



May 3, 2009

## Michigan consumers find little refuge in consumer protection law

Critics say state law is a wreck. Nonsense, say business groups

*BY DAVID ASHENFELTER  
FREE PRESS STAFF WRITER*

When Paulette Day rolled out of a Southgate car dealership in a bright red Chevy Monte Carlo in 2004, she thought she was buying a nearly new ride.

Later, the 38-year-old Romulus homemaker was shocked to learn her \$20,350 GM-certified used car actually was two wrecks that a Macomb County car dealer welded together and sold to a broker, which sold it to Rowan Pontiac-GMC.

Now, five years later, Day and her husband are waging an uphill legal battle to get their money back - a task made more difficult by two Michigan Supreme Court decisions that gutted the state's Consumer Protection Act.

In 10 years, consumer advocates say, the court has turned one of the nation's best consumer protection laws into one of the worst. A national group says Michigan and Rhode Island are "The Terrible Two" in consumer protection.

But business groups say the laws are good enough and that reconstituting the act would spark frivolous lawsuits.

The Consumer Law Section of the State Bar of Michigan plans to report this week that, because of the rulings, nearly three-fourths of the 13,122 complaints the attorney general received last year are no longer covered by the act.

## Michiganders learn hard reality of consumer law

Paulette and James Day said they became suspicious of their newly purchased 2004 Chevy Monte Carlo when a relative spotted blue paint on the back of the gas cap door and told them it might have been involved in an accident.

But they said the dealership, which described the car as a dealer demo, refused to take it back despite assurances that they could return it within three days or 150 miles under General Motors Corp.'s satisfaction guarantee.

"I feel taken, I feel violated," Paulette Day said.

Day said they didn't realize their car had been pieced together until six months later when they hired a lawyer, who had the car examined by an expert. GM's Web site says it doesn't approve of the practice, called clipping, which is relatively common.

"No consumer would ever expect that two vehicles welded together make a GM-certified used car," said Day's lawyer, Dani Liblang of Birmingham, who is suing the company that clipped the cars together, the broker that sold it to the Rowan Pontiac-GMC dealership and GM, which relied on the dealer to thoroughly inspect the car.

## Rulings 'against the public interest'

Former state Attorney General Frank Kelley, who used the 1976 Consumer Protection Act to hunt down rogue businesses, says state Supreme Court rulings in 1999 and 2007 have turned the law into mush, leaving people such as the Days in the lurch.

"I'm sick about what's happened to the Consumer Protection Act," Kelley said. "For years, since its introduction, the act was always supported and interpreted freely whenever it was contested in the courts.

"Regrettably, that period has come to an end with interpretations that have, in my judgment, been against the public interest."

But business groups, which have fiercely opposed efforts to beef up the law, say there are enough laws on the books to protect consumers.

"The Chamber of Commerce has a long-standing policy in opposition to expanding the Consumer Protection Act," said its Lansing lobbyist, Wendy Block, who spoke out against a 2007 measure to restore the act. She said the legislation would open the flood gates to needless lawsuits.

Until something changes, consumers lawyers say, more and more buyers will wind up feeling cheated with little recourse to do anything about it.

In the Days' case, GM wouldn't comment but blamed the dealership in court documents for giving the car the GM stamp of approval. The company that assembled it and the broker that sold it to Rowan say they disclosed that it had been in an accident. Rowan Pontiac closed last August and no longer is a party to the suit.

The dealership, in court papers, neither admitted nor denied wrongdoing.

While the case chugs along in Macomb County Circuit Court, the Days say they are stuck with a potential death trap that makes odd noises and prematurely wears out tires. And they're among a growing number of Michigan consumers to learn the new reality of consumer protection in the state.

The Legislature enacted the Michigan Consumer Protection Act with strong support from Democrats and Republicans. It banned 29 unfair, deceptive or unconscionable business practices in the sale of goods and services and empowered the state attorney general to go to court to halt such conduct.

It also let consumers sue dishonest businesses and collect attorney fees if they won, and it helped short-staffed state officials patrol the marketplace.

Every state has a Consumer Protection Act. They're designed to fill in the gaps left by other laws and regulations.

## The act's erosion

In 1999, the conservative majority of the Michigan Supreme Court ruled that businesses whose general conduct was specifically authorized by state law were exempt from the act, even if the conduct was unfair or deceptive.

The court reaffirmed the decision in 2007, experts said, effectively exempting most, if not all, businesses regulated by state or federal law, such as home improvement contractors, mortgage companies and plumbers.

"If we had a strong Consumer Protection Act, this case would have been a slam dunk," Liblang said of the legal brawl over the Monte Carlo. She said the rulings forced her to rely on other laws to make her case.

The opinions were written by Justice Robert Young Jr., who declined last week to comment.

He was joined in the first decision by Maura Corrigan, Elizabeth Weaver, the deceased James Brickley and Clifford Taylor, who was voted out of office last year.

Young was joined in the second case by Corrigan, Taylor, Weaver and Stephen Markman. Justices Michael Cavanagh and Marilyn Kelly dissented in both cases.

As a result, some lawyers say they pursue consumer cases in only federal court.

Attempts to fix the law have gone nowhere.

State Rep. Robert Jones, D-Kalamazoo, said corrective measures he and other lawmakers have introduced have died in the face of opposition from the Michigan Chamber of Commerce and other business groups. He plans to reintroduce the measure soon. And he will face more opposition from business groups.

"The proposed legislation would create new and costly litigation opportunities for personal injury attorneys against 80 different businesses, trades and professions which are already regulated by and subject to penalties under state and federal law," said Block, the Chamber's lobbyist.

Lee Schwartz, a Michigan Association of Home Builders lobbyist who also opposed Jones' bill, said consumers have other avenues to pursue problematic companies, including going after their licenses through the state's regulatory process.

## Michigan's 'dirty little secret'

But consumer experts said such options provide only piecemeal protection and fail to protect honest companies from being undercut by dishonest competitors.

"You can't have merchants taking advantage of a black hole exception in the law and have fair competition," said Gary Maveal, a University of Detroit Mercy law professor and member of the Consumer Law Section of the State Bar of Michigan.

"We need to encourage the best in merchants and reward those who are playing by the rules," he said.

Maveal said he's disappointed Gov. Jennifer Granholm, a former attorney general, and Attorney General Mike Cox haven't fixed the problem.

Cox didn't respond to Maveal's concern, but Granholm spokeswoman Liz Boyd said the governor has repeatedly supported legislation to repair the act.

"But she can't unilaterally sign legislation into law that hasn't been passed by both chambers of the Legislature," Boyd said.

Lindsay Duneske said she discovered how weak Michigan's Consumer Protection Act has become after the company that built her new home in Milan kept putting off needed repairs.

She said she and her husband bought the house in 2007 for \$306,000, after receiving assurances that the builder would fix buckling roof shingles and vinyl siding, leaky windows and other problems.

After the builder reneged, Duneske said, she couldn't find a lawyer to help her because home builders are no longer covered by the Consumer Protection Act.

She said the builder eventually went out of business and its lawyer got a court order to stop her from pestering him.

"We have been totally and completely cheated," Duneske said, adding that she feels betrayed by state officials. "We are looking to move, and it will be anywhere but Michigan."

Southfield consumer lawyer Adam Taub, whom Duneske consulted, said the state Supreme Court turned Michigan into a buyer beware state.

"I get 15 calls a month from people I can't help," Taub said. "And they're always shocked to discover that Michigan no longer has an effective Consumer Protection Act. ... It's Michigan's dirty little secret."

Contact **DAVID ASHENFELTER**: [dashenfelter@freepress.com](mailto:dashenfelter@freepress.com)

## Additional Facts

Exempt from the law

The Michigan Supreme Court ruled in 1999 and 2007 that businesses regulated by other laws are no longer subject to the Michigan Consumer Protection Act. Experts said the decisions have turned Michigan into a buyer-beware state.

Some of the exempted businesses:

- Banks
- Mortgage brokers
- Debt collectors
- Finance companies
- Home builders
- Home improvement contractors
- New and used car dealers
- Auto repair shops
- Funeral homes
- Plumbers and electricians

**Source: Consumer Law Section of the State Bar of Michigan**

---