

**SUBSTITUTE FOR
HOUSE BILL NO. 5770**

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending sections 3, 5, and 11 (MCL 445.903, 445.905, and
445.911), section 3 as amended by 2018 PA 211 and section 5 as
amended by 2006 PA 508, and by adding section 31.

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



1 of geographic origin in connection with goods or services.

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

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

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

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

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

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

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

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

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

28 (l) Misrepresenting that because of some defect in a consumer's
29 home the health, safety, or lives of the consumer or his or her



1 family are in danger if the product or services are not purchased,
2 when in fact the defect does not exist or the product or services
3 would not remove the danger.

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

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

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

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

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

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

26 (s) Failing to reveal a material fact, the omission of which
27 tends to mislead or deceive the consumer, and which fact could not
28 reasonably be known by the consumer.

29 (t) Entering into a consumer transaction in which the consumer



1 waives or purports to waive a right, benefit, or immunity provided
2 by law, unless the waiver is clearly stated and the consumer has
3 specifically consented to it.

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

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

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

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

26 (y) Gross discrepancies between the oral representations of
27 the seller and the written agreement covering the same transaction
28 or failure of the other party to the transaction to provide the
29 promised benefits.



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

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

5 (bb) Making a representation of fact or statement of fact
6 material to the transaction such that a person reasonably believes
7 the represented or suggested state of affairs to be other than it
8 actually is.

9 (cc) Failing to reveal facts that are material to the
10 transaction in light of representations of fact made in a positive
11 manner.

12 (dd) Subject to subdivision (ee), representations by the
13 manufacturer of a product or package that the product or package is
14 1 or more of the following:

15 (i) Except as provided in subparagraph (ii), recycled,
16 recyclable, degradable, or is of a certain recycled content, in
17 violation of guides for the use of environmental marketing claims,
18 16 CFR part 260.

19 (ii) For container holding devices regulated under part 163 of
20 the natural resources and environmental protection act, 1994 PA
21 451, MCL 324.16301 to 324.16303, representations by a manufacturer
22 that the container holding device is degradable contrary to the
23 definition provided in that act.

24 (ee) Representing that a product or package is degradable,
25 biodegradable, or photodegradable unless it can be substantiated by
26 evidence that the product or package will completely decompose into
27 elements found in nature within a reasonably short period of time
28 after consumers use the product and dispose of the product or the
29 package in a landfill or composting facility, as appropriate.



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

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

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

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

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

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

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

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



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

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

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

(v) The disclosure is requested from an individual to effect, administer or enforce a specific telephonic or other electronic consumer transaction that is not made in person but is requested or authorized by the individual if it is to be used solely to confirm the identity of the individual through a fraud prevention service database. The consumer good or service ~~shall~~**must** still be provided to the consumer ~~upon~~**on** verification of his or her identity if he or she refuses to provide his or her Social Security number but provides other information or documentation that can be used by the person to verify his or her identity. The person may inform the consumer that verification through other means than use of the Social Security number may cause a delay in providing the service or good to the consumer.

(ii) If a credit card or debit card is used for payment in a consumer transaction, issuing or delivering a receipt to the consumer that displays any part of the expiration date of the card or more than the last 4 digits of the consumer's account number. This subdivision does not apply if the only receipt issued in a consumer transaction is a credit card or debit card receipt on which the account number or expiration date is handwritten, mechanically imprinted, or photocopied. This subdivision applies to



1 any consumer transaction that occurs on or after March 1, 2005,
2 except that if a credit or debit card receipt is printed in a
3 consumer transaction by an electronic device, this subdivision
4 applies to any consumer transaction that occurs using that device
5 only after 1 of the following dates, as applicable:

6 (i) If the electronic device is placed in service after March
7 1, 2005, July 1, 2005 or the date the device is placed in service,
8 whichever is later.

9 (ii) If the electronic device is in service on or before March
10 1, 2005, July 1, 2006.

11 (jj) Violating section 11 of the identity theft protection
12 act, 2004 PA 452, MCL 445.71.

13 (kk) Advertising or conducting a live musical performance or
14 production in this state through the use of a false, deceptive, or
15 misleading affiliation, connection, or association between a
16 performing group and a recording group. This subdivision does not
17 apply if any of the following are met:

18 (i) The performing group is the authorized registrant and owner
19 of a federal service mark for that group registered in the United
20 States Patent and Trademark Office.

21 (ii) At least 1 member of the performing group was a member of
22 the recording group and has a legal right to use the recording
23 group's name, by virtue of use or operation under the recording
24 group's name without having abandoned the name or affiliation with
25 the recording group.

26 (iii) The live musical performance or production is identified
27 in all advertising and promotion as a salute or tribute and the
28 name of the vocal or instrumental group performing is not so
29 closely related or similar to that used by the recording group that



1 it would tend to confuse or mislead the public.

2 (iv) The advertising does not relate to a live musical
3 performance or production taking place in this state.

4 (v) The performance or production is expressly authorized by
5 the recording group.

6 (ll) Violating section 3e, 3f, 3g, 3h, 3i, ~~or 3k~~, **or 3l**.

7 (2) The attorney general may promulgate rules to implement
8 this act under the administrative procedures act of 1969, 1969 PA
9 306, MCL 24.201 to 24.328. The rules ~~shall~~**must** not create an
10 additional unfair trade practice not already enumerated by this
11 section. However, to assure national uniformity, rules ~~shall~~**must**
12 not be promulgated to implement subsection (1)(dd) or (ee).

13 (3) Subsection (1)(hh) does not apply to either of the
14 following:

15 (a) Providing a service related to the administration of
16 health-related or dental-related benefits or services to patients,
17 including provider contracting or credentialing. This subdivision
18 is intended to limit the application of subsection (1)(hh) and is
19 not intended to imply that this act would otherwise apply to
20 health-related or dental-related benefits.

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

22 **Sec. 3l. (1) A third-party delivery service shall not use a**
23 **likeness, trademark, or other intellectual property belonging to a**
24 **merchant without obtaining written consent from the merchant to use**
25 **the likeness, trademark, or other intellectual property. Written**
26 **consent under this subsection must be reflected in a valid**
27 **agreement.**

28 (2) To enter into a valid agreement under this section, the
29 third-party delivery service must be registered to do business in



1 this state.

2 (3) An agreement under this section must not require the
3 merchant to indemnify the third-party delivery service, an
4 independent contractor acting on behalf of the third-party delivery
5 service, or a registered agent of the third-party delivery service
6 for damages or harm that may occur after a product leaves the
7 merchant's place of business. A provision of an agreement that is
8 contrary to this section is void and unenforceable. This subsection
9 applies only to an agreement that takes effect or is extended,
10 renewed, or modified after the effective date of the amendatory act
11 that added this section.

12 (4) As used in this section:

13 (a) "Agreement" means a written contractual agreement between
14 a merchant and a third-party delivery service.

15 (b) "Business entity" means a corporation, association,
16 partnership, limited liability company, limited liability
17 partnership, or other legal entity.

18 (c) "Customer" means a person that places an order for a
19 merchant's product through a marketplace.

20 (d) "Likeness" means an identifiable symbol attributed and
21 easily identified as belonging to a specific merchant.

22 (e) "Marketplace" means a third-party delivery service's
23 proprietary online communication platform where customers can view
24 and search the menus of merchants or place an order for merchants'
25 products, or both, via the third-party delivery service's website
26 or mobile application for delivery by the third-party delivery
27 service to the customer.

28 (f) "Merchant" means a restaurant or other retailer.

29 (g) "Restaurant" means a food service establishment defined



1 and licensed under the food law, 2000 PA 92, MCL 289.1101 to
2 289.8111.

3 (h) "Third-party delivery service" means a business entity,
4 other than a merchant, that provides limited delivery services to
5 customers.

6 Sec. 5. (1) If the attorney general has probable cause to
7 believe that a person has engaged, is engaging, or is about to
8 engage in a method, act, or practice that is unlawful ~~pursuant to~~
9 **under** section 3, and gives notice ~~in accordance with~~ **pursuant to**
10 this section, the attorney general may bring an action in
11 accordance with principles of equity to restrain the defendant by
12 temporary or permanent injunction from engaging in the method, act,
13 or practice. The action may be brought in the circuit court of the
14 county where the defendant is established or conducts business or,
15 if the defendant is not established in this state, in the circuit
16 court of Ingham ~~county.~~ **County**. The court may award costs to the
17 prevailing party. ~~For~~ **Except as otherwise provided in this section,**
18 **for** persistent and knowing violation of section 3 the court may
19 assess the defendant a civil fine of not more than \$25,000.00. For
20 a violation of section 3(1)(kk), each performance or production is
21 a separate violation. **For a violation of section 3/, the court may**
22 **assess the defendant a civil fine of not more than \$1,000.00 per**
23 **violation. Each day a violation of section 3/ occurs counts as a**
24 **separate violation.**

25 (2) Unless waived by the court on good cause shown not less
26 than 10 days before the commencement of an action under this
27 section, the attorney general shall notify the person of his or her
28 intended action and give the person an opportunity to cease and
29 desist from the alleged unlawful method, act, or practice or to



1 confer with the attorney general in person, by counsel, or by other
2 representative as to the proposed action before the proposed filing
3 date. The notice may be given **to** the person by mail, postage
4 prepaid, to his or her usual place of business or, if the person
5 does not have a usual place of business, to his or her last known
6 address, or, if the person is a corporation, only to a resident
7 agent who is designated to receive service of process or to an
8 officer of the corporation.

9 (3) A prosecuting attorney or law enforcement officer
10 receiving notice of an alleged violation of this act, or of a
11 violation of an injunction, order, decree, or judgment issued in an
12 action brought pursuant to this section, or of an assurance under
13 this act, shall immediately forward written notice of the violation
14 together with any information he or she may have to the office of
15 the attorney general.

16 (4) A person who knowingly violates the terms of an
17 injunction, order, decree, or judgment issued ~~pursuant to~~ **under**
18 this section shall forfeit and pay to the state a civil fine of not
19 more than \$5,000.00 for each violation. For the purposes of this
20 section, the court issuing an injunction, order, decree, or
21 judgment shall retain jurisdiction, the cause shall be continued,
22 and the attorney general may petition for recovery of a civil fine
23 as provided by this section.

24 Sec. 11. (1) Whether or not ~~he~~ **a person** seeks damages or has
25 an adequate remedy at law, a person may bring an action to do
26 either or both of the following:

27 (a) Obtain a declaratory judgment that a method, act, or
28 practice is unlawful under section 3.

29 (b) Enjoin in accordance with the principles of equity a



1 person who is engaging or is about to engage in a method, act, or
 2 practice ~~which~~**that** is unlawful under section 3.

3 (2) Except in a class action **or as otherwise provided in**
 4 **subsection (3)**, a person who suffers loss as a result of a
 5 violation of this act may bring an action to recover actual damages
 6 or \$250.00, whichever is greater, together with reasonable
 7 ~~attorneys'~~**attorney** fees.

8 (3) **Except in a class action, a person who suffers a loss as a**
 9 **result of a violation of section 3/ may bring an action to recover**
 10 **actual damages or \$5,000.00, whichever is greater, together with**
 11 **reasonable attorney fees. In an action brought under this**
 12 **subsection, the court may, in its discretion, award punitive**
 13 **damages.**

14 (4) ~~(3)~~A person who suffers loss as a result of a violation
 15 of this act may bring a class action on behalf of persons residing
 16 or injured in this state for the actual damages caused by any of
 17 the following:

18 (a) A method, act, or practice in trade or commerce defined as
 19 unlawful under section 3.

20 (b) A method, act, or practice in trade or commerce declared
 21 to be unlawful under section 3(1) by a final judgment of the
 22 circuit court or an appellate court of this state ~~which~~**that** is
 23 either reported officially or made available for public
 24 dissemination pursuant to section 9 by the attorney general not
 25 less than 30 days before the method, act, or practice on which the
 26 action is based occurs.

27 (c) A method, act, or practice in trade or commerce declared
 28 by a circuit court of appeals or the ~~supreme court of the~~ United
 29 States **Supreme Court** to be an unfair or deceptive act or practice



1 within the meaning of section 5(a)(1) of the federal trade
 2 commission act, 15 ~~U.S.C.~~ **USC** 45(a)(1), in a decision ~~which that~~
 3 affirms or directs the affirmance of a cease and desist order
 4 issued by the ~~federal trade commission~~ **Federal Trade Commission** if
 5 the order is final within the meaning of section 5(g) of the
 6 federal trade commission act, 15 ~~U.S.C.~~ **USC** 45(g), and ~~which that~~
 7 is officially reported not less than 30 days before the method,
 8 act, or practice on which the action is based occurs. For purposes
 9 of this subdivision, a method, act, or practice ~~shall not be deemed~~
 10 ~~to be~~ **is not** unfair or deceptive within the meaning of section
 11 5(a)(1) of the federal trade commission act, **15 USC 45(a)(1)**,
 12 solely because the method, act, or practice is made unlawful by
 13 another federal statute that refers to or incorporates section
 14 5(a)(1) of the federal trade commission act, **15 USC 45(a)(1)**.

15 (5) ~~(4)~~ On motion of a person and without bond in an action
 16 brought under subsection ~~(3)~~ **(4)**, the court may make an appropriate
 17 order ~~to reimburse~~ **do 1 or more of the following:**

18 (a) **Reimburse** persons who have suffered damages. ~~to carry~~

19 (b) **Carry** out a transaction in accordance with the aggrieved
 20 persons' reasonable expectations. ~~to strike~~

21 (c) **Strike** or limit the application of unconscionable clauses
 22 of contracts to avoid an unconscionable result. ~~or to grant~~

23 (d) **Grant** other appropriate relief. ~~The~~

24 (6) **In an action brought under subsection (4), the** court after
 25 a hearing may appoint a receiver or order sequestration of the
 26 defendant's assets if it appears to the satisfaction of the court
 27 that the defendant threatens or is about to remove, conceal, or
 28 dispose of ~~his~~ **the defendant's** assets to the detriment of members
 29 of the class.



1 (7) ~~(5)~~—If at any stage of proceedings brought under
 2 subsection ~~(3)~~ **(4)** the court requires that notice be sent to the
 3 class, a person may petition the court to require the defendant to
 4 bear the cost of notice. In determining whether to impose the cost
 5 on the defendant or the plaintiff, the court shall consider the
 6 probability that the person will succeed on the merits of ~~his~~ **the**
 7 **person's** action.

8 (8) ~~(6)~~—If the defendant shows by a preponderance of the
 9 evidence that a violation of this act resulted from a bona fide
 10 error notwithstanding the maintenance of procedures reasonably
 11 adapted to avoid the error, the amount of recovery ~~shall be~~ **is**
 12 limited to actual damages.

13 (9) ~~(7)~~—An action under this section ~~shall~~ **must** not be brought
 14 more than 6 years after the occurrence of the method, act, or
 15 practice ~~which~~ **that** is the subject of the action ~~nor~~ **or** more than 1
 16 year after the last payment in a transaction involving the method,
 17 act, or practice ~~which~~ **that** is the subject of the action, whichever
 18 period of time ends at a later date. However, ~~when~~ **if** a person
 19 commences an action against another person, the defendant may
 20 assert, as a defense or counterclaim, any claim under this act
 21 arising out of the transaction on which the action is brought.

22 Enacting section 1. This amendatory act takes effect April 1,
 23 2021.

