

HOUSE BILL No. 5437

November 22, 2005, Introduced by Rep. Miller and referred to the Committee on Commerce.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2004 PA 462, and
by adding section 3e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Unfair, unconscionable, or deceptive methods,
2 acts, or practices in the conduct of trade or commerce are unlawful
3 and are defined as follows:

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

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

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

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

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

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

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

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

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

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

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

27 (l) Misrepresenting that because of some defect in a consumer's

1 home the health, safety, or lives of the consumer or his or her
2 family are in danger if the product or services are not purchased,
3 when in fact the defect does not exist or the product or services
4 would not remove the danger.

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

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

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

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

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

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

27 (s) Failing to reveal a material fact, the omission of which

1 tends to mislead or deceive the consumer, and which fact could not
2 reasonably be known by the consumer.

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

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

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

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

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

1 should know of the consumer's inability.

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

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

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

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

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

17 (dd) Subject to subdivision (ee), representations by the
18 manufacturer of a product or package that the product or package is
19 1 or more of the following:

20 (i) Except as provided in subparagraph (ii), recycled,
21 recyclable, degradable, or is of a certain recycled content, in
22 violation of guides for the use of environmental marketing claims,
23 16 CFR part 260.

24 (ii) For container holding devices regulated under part 163 of
25 the natural resources and environmental protection act, 1994 PA
26 451, MCL 324.16301 to 324.16303, representations by a manufacturer
27 that the container holding device is degradable contrary to the

1 definition provided in that act.

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

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

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

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

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

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

24 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in
25 connection with a home solicitation sale or telephone solicitation,
26 including, but not limited to, having an independent courier
27 service or other third party pick up a consumer's payment on a home

1 solicitation sale during the period the consumer is entitled to
2 cancel the sale.

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

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

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

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

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

18 (v) The disclosure is requested from an individual to effect,
19 administer or enforce a specific telephonic or other electronic
20 consumer transaction that is not made in person but is requested or
21 authorized by the individual if it is to be used solely to confirm
22 the identity of the individual through a fraud prevention service
23 database. The consumer good or service shall still be provided to
24 the consumer upon verification of his or her identity if he or she
25 refuses to provide his or her social security number but provides
26 other information or documentation that can be used by the person
27 to verify his or her identity. The person may inform the consumer

1 that verification through other means than use of the social
2 security number may cause a delay in providing the service or good
3 to the consumer.

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

17 (i) If the electronic device is placed in service after March
18 1, 2005, July 1, 2005 or the date the device is placed in service,
19 whichever is later.

20 (ii) If the electronic device is in service on or before March
21 1, 2005, July 1, 2006.

22 (jj) Violating section 11 of the identity theft protection
23 act.

24 **(KK) VIOLATING SECTION 3E.**

25 (2) The attorney general may promulgate rules to implement
26 this act under the administrative procedures act of 1969, 1969 PA
27 306, MCL 24.201 to 24.328. The rules shall not create an additional

1 unfair trade practice not already enumerated by this section.
2 However, to assure national uniformity, rules shall not be
3 promulgated to implement subsection (1)(dd) or (ee).

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

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

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

13 **SEC. 3E. (1) A PERSON ENGAGED IN THE RETAIL SALE OF GOODS OR**
14 **SERVICES SHALL NOT DO ANY OF THE FOLLOWING IN CONNECTION WITH A**
15 **GIFT CERTIFICATE ISSUED FOR RETAIL GOODS OR SERVICES:**

16 **(A) REFUSE TO ACCEPT A GIFT CERTIFICATE IN PAYMENT FOR GOODS**
17 **OR SERVICES USED OR BOUGHT FOR USE PRIMARILY FOR PERSONAL, FAMILY,**
18 **OR HOUSEHOLD PURPOSES, INCLUDING, BUT NOT LIMITED TO, GOODS OR**
19 **SERVICES ADVERTISED ON SALE OR PURSUANT TO A LIQUIDATION OR**
20 **CLOSEOUT. THIS SUBDIVISION DOES NOT APPLY IF THE GIFT CERTIFICATE**
21 **LIMITS THE PERIOD OF TIME DURING WHICH IT MAY BE USED AND IT IS**
22 **PRESENTED FOR REDEMPTION AFTER THE EXPIRATION OF THAT PERIOD.**

23 **(B) IN ANY MANNER RESTRICT THE HOLDER OF A GIFT CERTIFICATE**
24 **FROM USING THE GIFT CERTIFICATE IN A MANNER CONSISTENT WITH THE**
25 **STATED TERMS AND CONDITIONS OF THE GIFT CERTIFICATE.**

26 **(C) ALTER ANY TERM OR CONDITION OF A GIFT CERTIFICATE AFTER IT**
27 **IS ISSUED.**

1 (D) IF A GIFT CERTIFICATE HAS ANY TERMS OR CONDITIONS, FAIL TO
2 DISCLOSE THE TERMS AND CONDITIONS TO A PROSPECTIVE PURCHASER BY
3 DOING ANY OF THE FOLLOWING:

4 (i) CONSPICUOUSLY POSTING A SIGN THAT STATES THAT "TERMS AND
5 CONDITIONS ARE APPLIED TO GIFT CERTIFICATES AND GIFT CARDS".

6 (ii) IF A GIFT CERTIFICATE IS OFFERED FOR SALE BY MAIL,
7 CONSPICUOUSLY STATING IN THE OFFER THAT "TERMS AND CONDITIONS ARE
8 APPLIED TO GIFT CERTIFICATES AND GIFT CARDS".

9 (iii) IF A GIFT CERTIFICATE IS OFFERED FOR SALE BY ELECTRONIC,
10 COMPUTER, OR TELEPHONIC MEANS, INCLUDING A STATEMENT THAT "TERMS
11 AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES OR GIFT CARDS"
12 BEFORE THE PROSPECTIVE PURCHASER IS ABLE TO PURCHASE THE GIFT
13 CERTIFICATE OR CONSPICUOUSLY INCLUDING THAT STATEMENT IN THE
14 ELECTRONIC MESSAGE OFFERING THE GIFT CERTIFICATE FOR PURCHASE.

15 (E) IF A GIFT CERTIFICATE HAS ANY TERMS OR CONDITIONS, FAIL TO
16 DISCLOSE THE TERMS AND CONDITIONS BY CONSPICUOUSLY PRINTING THE
17 TERMS AND CONDITIONS ON 1 OF THE FOLLOWING:

18 (i) THE GIFT CERTIFICATE.

19 (ii) THE ENVELOPE OR PACKAGING CONTAINING THE GIFT CERTIFICATE,
20 IF A TOLL-FREE TELEPHONE NUMBER TO ACCESS THE TERMS AND CONDITIONS
21 IS PRINTED ON THE GIFT CERTIFICATE.

22 (iii) A SEPARATE PRINTED DOCUMENT DELIVERED TO THE PURCHASER, IF
23 A TOLL-FREE TELEPHONE NUMBER TO ACCESS THE TERMS AND CONDITIONS IS
24 PRINTED ON THE GIFT CERTIFICATE.

25 (F) IF A GIFT CERTIFICATE HAS ANY TERMS OR CONDITIONS, FAIL TO
26 INCLUDE IN ANY ADVERTISEMENT OR PROMOTION FOR THE GIFT CERTIFICATE
27 A NOTICE THAT STATES THAT "TERMS AND CONDITIONS ARE APPLIED TO GIFT

1 CERTIFICATES AND GIFT CARDS".

2 (G) ASSESS RETROACTIVE FEES AGAINST A GIFT CERTIFICATE.

3 (H) ASSESS A MONTHLY SERVICE FEE AGAINST THE BALANCE OF A GIFT
4 CERTIFICATE BEFORE THE THIRTEENTH MONTH OF DORMANCY.

5 (I) IF THE VALUE OF THE GIFT CERTIFICATE OR REMAINING BALANCE
6 OF THE GIFT CERTIFICATE IS LESS THAN THE PURCHASE PRICE OF GOODS OR
7 SERVICES, REFUSE TO ACCEPT THE GIFT CERTIFICATE AND APPLY IT TO THE
8 PURCHASE PRICE OF THE GOODS OR SERVICES.

9 (2) AS USED IN THIS SECTION:

10 (A) "DORMANCY" MEANS A PERIOD OF TIME DURING WHICH A GIFT
11 CERTIFICATE IS NOT USED.

12 (B) "PERSON ENGAGED IN THE RETAIL SALE OF GOODS" INCLUDES A
13 PERSON CONDUCTING A CLOSEOUT, LIQUIDATION, OR GOING-OUT-OF-BUSINESS
14 SALE ON BEHALF OF THE PERSON ENGAGED IN THE RETAIL SALE OF GOODS OR
15 THAT PERSON'S CREDITORS.

16 (C) SUBJECT TO SUBSECTION (3), "GIFT CERTIFICATE" MEANS A
17 WRITTEN PROMISE OR ELECTRONIC PAYMENT DEVICE THAT MEETS ALL OF THE
18 FOLLOWING:

19 (i) IS USABLE AT A SINGLE RETAILER, IS USABLE AT AN AFFILIATED
20 GROUP OF RETAILERS THAT SHARE THE SAME NAME, MARK, OR LOGO, OR IS
21 USABLE AT MULTIPLE, UNAFFILIATED RETAILERS OR SERVICE PROVIDERS.

22 (ii) IS ISSUED IN A SPECIFIED AMOUNT.

23 (iii) MAY OR MAY NOT BE INCREASED IN VALUE OR RELOADED.

24 (iv) IS PURCHASED OR LOADED ON A PREPAID BASIS FOR THE FUTURE
25 PURCHASE OR DELIVERY OF GOODS OR SERVICES.

26 (v) IS HONORED UPON PRESENTATION.

27 (D) "TERMS AND CONDITIONS" INCLUDES, BUT IS NOT LIMITED TO,

1 ANY EXPIRATION DATE OF A GIFT CERTIFICATE, WHETHER ANY FEES ARE
2 ASSESSED AGAINST THE BALANCE OF THE GIFT CERTIFICATE, AND WHETHER A
3 FEE IS CHARGED FOR THE REPLACEMENT OF A GIFT CERTIFICATE THAT IS
4 LOST, STOLEN, OR DESTROYED.

5 (E) "USE" OF A GIFT CERTIFICATE INCLUDES MAKING PURCHASES WITH
6 OR ADDING VALUE TO THE GIFT CERTIFICATE.

7 (3) AS USED IN THIS SECTION, "GIFT CERTIFICATE" DOES NOT
8 INCLUDE ANY OF THE FOLLOWING:

9 (A) AN ELECTRONIC PAYMENT DEVICE LINKED TO A DEPOSIT ACCOUNT.

10 (B) A PREPAID TELEPHONE CALLING CARD REGULATED UNDER STATE OR
11 FEDERAL LAW.

12 (C) AN ELECTRONIC PAYMENT DEVICE USED TO ACCESS AN ACCOUNT
13 FROM WHICH AN INDIVIDUAL MAY PAY MEDICAL EXPENSES, HEALTH CARE
14 EXPENSES, DEPENDENT CARE EXPENSES, OR SIMILAR EXPENSES ON A PRETAX
15 BASIS UNDER THE INTERNAL REVENUE CODE, 26 USC 1 TO 1789, OR
16 REGULATIONS ADOPTED PURSUANT TO THE INTERNAL REVENUE CODE.

17 (D) A PREPAID DISCOUNT CARD OR PROGRAM USED TO PURCHASE
18 IDENTIFIED GOODS OR SERVICES AT A PRICE OR PERCENTAGE BELOW THE
19 NORMAL AND CUSTOMARY PRICE, IF ANY EXPIRATION DATE OF THE PREPAID
20 DISCOUNT CARD OR PROGRAM IS CLEARLY AND CONSPICUOUSLY DISCLOSED.

21 (E) A PAYROLL CARD OR OTHER ELECTRONIC PAYMENT DEVICE LINKED
22 TO A DEPOSIT ACCOUNT AND GIVEN IN EXCHANGE FOR GOODS OR SERVICES
23 RENDERED.

24 (F) A GIFT CERTIFICATE SOLD BELOW FACE VALUE OR AT A VOLUME
25 DISCOUNT TO AN EMPLOYEE, TO A NONPROFIT OR CHARITABLE ORGANIZATION,
26 OR TO AN EDUCATIONAL INSTITUTION FOR FUND-RAISING PURPOSES.

27 (G) A GIFT CERTIFICATE DISTRIBUTED TO A CONSUMER OR EMPLOYEE

1 PURSUANT TO AN AWARDS, REWARDS, LOYALTY, OR PROMOTIONAL PROGRAM, IF
2 THE CONSUMER OR EMPLOYEE IS NOT REQUIRED TO GIVE CONSIDERATION FOR
3 THE GIFT CERTIFICATE.