfair practices and unsafe conditions and products. At the state level in Michigan, the Department of Attorney General (AG) is responsible for enforcing most consumer-protection laws. The Department of Consumer and Industry Services (MDCIS) regulates professions, corporations, and nursing homes.

Michigan created the nation's first state-level consumer-protection agency: the Consumer Protection Division, established in the AG's office in 1962. Early legislation to protect Michigan consumers covers unlawful trade practices and prohibits false representation and misleading use of words in selling, governs eviction procedures and rental agreements, regulates unsolicited merchandise, and delineates buyers' rights in home solicitation sales.

Later legislation includes the landmark Consumer Protection Act of 1976, which prohibits a variety of specific misrepresentations in commerce and advertising, regulates the return of down payments and conditions of signing agreements and service contracts, and requires sellers of business opportunities to file notice with the AG. It allows the AG to bring a class action on behalf of Michigan residents and for a person to seek a judgment, injunction, or damages against a violator of the act. Also enacted in 1976 was the item-pricing law, which requires prices to be clearly marked on individual items for sale (with certain exceptions), the volume and availability of advertised items to be posted, and a rain check offered if an advertised item is not available. Under this law, if an automatic checkout system (*scanner*) charges a price higher than that on the item, the buyer is entitled to the lower price plus 10 times the amount of the difference.

Consumer-protection legislation regarding automobiles includes a law that prohibits unfair and deceptive practices in motor-vehicle service and repair (1974) and the "lemon law" (1986); the latter provides legal remedies for buyers of new cars that do not conform to their warranty and cannot be fixed.

Product liability is a consumer-protection area pertaining to (1) damages or injuries that manufactured products may cause to users and (2) penalties and remedies imposed for such damage or injury. In the mid-1990s, business interests successfully championed a number of changes in product-liability law, among them statutes that

- eliminate *joint and several liability*, thereby making defendants responsible for only their percentage of fault unless there is criminal intent;
- establish a "state-of-the-art" defense permitting manufacturers and sellers to defend themselves from liability on the grounds that (1) their product meets current standards or is without defect, or (2) the damage/injury resulted from a risk that such a product is commonly known to possess; and
- cap rewards for noneconomic losses (that is, for the pain and suffering caused by the injury) except in instances of gross negligence or criminal fraud.

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In the late 1990s, consumer groups and trial lawyers tried but failed to achieve legislative repeal of the above changes.

In other consumer-protection areas, recent legislation

- requires home solicitors using an automated message to terminate the call when the consumer hangs up;
- prohibits sellers from sending someone to collect payment for a home-solicitation sale before the three-day right-of-rescission period has expired;
- prohibits the state from selling the driver and motor-vehicle records maintained by the secretary of state to a party that plans to use them for surveying, marketing, or soliciting;
- prohibits insurers from disclosing nonpublic, personal, financial-aid information to a third party unless the customer has been notified and given the opportunity to say no (that is, to *opt out*), and prohibits insurers from unfairly disclosing customer information for telemarketing, direct mail, or marketing through e-mail; and
- eliminates the court filing fee in cases contesting an insurer's cancellation of automobile insurance.

At the federal level, the Federal Communications Commission's (FCC) recent "truth-in-billing" guidelines require new telephone charges to be highlighted and clearly organized to prevent *cramming*—placing unauthorized or misleading charges on phone bills, a practice that has been the subject of growing consumer complaint. *Slamming*—switching consumers to another long-distance phone company without their direction—also is prohibited.

DISCUSSION

Historically, Michigan has been a leader in consumer protection, but consumer advocates assert that a pronounced business-oriented climate in state government during the 1990s blunted the protections, favoring industry over customers. Business interests respond that the earlier environment was too consumer oriented and discouraged businesses from coming to or expanding in Michigan; they believe that the changes of the last few years, particularly in product liability, put Michigan on equal footing with other states.

The AG's office, where consumers direct their complaints about unfair business practices and charities, reports that the vast majority of businesses deal fairly with consumers. Roughly 126,000 complaints were filed on a variety of businesses in 2001, and most were resolved without court

action. In the past, grievances most frequently concerned motor-vehicle repair and item pricing. More recently, complaints about telemarketing top the list, followed by grievances about natural and propane gas service and the Internet. Other complaints concern the actions of retail companies, gasoline merchants, mail-order companies, banks, automobile manufacturers, credit-reporting agencies, and contractors.

Pending Legislation

Considerable consumer-protection legislation is pending in the Michigan Legislature. Among the most significant are bills that would

- require telephone solicitors to identify themselves at the beginning of a call, prohibit them from blocking their telephone number so that it won't appear on the consumer's caller-ID, and deem it unfair or deceptive for a telephone solicitor to make certain misrepresentations (HBs 4042, 4126, 4153–54, 4250, 4506, 4631–32, 4702, 4861–63 and SBs 153–54);
- eliminate the item-pricing requirement except on food and nonprescription medicines and require that hand-held scanners with printers be available to consumers throughout an establishment (HBs 5544, 5562 and SB 1211);
- prohibit predatory lending practices, such as misrepresentation and fraud, by financial institutions, credit unions, savings and loans, secondary mortgage providers, and banks (HBs 5424–30 and SBs 776–80, 708–14, 768–774);
- include leased vehicles, motor homes, and manufactured homes in the provisions of the lemon law (HBs 4831, 5363 and SB 323);
- prohibit businesses from engaging in certain credit-transaction practices—e.g., printing the customers' credit card number on a receipt (HB 5435);
- include identity theft in the provisions of the state racketeering law (HB 5222);
- prohibit such unfair trade practices as implying that a consumer is in danger unless s/he buys a particular product or service, require disclosure to consumers of the conditions under which goods or services are offered "free" or "without charge", prohibit deceptive and unsolicited e-mail (*spam*), and prohibit disclosing to a credit-reporting agency the Social Security number of a consumer without the consumer's permission (HBs 5135, 5293, 5777);

- regulate the travel-promotion business by requiring bonds, insurance, and consumer advice on avoiding deceptive practices (HBs 4471–72);
- require plain language in consumer contracts (except insurance policies, contracts in which language is prescribed by state or federal statute, and words or phrases that are part of a legal description of real estate) (HB 5052);
- allow consumers to recover damages beyond the limit of their property/liability policy—including damages—when an insurer unfairly denies a claim and require insurers to notify authorities when a claim is denied because arson is suspected (HBs 4740–44, 4176); and
- require health insurers to make timely payment of providers' claims—within 45 days of receipt—unless they notify the provider within 30 days of the reasons the claim is denied (SBs 451–52).

Telemarketing

Currently, federal law requires telemarketers to maintain a “do-not-call” list of consumers who have given notice to the individual calling company that they do not wish to be contacted. The Federal Trade Commission (FTC) currently is holding hearings on a plan to establish a nationwide do-not-call registry. Opponents in marketing and advertising argue that such a list would use taxpayer money to restrict First Amendment rights and, further, cause extensive job and sales losses.

In Michigan, a provision for a do-not-call registry was passed by the House, but removed from telemarketing legislation by the Senate. Critics argue that a Michigan registry would not prevent out-of-state or foreign telephone solicitation. Many consumers support such a list, and the AG, in cooperation with the Michigan AARP (American Association of Retired Persons) office, has produced new complaint forms in the absence of state legislation.

According to the AG, about one-third of the telemarketing-fraud victims are senior citizens. A recent FBI report estimates that about 14,000 illegal telemarketing operations bilk consumers nationwide of about \$40 billion annually, and half the victims are aged 50 and older. Telemarketing fraud has increasingly become an international problem as American telemarketers respond to U.S. law enforcement and move operations elsewhere, often to Canada.

Internet Sales and Identity Theft

The Better Business Bureau, a private, business-sponsored organization, reports that

- fraud complaints in Michigan numbered more than 2,800 in 2001, with grievances about Internet sales and auctions topping the list, and
- identity theft claimed 3,000 Michigan victims—the most (more than a third) resulted in unauthorized use of the victim’s credit card, followed by a telephone or other utility account being opened in the victim’s name.

The FTC reports that nationally, identity theft was the leading consumer-fraud complaint in 2000, exceeding grievances about Internet sales/auctions and services. Thefts of someone’s identity information, such as credit card or Social Security numbers, to steal money or commit fraud are rapidly increasing. Privacy advocates say that as many as 750,000 people may be victimized annually. The FTC has developed an ID theft affidavit that a victim may use when an account has been opened fraudulently in his/her name, eliminating the need for the consumer to file separate paperwork with each company with which s/he does business.

Item Pricing

The current item-pricing law is favored by consumers, the AG, and the AARP but opposed by retailers who must mark items individually even when, for example, they are in a bin under a sign stating the price. Pending legislation would remove item pricing from all goods except food and nonprescription drugs and increase penalties for scanner error from 10 times the error amount to 20 times. Supporters of the change say the 26-year-old item pricing law negates the benefit of advancing technology. The AG’s annual accuracy survey of scanners at major retailers shows an error rate of 3.2 percent in 2001, a marked improvement over 16.9 percent in 2000.

Insurance

Recent hearings on the “good faith” insurance claim-payment legislation produced horror stories from consumers who said their claims had been delayed or denied without cause. Anecdotal evidence, insurers say, obscures the fact that hundreds of thousands of claims are resolved every year, and that settling claims amicably is what keeps insurers in business.

The insurance commissioner is investigating automobile insurers’ practice of considering the customer’s credit history in setting rates. Companies say that credit standing is an accurate predictor of loss, but consumer and agent groups say driving records should determine rates.

Lending Practices

Testimony in hearings on predatory-lending legislation suggests that the number of unscrupulous financial pro-

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professionals is small, but the impact is sizable. Elderly consumers, first-time home buyers, and low-income people often are the victims of lending scams, fraud, and misrepresentation. Opponents say that the bills mistakenly focus on banks, credit unions, and savings and loans, whereas most predatory lending is engaged in by unscrupulous used-car dealers, home contractors, payday lenders, and others. They also contend that people who have poor credit are a high risk and lenders should be entitled to charge them a higher interest rate than other borrowers.

Plain Language

The proposal to require plain language in contracts has wide consumer support. Business groups support the concept of plain language and note that common marketplace sense dictates the need for informed consumers. They oppose the legislation, however, arguing that there is no consensus on what constitutes “plain” language, and a government agency or some other third party should not be dictating the language that will be used in a particular field of business.

See also Privacy; Telecommunications.

FOR ADDITIONAL INFORMATION

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Consumer Information Bureau
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