

**SUBSTITUTE FOR
HOUSE BILL NO. 4015**

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2020 PA 296, and
by adding section 3m.

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
28 home the health, safety, or lives of the consumer or his or her
29 family are in danger if the product or services are not purchased,

1 when in fact the defect does not exist or the product or services
2 would not remove the danger.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (ii) If a credit card or debit card is used for payment in a
23 consumer transaction, issuing or delivering a receipt to the
24 consumer that displays any part of the expiration date of the card
25 or more than the last 4 digits of the consumer's account number.
26 This subdivision does not apply if the only receipt issued in a
27 consumer transaction is a credit card or debit card receipt on
28 which the account number or expiration date is handwritten,
29 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, 3k, ~~or 3l~~, or 3m.

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 must not create an additional
10 unfair trade practice not already enumerated by this section.
11 However, to assure national uniformity, rules must not be
12 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. 3m. (1) If a third party offers online services that are**
23 **performed by an agency, department, or division of this state and**
24 **the third party is not affiliated or under contract to perform the**
25 **online services for an agency, department, or division of this**
26 **state, the third party must do all of the following:**

27 (a) **Have a conspicuous notification on its website stating**
28 **that it is not an agency, department, or division of this state.**

29 (b) **Have a conspicuous notification on its website stating**

1 that its services are not endorsed or approved by an agency,
2 department, or division of this state.

3 (c) Have a conspicuous notification on its website stating
4 that it is not affiliated or under contract to perform online
5 services for an agency, department, or division of this state.

6 (d) Provide a link on its website to the website of the
7 agency, department, or division of this state on which a person may
8 utilize the online service.

9 (e) Before a transaction for an online service is completed,
10 ensure that a conspicuous notification of any fee it will charge
11 for the online service occurs.

12 (2) Failure to comply with the requirements in subsection (1)
13 is a violation of this section.

14 (3) As used in this section:

15 (a) "Conspicuous notification" means, at a minimum, for a
16 notification that is on a website, a notification that is on the
17 opening page of that website, is in a type size that is the same or
18 larger than the largest type size on that website, and is in
19 boldface, capital letters.

20 (b) "Online services" does not include the sharing of public
21 information that is otherwise accessible and does not require
22 consumers to provide payment or personal information to access it.

23 (c) "Third party" means a person that is not an agency,
24 department, or division of this state.

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