

**SUBSTITUTE FOR
HOUSE BILL NO. 5486**

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
by amending section 3 (MCL 445.903), as amended by 2021 PA 46.

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.

9 (c) Representing that goods or services have sponsorship,

1 approval, characteristics, ingredients, uses, benefits, or
2 quantities that they do not have or that a person has sponsorship,
3 approval, status, affiliation, or connection that he or she does
4 not have.

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

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

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

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

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

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

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

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

26 (l) Misrepresenting that because of some defect in a consumer's
27 home the health, safety, or lives of the consumer or his or her
28 family are in danger if the product or services are not purchased,
29 when in fact the defect does not exist or the product or services

1 would not remove the danger.

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

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

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

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

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

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

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

27 (t) Entering into a consumer transaction in which the consumer
28 waives or purports to waive a right, benefit, or immunity provided
29 by law, unless the waiver is clearly stated and the consumer has

1 specifically consented to it.

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

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

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

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

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

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

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

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

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

10 (dd) Subject to subdivision (ee), representing as the
11 manufacturer of a product or package that the product or package is
12 1 or more of the following:

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

17 (ii) For container holding devices regulated under part 163 of
18 the natural resources and environmental protection act, 1994 PA
19 451, MCL 324.16301 to 324.16303, degradable contrary to the
20 definition provided in that act.

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

27 (ff) Offering a consumer a prize if the consumer is required
28 to submit to a sales presentation to claim the prize, unless a
29 written disclosure is given to the consumer at the time the

1 consumer is notified of the prize and the written disclosure meets
2 all of the following requirements:

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

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

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

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

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

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

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

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

29 (iii) The disclosure is requested by a person to obtain a

1 consumer report for a permissible purpose described in section 604
2 of the fair credit reporting act, 15 USC 1681b.

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

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

19 (ii) If a credit card or debit card is used for payment in a
20 consumer transaction, issuing or delivering a receipt to the
21 consumer that displays any part of the expiration date of the card
22 or more than the last 4 digits of the consumer's account number.
23 This subdivision does not apply if the only receipt issued in a
24 consumer transaction is a credit card or debit card receipt on
25 which the account number or expiration date is handwritten,
26 mechanically imprinted, or photocopied. This subdivision applies to
27 any consumer transaction that occurs on or after March 1, 2005,
28 except that if a credit or debit card receipt is printed in a
29 consumer transaction by an electronic device, this subdivision

1 applies to any consumer transaction that occurs using that device
2 only after 1 of the following dates, as applicable:

3 (i) If the electronic device is placed in service after March
4 1, 2005, July 1, 2005 or the date the device is placed in service,
5 whichever is later.

6 (ii) If the electronic device is in service on or before March
7 1, 2005, July 1, 2006.

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

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

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

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

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

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

1 (v) The performance or production is expressly authorized by
2 the recording group.

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

4 (2) The attorney general may promulgate rules to implement
5 this act under the administrative procedures act of 1969, 1969 PA
6 306, MCL 24.201 to 24.328. The rules must not create an additional
7 unfair trade practice not already enumerated by this section.
8 However, to assure national uniformity, rules must not be
9 promulgated to implement subsection (1)(dd) or (ee).

10 (3) Subsection (1)(hh) does not apply to either of the
11 following:

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

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

19 Enacting section 1. This amendatory act takes effect January
20 1, 2023.