

Consumer Protection

BACKGROUND

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

History

Michigan was an early leader in consumer protection, establishing the nation's first statewide Consumer Protection Division in the AG's office in 1962.

The legislature has enacted numerous laws designed to protect Michigan consumers. Early legislation (1941) covers unlawful trade practices and prohibits false representation and misleading use of words in selling. Landlord/tenant relations are subject to several laws (1961, 1978, 1980) governing eviction procedures and the contents of rental agreements. Other early consumer protection legislation regulates unsolicited merchandise (1969) and delineates the rights of the buyer in home solicitation sales (1971).

Consumer Protection Act of 1976

The lynchpin of consumer protection in Michigan is the Consumer Protection Act of 1976. This act 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. The act carries remedies, damages, and penalties. It also 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. It requires other government officials to investigate and report violations to the AG; among these are the commissioner of the Financial Institutions Bureau, public service commissioners, director of the Department of Commerce (now the MDCIS), and the insurance commissioner.

Also in 1976, legislation was enacted (the item-pricing law) regulating the pricing and advertising of consumer items. It 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" to be offered if an advertised item is not available. Under this law, if an automatic checkout system charges a price higher than that on the item, the buyer is entitled to the lower price plus ten times the amount of the difference.

Automobile Issues

Considerable consumer protection legislation involves automobiles. Especially significant are the 1974 act, which proscribes unfair and deceptive practices in servicing and repairing motor vehicles, 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. After mediation, a buyer may accept a refund or a comparable replacement car. A proposal to extend similar protection to leased vehicles is one of more than two dozen consumer protection bills introduced in 1997.

Other Pending Legislation

Among the recently introduced measures are several to regulate the telephone business, including proposals that would establish a list of consumers that telemarketers may *not* call, prohibit recorded solicitations under certain circumstances, require long-distance carriers to notify the caller of the charge for transferring the call to his/her own provider, require access to pay phone charges, and prohibit regulated phone service from being disconnected for failure to pay nonregulated charges. Several of these measures await Senate action after passing the House.

Other proposals would further regulate sweepstakes, mandate plain language in all contracts, prohibit differential pricing by gender on similar services, provide penalties for falsely identifying the origin of foods, and regulate hearing aid sales. In addition, proposals recently introduced would require disclosure of automatic teller machine (ATM) fees; require lenders to notify mortgagees when it is permissible for the latter to discontinue carrying private mortgage insurance; amend the Home Solicitation Act by extending to additional transactions the three-day period in which the buyer may change his/her mind; require insurers to disclose certain profit, cost, and premium information; and require a three-visit or 30-day escape from health club contracts. Several of these proposals have passed the House and are under discussion in various Senate committees. In the area of privacy rights, new 1997 laws prohibit requiring Social Security or credit card num-

bers for check verification and limit the secretary of state's use of license information. A proposal to require that credit companies disclose credit report information to consumers is in a Senate committee after passing the House.

Product Liability

Product liability is a consumer protection area pertaining to (1) the damages or injuries manufactured products may cause to users and (2) penalties and remedies imposed for such damage or injury. The state legislature addresses product liability frequently, with Republicans most often siding with business interests and Democrats generally aligning themselves with consumer advocates. A major issue of contention has been the concept of *joint and several liability*, under which persons may be held responsible for damages irrespective of degree of fault, but in 1995 product liability reform essentially eliminated joint and several liability in Michigan, making a defendant responsible for only his/her percentage of fault unless there was criminal intent.

The reform legislation also established "state-of-the-art" defense, which permits manufacturers and sellers to defend themselves from liability on the ground that their product (1) 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 (e.g., knives are sharp and can cause cuts). Among other changes, *noneconomic* losses (resulting in pain and suffering but not monetary loss) were capped except in instances of gross negligence or criminal fraud.

Among the bills recently introduced are measures that would repeal several aspects of the product liability reform legislation. One would make a manufacturer liable for *knowingly* manufacturing or distributing a defective product; this replaces the current stipulation that liability occurs when (1) the manufacturer knows its product is defective, (2) there is a substantial likelihood that the defect could cause injury, and (3) the manufacturer willfully disregards that knowledge.

DISCUSSION

Historically, consumer advocates have considered Michigan at the forefront in consumer protection, but they believe this distinction has become somewhat tarnished with recent legislation and a more business-oriented climate in government. Indicative of lower priority for consumers, they contend, are such actions as the elimination of the Michigan Consumer's Council in 1991 and consolidation of consumer-related functions of several state departments and bureaus into the MDCIS.

Consumer advocates note that callers to the MDCIS seeking information on the licensing of a nursing home, tradesperson, or a Michigan corporation are charged a 900-number rate of \$1.50 a minute for information that previously was available without charge. The department notes that the goal of all changes is better customer service, evidence of which are a reduced complaint backlog and innovation of such new services as permitting consumers to fax their request for information.

The AG's office, where consumers direct complaints about unfair business practices and charities, reports that the vast majority of businesses deal fairly with consumers and that about 90 percent of all complaints are resolved without court action. The office receives 12,000 written complaints annually and takes more than 50,000 calls dealing with complaints.

Sources of Consumer Complaint

The grievances most frequently raised by consumers usually concern motor vehicle repair and item pricing, although recently, there has been an upsurge in complaints about telemarketing and sweepstakes promotions. Michigan's elderly population is especially vulnerable to these latter matters: An American Association of Retired Persons' (AARP) survey finds that 58 percent of all telemarketing calls are made to people aged 65 and older, and the FBI estimates that telemarketing fraud costs senior citizens as much as \$40 billion annually.

The AARP and the AG work together to identify and combat fraudulent marketers, whose "ruse of

choice" for seniors generally involves sweepstakes, "free" prizes, and vacation or retirement homes. As state laws have caught up with the increasing use of telemarketing in sales and with passage of laws allowing attorneys general to prosecute across state lines, fraudulent marketers more frequently call from Canada.

The Better Business Bureau, a private, business-sponsored organization, also reports increasing perpetuation of scams through telemarketing and, more recently, over the Internet. The bureau notes that the Internet—the last unregulated medium—is becoming a common conduit for outrageous and difficult-to-counter promises ranging from a sure cure for arthritis to a six-figure income to be earned from making baby dolls. Several bills further regulating telemarketing and sweepstakes currently are under discussion in Michigan.

Viewpoints

Cracking down on telephone fraud and misrepresentation is supported by consumers and businesses alike, but the proposed law to establish a "do not call" list of consumers is opposed by some direct marketers. The MDCIS, which would be responsible for compiling and maintaining the list, also objects, stating that such a list is maintained currently by the private sector, a state law will not deter unscrupulous telemarketers, and the law will falsely reassure consumers that state government can protect them from unwanted callers.

The extension of current "lemon law" protection to leased vehicles is not opposed by automobile manufacturers, but they wish the bill to be crafted in such a way that both parties—manufacturer and consumer—will be treated fairly and emerge "whole" from the change. After working with industry representatives, the House Committee on Consumer Protection is expected to reach compromise on language for a bill in April 1998.

The widely supported item-pricing law was and remains strongly opposed by retailers and grocers, who must mark individually nearly all items in their stores, thereby diminishing the worth of their investment

CONSUMER PROTECTION

in expensive scanning equipment. However, consumer advocates say individual pricing allows consumers to see that items are charged at their advertised price. A 13 percent error rate was found in the AG's 1997 survey of scanner accuracy on sale items, a marked improvement over the 19.8 percent error rate revealed in 1996.

Many in the financial community oppose mandating private mortgage insurance and ATM fee disclosure. While they maintain that disclosure is healthy for the marketplace and that most banks voluntarily disclose ATM fees, they resist legislation mandating these actions as unnecessary and onerous for business.

Other proposed measures are supported in principle by business interests but opposed as presented. Most contend, for example, that common marketplace sense dictates "plain English" in consumer contracts, making mandates unnecessary. Furthermore, current proposals would require expensive rewriting of forms and a large number of exemptions for real estate descriptions, historic insurance language, and so on. In addition, there is no consensus on what constitutes "plain" English or who will define it. Consumer advocates, on the other hand, assert that consumers cannot fight fraud and misrepresentation without complete and fair disclosure of information supplied in an understandable form. The "plain language" bill passed the House in early 1998 and moved to the Senate Committee on Financial Services.

Product Liability

It generally is accepted that many products are safer today because of product liability laws, but beyond that, the subject generates deep division in Michigan. The 1995 changes were supported by the business community, which believed Michigan's economic environment had been severely weakened by laws that encouraged consumers and attorneys to seek large damages from corporations with "deep pockets," even when the injured party was at fault for the injury or under the influence of drugs or alcohol. Consumer advocates opposed the changes with equal fervor, argu-

ing that they would weaken the deterrent effect of lawsuits and reduce the incentive to make products safe.

A similar divergence of opinion exists regarding the 1997 product-safety proposals, which would repeal elements of the 1995 reform. Manufacturers believe that the 1995 act significantly improved the legal and regulatory manufacturing climate in Michigan and has been instrumental in the state's robust economy; they contend that repealing parts of it would unfairly again favor consumers.

Consumer advocates protest that the 1995 reforms give unfair advantage to manufacturers. They support removing the 1995 protections and economic caps from those who *knowingly* manufacture or distribute defective products; they would remove protection, for example, from those who manufacture or sell products that initially were approved by the Federal Drug Administration but later found harmful. The business community contends that people at the end of the distribution chain cannot reasonably be expected to have intimate knowledge of sophisticated products and, moreover, "knowingly" is a difficult-to-define concept favored by attorneys who benefit from murkiness in the law. As of April 1, 1998, measures on pharmaceutical product liability, defective products, and financial damages for fraud and malice had passed the House and moved to various Senate committees. The proposal on criminal charges for "knowingly" dealing in defective products remains in the House Committee on Judiciary.

See also Agriculture; Automobile Insurance, Electric Industry Deregulation; Information Technology and Society; Internet and Computers; Local Telephone Service; Long-Term and Related Care.

FOR ADDITIONAL INFORMATION

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