

SUBSTITUTE FOR
HOUSE BILL NO. 4050

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
(MCL 445.901 to 445.922) by adding section 3e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (A) REFUSE TO ACCEPT A GIFT CERTIFICATE IN PAYMENT FOR GOODS
5 OR SERVICES USED OR BOUGHT FOR USE PRIMARILY FOR PERSONAL, FAMILY,
6 OR HOUSEHOLD PURPOSES, INCLUDING, BUT NOT LIMITED TO, GOODS OR
7 SERVICES ADVERTISED ON SALE OR PURSUANT TO A LIQUIDATION OR
8 CLOSEOUT. THIS SUBDIVISION DOES NOT APPLY IF THE GIFT CERTIFICATE

1 HAS AN EXPIRATION DATE THAT DOES NOT VIOLATE SECTION 3G AND IT IS
2 PRESENTED FOR REDEMPTION AFTER THAT EXPIRATION DATE.

3 (B) IN ANY MANNER RESTRICT THE HOLDER OF A GIFT CERTIFICATE
4 FROM USING THE GIFT CERTIFICATE IN A MANNER CONSISTENT WITH THE
5 STATED TERMS AND CONDITIONS OF THE GIFT CERTIFICATE.

6 (C) ALTER ANY TERM OR CONDITION OF A GIFT CERTIFICATE AFTER IT
7 IS ISSUED.

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

11 (i) IF A GIFT CERTIFICATE IS OFFERED FOR SALE BY MAIL,
12 CONSPICUOUSLY STATING IN THE OFFER THAT "TERMS AND CONDITIONS ARE
13 APPLIED TO GIFT CERTIFICATES AND GIFT CARDS".

14 (ii) IF A GIFT CERTIFICATE IS OFFERED FOR SALE BY ELECTRONIC,
15 COMPUTER, OR TELEPHONIC MEANS, INCLUDING A STATEMENT THAT "TERMS
16 AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES OR GIFT CARDS"
17 BEFORE THE PROSPECTIVE PURCHASER IS ABLE TO PURCHASE THE GIFT
18 CERTIFICATE OR CONSPICUOUSLY INCLUDING THAT STATEMENT IN THE
19 ELECTRONIC MESSAGE OFFERING THE GIFT CERTIFICATE FOR PURCHASE.

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

23 (i) THE GIFT CERTIFICATE.

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

27 (iii) A SEPARATE PRINTED DOCUMENT DELIVERED TO THE PURCHASER, IF

1 A TOLL-FREE TELEPHONE NUMBER TO ACCESS THE TERMS AND CONDITIONS IS
2 PRINTED ON THE GIFT CERTIFICATE.

3 (F) IF A GIFT CERTIFICATE HAS ANY TERMS OR CONDITIONS, FAIL TO
4 INCLUDE IN ANY ADVERTISEMENT OR PROMOTION FOR THE GIFT CERTIFICATE
5 A NOTICE THAT STATES THAT "TERMS AND CONDITIONS ARE APPLIED TO GIFT
6 CERTIFICATES AND GIFT CARDS".

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

11 (2) AS USED IN THIS SECTION AND SECTIONS 3F AND 3G:

12 (A) "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 (B) SUBJECT TO SUBSECTION (3), "GIFT CERTIFICATE" MEANS A
17 WRITTEN PROMISE OR A GIFT CARD OR OTHER ELECTRONIC PAYMENT DEVICE
18 THAT MEETS ALL OF THE 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 (C) "TERMS AND CONDITIONS" INCLUDES, BUT IS NOT LIMITED TO, AN

1 EXPIRATION DATE OR A FEE CHARGED FOR THE REPLACEMENT OF A GIFT
2 CERTIFICATE THAT IS LOST, STOLEN, OR DESTROYED.

3 (D) "USE" OF A GIFT CERTIFICATE INCLUDES MAKING PURCHASES WITH
4 OR ADDING VALUE TO THE GIFT CERTIFICATE.

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

7 (A) A GENERAL USE, PREPAID CARD OR OTHER ELECTRONIC PAYMENT
8 DEVICE THAT IS ISSUED OR SPONSORED BY A FINANCIAL INSTITUTION IN A
9 PREDETERMINED AMOUNT AND IS USABLE AT MULTIPLE, UNAFFILIATED
10 RETAILERS OR AT AUTOMATED TELLER MACHINES. AS USED IN THIS
11 SUBDIVISION, "FINANCIAL INSTITUTION" MEANS A BANK, BANK AND TRUST,
12 NATIONAL BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
13 UNION, OR MONEY TRANSMITTER ORGANIZED UNDER THE LAWS OF THIS STATE,
14 ANOTHER STATE, THE DISTRICT OF COLUMBIA, THE UNITED STATES, OR ANY
15 TERRITORY OR PROTECTORATE OF THE UNITED STATES AND THEIR RESPECTIVE
16 SUBSIDIARIES, AFFILIATES, OR HOLDING COMPANIES.

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

18 (C) A PREPAID TELEPHONE CALLING CARD REGULATED UNDER STATE OR
19 FEDERAL LAW.

20 (D) AN ELECTRONIC PAYMENT DEVICE USED TO ACCESS AN ACCOUNT
21 FROM WHICH AN INDIVIDUAL MAY PAY MEDICAL EXPENSES, HEALTH CARE
22 EXPENSES, DEPENDENT CARE EXPENSES, OR SIMILAR EXPENSES ON A PRETAX
23 BASIS UNDER THE INTERNAL REVENUE CODE, 26 USC 1 TO 1789, OR
24 REGULATIONS ADOPTED PURSUANT TO THE INTERNAL REVENUE CODE.

25 (E) A PREPAID DISCOUNT CARD OR PROGRAM USED TO PURCHASE
26 IDENTIFIED GOODS OR SERVICES AT A PRICE OR PERCENTAGE BELOW THE
27 NORMAL AND CUSTOMARY PRICE, IF ANY EXPIRATION DATE OF THE PREPAID

House Bill No. 4050 (H-3) as amended November 27, 2007

DISCOUNT CARD OR PROGRAM IS CLEARLY AND CONSPICUOUSLY DISCLOSED.

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

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

(H) A GIFT CERTIFICATE DISTRIBUTED TO A CONSUMER OR EMPLOYEE PURSUANT TO AN AWARDS, REWARDS, LOYALTY, OR PROMOTIONAL PROGRAM, IF THE CONSUMER OR EMPLOYEE IS NOT REQUIRED TO GIVE CONSIDERATION FOR THE GIFT CERTIFICATE.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) House Bill No. 4317.

(b) House Bill No. 4680.

(c) Senate Bill No. 388.

[Enacting section 2. This amendatory act takes effect September 30, 2008.]