

# HOUSE BILL NO. 5486

October 27, 2021, Introduced by Reps. Steckloff, Tisdell, Weiss, Hall, Aiyash, Hertel, Brixie, Breen, Lilly, Rogers and Frederick and referred to the Committee on Judiciary.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE  
2 An act to prohibit certain methods, acts, and practices in  
3 trade or commerce; **to require the disclosure, maintenance, and**  
4 **verification of certain information for consumer protection;** to

1 prescribe certain powers and duties; to provide for certain  
2 remedies, damages, and penalties; to provide for the promulgation  
3 of rules; to provide for certain investigations; and to prescribe  
4 penalties.

5       Sec. 3. (1) Unfair, unconscionable, or deceptive methods,  
6 acts, or practices in the conduct of trade or commerce are unlawful  
7 and are defined as follows:

8       (a) Causing a probability of confusion or misunderstanding as  
9 to the source, sponsorship, approval, or certification of goods or  
10 services.

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

13       (c) Representing that goods or services have sponsorship,  
14 approval, characteristics, ingredients, uses, benefits, or  
15 quantities that they do not have or that a person has sponsorship,  
16 approval, status, affiliation, or connection that ~~he or she~~ **the**  
17 **person** does not have.

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

20       (e) Representing that goods or services are of a particular  
21 standard, quality, or grade, or that goods are of a particular  
22 style or model, if they are of another.

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

25       (g) Advertising or representing goods or services with intent  
26 not to dispose of those goods or services as advertised or  
27 represented.

28       (h) Advertising goods or services with intent not to supply  
29 reasonably expectable public demand, unless the advertisement

discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

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

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

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

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

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

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

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

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

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to

1 know it will not be so provided.

2 (r) Representing that a consumer will receive goods or  
3 services free or without charge, or using words of similar import  
4 in the representation, without clearly and conspicuously disclosing  
5 with equal prominence in immediate conjunction with the use of  
6 those words the conditions, terms, or prerequisites to the use or  
7 retention of the goods or services advertised.

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

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

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

23 (v) Taking or arranging for the consumer to sign an  
24 acknowledgment, certificate, or other writing affirming acceptance,  
25 delivery, compliance with a requirement of law, or other  
26 performance, if the merchant knows or has reason to know that the  
27 statement is not true.

28 (w) Representing that a consumer will receive a rebate,  
29 discount, or other benefit as an inducement for entering into a

1 transaction, if the benefit is contingent on an event to occur  
2 subsequent to the consummation of the transaction.

3 (x) Taking advantage of the consumer's inability reasonably to  
4 protect his or her interests by reason of disability, illiteracy,  
5 or inability to understand the language of an agreement presented  
6 by the other party to the transaction who knows or reasonably  
7 should know of the consumer's inability.

8 (y) Gross discrepancies between the oral representations of  
9 the seller and the written agreement covering the same transaction  
10 or failure of the other party to the transaction to provide the  
11 promised benefits.

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

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

16 (bb) Making a representation of fact or statement of fact  
17 material to the transaction such that a person reasonably believes  
18 the represented or suggested state of affairs to be other than it  
19 actually is.

20 (cc) Failing to reveal facts that are material to the  
21 transaction in light of representations of fact made in a positive  
22 manner.

23 (dd) Subject to subdivision (ee), representing as the  
24 manufacturer of a product or package that the product or package is  
25 1 or more of the following:

26 (i) Except as provided in subparagraph (ii), recycled,  
27 recyclable, degradable, or is of a certain recycled content, in  
28 violation of guides for the use of environmental marketing claims,  
29 16 CFR part 260.

1           (ii) For container holding devices regulated under part 163 of  
2 the natural resources and environmental protection act, 1994 PA  
3 451, MCL 324.16301 to 324.16303, degradable contrary to the  
4 definition provided in that act.

5           (ee) Representing that a product or package is degradable,  
6 biodegradable, or photodegradable unless it can be substantiated by  
7 evidence that the product or package will completely decompose into  
8 elements found in nature within a reasonably short period of time  
9 after consumers use the product and dispose of the product or the  
10 package in a landfill or composting facility, as appropriate.

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

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

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

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

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

27           (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in  
28 connection with a home solicitation sale or telephone solicitation,  
29 including, but not limited to, having an independent courier

1 service or other third party pick up a consumer's payment on a home  
2 solicitation sale during the period the consumer is entitled to  
3 cancel the sale.

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

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

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

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

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

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

1 Security number may cause a delay in providing the service or good  
2 to the consumer.

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

16 (i) If the electronic device is placed in service after March  
17 1, 2005, July 1, 2005 or the date the device is placed in service,  
18 whichever is later.

19 (ii) If the electronic device is in service on or before March  
20 1, 2005, July 1, 2006.

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

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

28 (i) The performing group is the authorized registrant and owner  
29 of a federal service mark for that group registered in the United

1 States Patent and Trademark Office.

2 (ii) At least 1 member of the performing group was a member of  
3 the recording group and has a legal right to use the recording  
4 group's name, by virtue of use or operation under the recording  
5 group's name without having abandoned the name or affiliation with  
6 the recording group.

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

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

14 (v) The performance or production is expressly authorized by  
15 the recording group.

16 (ll) Violating section 3e, 3f, 3g, 3h, 3i, 3k, 3l, ~~or~~ 3m, 3o, or  
17 3p.

18 (2) ~~The~~ **Except as otherwise provided in this subsection and**  
19 **subject to sections 3o(5) and 3p(6),** the attorney general may  
20 promulgate rules to implement this act under the administrative  
21 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The  
22 rules must not create an additional unfair trade practice not  
23 already enumerated by this section. However, to assure national  
24 uniformity, rules must not be promulgated to implement subsection  
25 (1)(dd) or (ee).

26 (3) Subsection (1)(hh) does not apply to either of the  
27 following:

28 (a) Providing a service related to the administration of  
29 health-related or dental-related benefits or services to patients,

1 including provider contracting or credentialing. This subdivision  
2 is intended to limit the application of subsection (1)(hh) and is  
3 not intended to imply that this act would otherwise apply to  
4 health-related or dental-related benefits.

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

6 **Sec. 3n. As used in this section and sections 3o and 3p:**

7 (a) "Consumer product" means any tangible personal property  
8 that is distributed in trade or commerce and that is normally used  
9 for personal, family, or household purposes regardless of whether  
10 the property is attached to or installed in, or intended to be  
11 attached to or installed in, real property.

12 (b) "High-volume third-party seller" means a third-party  
13 seller that meets either of the following requirements:

14 (i) In any continuous 12-month period during the previous 24  
15 months, has entered into 200 or more discrete sales or transactions  
16 of new or unused consumer products into this state.

17 (ii) In any continuous 12-month period during the previous 24  
18 months, has entered into more than 5 discrete sales or transactions  
19 of new or unused consumer products into this state resulting in the  
20 accumulation of an aggregate total of \$5,000.00 or more in gross  
21 revenues.

22 (c) "Online marketplace" means any electronically based or  
23 accessed platform that does both of the following:

24 (i) Includes features that allow for, facilitate, or enable  
25 third-party sellers to engage in the sale, purchase, payment,  
26 storage, shipping, or delivery of a consumer product in this state.

27 (ii) Hosts 1 or more third-party sellers.

28 (d) "Political subdivision" means a county, city, village,  
29 township, or other political subdivision, public corporation,

1 authority, or district in this state.

2 (e) "Seller" means a person who sells, offers to sell, or  
3 contracts to sell a consumer product through an online marketplace.

4 (f) "Third-party seller" means any seller, independent of an  
5 operator, facilitator, or owner of an online marketplace, who  
6 sells, offers to sell, or contracts to sell a consumer product in  
7 this state through an online marketplace. Third-party seller does  
8 not include a seller that meets all of the following requirements:

9 (i) Is a business entity that has made available to the general  
10 public the entity's name, business address, and working contact  
11 information.

12 (ii) Has an ongoing contractual relationship with the owner of  
13 the online marketplace to provide for the manufacture,  
14 distribution, wholesaling, or fulfillment of shipments of consumer  
15 products.

16 (iii) Has provided to the online marketplace the information  
17 described in section 3o(1) that has been verified in accordance  
18 with section 3o.

19 (g) "Verify" means to confirm information provided to an  
20 online marketplace pursuant to section 3o by the use of 1 or both  
21 of the following:

22 (i) A third-party or proprietary identity verification system  
23 that has the capability to confirm a seller's name, email address,  
24 physical address, and telephone number.

25 (ii) A combination of 2-factor authentication, public records  
26 search, and the presentation of a government-issued identification  
27 or documentation of taxpayer identification number issued by the  
28 Social Security Administration or Internal Revenue Service.

29 Enacting section 1. This amendatory act takes effect 180 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect  
3 unless all of the following bills of the 101st Legislature are  
4 enacted into law:

5 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5487 (request no.  
6 03416'21 \*).

7 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5485 (request no.  
8 03417'21 \*).