

# HOUSE BILL NO. 5770

May 19, 2020, Introduced by Rep. Mueller and referred to the Committee on Commerce and Tourism.

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 3/.

## 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



1 and are defined as follows:

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

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

7 (c) Representing that goods or services have sponsorship,  
8 approval, characteristics, ingredients, uses, benefits, or  
9 quantities that they do not have or that a person has sponsorship,  
10 approval, status, affiliation, or connection that he or she does  
11 not have.

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

14 (e) Representing that goods or services are of a particular  
15 standard, quality, or grade, or that goods are of a particular  
16 style or model, if they are of another.

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

19 (g) Advertising or representing goods or services with intent  
20 not to dispose of those goods or services as advertised or  
21 represented.

22 (h) Advertising goods or services with intent not to supply  
23 reasonably expectable public demand, unless the advertisement  
24 discloses a limitation of quantity in immediate conjunction with  
25 the advertised goods or services.

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

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



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

4 (l) Misrepresenting that because of some defect in a consumer's  
5 home the health, safety, or lives of the consumer or his or her  
6 family are in danger if the product or services are not purchased,  
7 when in fact the defect does not exist or the product or services  
8 would not remove the danger.

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

12 (n) Causing a probability of confusion or of misunderstanding  
13 as to the legal rights, obligations, or remedies of a party to a  
14 transaction.

15 (o) Causing a probability of confusion or of misunderstanding  
16 as to the terms or conditions of credit if credit is extended in a  
17 transaction.

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

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

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



1 use or retention of the goods or services advertised.

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

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

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

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

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

26 (x) Taking advantage of the consumer's inability reasonably to  
27 protect his or her interests by reason of disability, illiteracy,  
28 or inability to understand the language of an agreement presented  
29 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  
28 definition provided in that act.

29 (ee) Representing that a product or package is degradable,

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

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

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

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

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

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

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

28 (hh) Except as provided in subsection (3), requiring a  
29 consumer to disclose his or her Social Security number as a



1 condition to selling or leasing goods or providing a service to the  
2 consumer, unless any of the following apply:

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

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

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

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

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

27 (ii) If a credit card or debit card is used for payment in a  
28 consumer transaction, issuing or delivering a receipt to the  
29 consumer that displays any part of the expiration date of the card



1 or more than the last 4 digits of the consumer's account number.  
2 This subdivision does not apply if the only receipt issued in a  
3 consumer transaction is a credit card or debit card receipt on  
4 which the account number or expiration date is handwritten,  
5 mechanically imprinted, or photocopied. This subdivision applies to  
6 any consumer transaction that occurs on or after March 1, 2005,  
7 except that if a credit or debit card receipt is printed in a  
8 consumer transaction by an electronic device, this subdivision  
9 applies to any consumer transaction that occurs using that device  
10 only after 1 of the following dates, as applicable:

11 (i) If the electronic device is placed in service after March  
12 1, 2005, July 1, 2005 or the date the device is placed in service,  
13 whichever is later.

14 (ii) If the electronic device is in service on or before March  
15 1, 2005, July 1, 2006.

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

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

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

26 (ii) At least 1 member of the performing group was a member of  
27 the recording group and has a legal right to use the recording  
28 group's name, by virtue of use or operation under the recording  
29 group's name without having abandoned the name or affiliation with





1 the recording group.

2 (iii) The live musical performance or production is identified  
3 in all advertising and promotion as a salute or tribute and the  
4 name of the vocal or instrumental group performing is not so  
5 closely related or similar to that used by the recording group that  
6 it would tend to confuse or mislead the public.

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

9 (v) The performance or production is expressly authorized by  
10 the recording group.

11 (II) Violating section 3e, 3f, 3g, 3h, 3i, ~~or 3k~~, or 3l.

12 (2) The attorney general may promulgate rules to implement  
13 this act under the administrative procedures act of 1969, 1969 PA  
14 306, MCL 24.201 to 24.328. The rules ~~shall~~**must** not create an  
15 additional unfair trade practice not already enumerated by this  
16 section. However, to assure national uniformity, rules ~~shall~~**must**  
17 not be promulgated to implement subsection (1)(dd) or (ee).

18 (3) Subsection (1)(hh) does not apply to either of the  
19 following:

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

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

27 **Sec. 3l. (1) A third-party delivery service shall not use a**  
28 **likeness, trademark, or other intellectual property belonging to a**  
29 **merchant without obtaining written consent from the merchant to use**



1 the likeness, trademark, or other intellectual property. Written  
2 consent under this subsection must be reflected in a valid  
3 agreement.

4 (2) To enter into a valid agreement under this section, the  
5 third-party delivery service must be registered to do business in  
6 this state.

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

17 (4) As used in this section:

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

20 (b) "Business entity" means a corporation, association,  
21 partnership, limited liability company, limited liability  
22 partnership, or other legal entity.

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

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

27 (e) "Marketplace" means a third-party delivery service's  
28 proprietary online communication platform where customers can view  
29 and search the menus of merchants or place an order for merchants'



1 products, or both, via the third-party delivery service's website  
 2 or mobile application for delivery by the third-party delivery  
 3 service to the customer.

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

5 (g) "Restaurant" means a food service establishment defined  
 6 and licensed under the food law, 2000 PA 92, MCL 289.1101 to  
 7 289.8111.

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

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



1 (2) Unless waived by the court on good cause shown not less  
2 than 10 days before the commencement of an action under this  
3 section, the attorney general shall notify the person of his or her  
4 intended action and give the person an opportunity to cease and  
5 desist from the alleged unlawful method, act, or practice or to  
6 confer with the attorney general in person, by counsel, or by other  
7 representative as to the proposed action before the proposed filing  
8 date. The notice may be given **to** the person by mail, postage  
9 prepaid, to his or her usual place of business or, if the person  
10 does not have a usual place of business, to his or her last known  
11 address, or, if the person is a corporation, only to a resident  
12 agent who is designated to receive service of process or to an  
13 officer of the corporation.

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

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

29 Sec. 11. (1) Whether or not ~~he~~ **a person** seeks damages or has

1 an adequate remedy at law, a person may bring an action to do  
2 either or both of the following:

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

5 (b) Enjoin in accordance with the principles of equity a  
6 person who is engaging or is about to engage in a method, act, or  
7 practice ~~which~~**that** is unlawful under section 3.

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

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

19 (4) ~~(3)~~A person who suffers loss as a result of a violation  
20 of this act may bring a class action on behalf of persons residing  
21 or injured in this state for the actual damages caused by any of  
22 the following:

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

25 (b) A method, act, or practice in trade or commerce declared  
26 to be unlawful under section 3(1) by a final judgment of the  
27 circuit court or an appellate court of this state ~~which~~**that** is  
28 either reported officially or made available for public  
29 dissemination pursuant to section 9 by the attorney general not



1 less than 30 days before the method, act, or practice on which the  
2 action is based occurs.

3 (c) A method, act, or practice in trade or commerce declared  
4 by a circuit court of appeals or the ~~supreme court of the United~~  
5 States **Supreme Court** to be an unfair or deceptive act or practice  
6 within the meaning of section 5(a)(1) of the federal trade  
7 commission act, 15 ~~U.S.C.~~ **USC** 45(a)(1), in a decision ~~which that~~  
8 affirms or directs the affirmance of a cease and desist order  
9 issued by the ~~federal trade commission~~ **Federal Trade Commission** if  
10 the order is final within the meaning of section 5(g) of the  
11 federal trade commission act, 15 ~~U.S.C.~~ **USC** 45(g), and ~~which that~~  
12 is officially reported not less than 30 days before the method,  
13 act, or practice on which the action is based occurs. For purposes  
14 of this subdivision, a method, act, or practice ~~shall not be deemed~~  
15 ~~to be~~ **is not** unfair or deceptive within the meaning of section  
16 5(a)(1) of the federal trade commission act, **15 USC 45(a)(1)**,  
17 solely because the method, act, or practice is made unlawful by  
18 another federal statute that refers to or incorporates section  
19 5(a)(1) of the federal trade commission act, **15 USC 45(a)(1)**.

20 (5) ~~(4)~~ On motion of a person and without bond in an action  
21 brought under subsection ~~(3)~~ **(4)**, the court may make an appropriate  
22 order ~~to reimburse~~ **do 1 or more of the following:**

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

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

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

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

29 (6) **In an action brought under subsection (4), the** court after



1 a hearing may appoint a receiver or order sequestration of the  
 2 defendant's assets if it appears to the satisfaction of the court  
 3 that the defendant threatens or is about to remove, conceal, or  
 4 dispose of ~~his~~**the defendant's** assets to the detriment of members  
 5 of the class.

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

13 (8) ~~(6)~~—If the defendant shows by a preponderance of the  
 14 evidence that a violation of this act resulted from a bona fide  
 15 error notwithstanding the maintenance of procedures reasonably  
 16 adapted to avoid the error, the amount of recovery ~~shall be~~**is**  
 17 limited to actual damages.

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

