

HOUSE BILL No. 5895

September 20, 2016, Introduced by Reps. Sarah Roberts, Wittenberg, Greig and Pagan and referred to the Committee on Commerce and Trade.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3e (MCL 445.903e), as added by 2008 PA 210.

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
9 has an expiration date that does not violate section 3g and it is
10 presented for redemption after that expiration date.

11 (b) In any manner restrict the holder of a gift certificate

1 from using the gift certificate in a manner consistent with the
2 stated terms and conditions of the gift certificate.

3 (c) Alter any term or condition of a gift certificate after it
4 is issued.

5 (d) If a gift certificate has any terms or conditions, fail to
6 disclose the terms and conditions to a prospective purchaser by
7 doing any of the following:

8 (i) If a gift certificate is offered for sale by mail,
9 conspicuously stating in the offer that "terms and conditions are
10 applied to gift certificates and gift cards".

11 (ii) If a gift certificate is offered for sale by electronic,
12 computer, or telephonic means, including a statement that "terms
13 and conditions are applied to gift certificates or gift cards"
14 before the prospective purchaser is able to purchase the gift
15 certificate or conspicuously including that statement in the
16 electronic message offering the gift certificate for purchase.

17 (e) If a gift certificate has any terms or conditions, fail to
18 disclose the terms and conditions by conspicuously printing the
19 terms and conditions on 1 of the following:

20 (i) The gift certificate.

21 (ii) The envelope or packaging containing the gift
22 certificate, if a toll-free telephone number to access the terms
23 and conditions is printed on the gift certificate.

24 (iii) A separate printed document delivered to the purchaser,
25 if a toll-free telephone number to access the terms and conditions
26 is printed on the gift certificate.

27 (f) If a gift certificate has any terms or conditions, fail to

1 include in any advertisement or promotion for the gift certificate
 2 a notice that states that "terms and conditions are applied to gift
 3 certificates and gift cards".

4 (g) If the value of the gift certificate or remaining balance
 5 of the gift certificate is less than the purchase price of goods or
 6 services, refuse to accept the gift certificate and apply it to the
 7 purchase price of the goods or services.

8 (2) As used in this section and sections 3f and 3g:

9 (a) "Person engaged in the retail sale of goods" includes a
 10 person conducting a closeout, liquidation, or going-out-of-business
 11 sale on behalf of the person engaged in the retail sale of goods or
 12 that person's creditors.

13 (b) Subject to subsection (3), "gift certificate" means ~~a~~**ANY**
 14 **OF THE FOLLOWING:**

15 (i) **A** written promise or a gift card or other electronic
 16 payment device that meets all of the following:

17 (A) ~~(i)~~—Is usable at a single retailer, is usable at an
 18 affiliated group of retailers that share the same name, mark, or
 19 logo, or is usable at multiple, unaffiliated retailers or service
 20 providers.

21 (B) ~~(ii)~~—Is issued in a specified amount.

22 (C) ~~(iii)~~—May or may not be increased in value or reloaded.

23 (D) ~~(iv)~~—Is purchased or loaded on a prepaid basis for the
 24 future purchase or delivery of goods or services.

25 (E) ~~(v)~~—Is honored upon presentation.

26 (ii) **A PREPAID DISCOUNT CARD OR PROGRAM USED TO PURCHASE**
 27 **IDENTIFIED GOODS, SERVICES, OR CLASSES AT A PRICE OR PERCENTAGE**

1 **BELOW THE NORMAL AND CUSTOMARY PRICE.**

2 (c) "Terms and conditions" includes, but is not limited to, an
3 expiration date or a fee charged for the replacement of a gift
4 certificate that is lost, stolen, or destroyed.

5 (d) "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) A general use, prepaid card or other electronic payment
10 device that is issued or sponsored by a financial institution in a
11 predetermined amount and is usable at multiple, unaffiliated
12 retailers or at automated teller machines. As used in this
13 subdivision, "financial institution" means a bank, bank and trust,
14 national bank, savings bank, savings and loan association, credit
15 union, or money transmitter organized under the laws of this state,
16 another state, the District of Columbia, the United States, or any
17 territory or protectorate of the United States and their respective
18 subsidiaries, affiliates, or holding companies.

19 (b) An electronic payment device linked to a deposit account.

20 (c) A prepaid telephone calling card regulated under state or
21 federal law or a card used in connection with prepaid wireless
22 telephone service.

23 (d) An electronic payment device used to access an account
24 from which an individual may pay medical expenses, health care
25 expenses, dependent care expenses, or similar expenses on a pretax
26 basis under the internal revenue code, 26 USC 1 to 1789, or
27 regulations adopted pursuant to the internal revenue code.

1 ~~— (e) A prepaid discount card or program used to purchase~~
2 ~~identified goods or services at a price or percentage below the~~
3 ~~normal and customary price, if any expiration date of the prepaid~~
4 ~~discount card or program is clearly and conspicuously disclosed.~~

5 (E) ~~(f)~~ A payroll card or other electronic payment device
6 linked to a deposit account and given in exchange for goods or
7 services rendered.

8 (F) ~~(g)~~ A gift certificate sold below face value or at a
9 volume discount to an employee, to a nonprofit or charitable
10 organization, or to an educational institution for fund-raising
11 purposes.

12 (G) ~~(h)~~ A gift certificate distributed to a consumer or
13 employee pursuant to an awards, rewards, loyalty, or promotional
14 program, if the consumer or employee is not required to give
15 consideration for the gift certificate.

16 (H) ~~(i)~~ An electronic credit voucher issued by a person that
17 holds a certificate issued under chapter 411 of title 49 of the
18 United States Code, 49 USC 41101 to 41113, or a permit issued under
19 chapter 413 of title 49 of the United States Code, 49 USC 41301 to
20 41313.

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.