

HOUSE BILL NO. 5967

March 24, 2022, Introduced by Reps. Beeler, Hertel, Witwer and Damoose and referred to the Committee on Regulatory Reform.

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

1 services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (s) Failing to reveal a material fact, the omission of which
29 tends to mislead or deceive the consumer, and which fact could not

1 reasonably be known by the consumer.

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

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

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

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

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

28 (y) Gross discrepancies between the oral representations of
29 the seller and the written agreement covering the same transaction

1 or failure of the other party to the transaction to provide the
2 promised benefits.

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

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

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

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

14 (dd) Subject to subdivision (ee), representing as the
15 manufacturer of a product or package that the product or package is
16 1 or more of the following:

17 (i) Except as provided in subparagraph (ii), recycled,
18 recyclable, degradable, or is of a certain recycled content, in
19 violation of guides for the use of environmental marketing claims,
20 16 CFR part 260.

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

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

1 package in a landfill or composting facility, as appropriate.

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

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

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

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

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

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

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

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

1 to the consumer.

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

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

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

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

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

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

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

10 (ii) If the electronic device is in service on or before March
11 1, 2005, July 1, 2006.

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

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

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

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

27 (iii) The live musical performance or production is identified
28 in all advertising and promotion as a salute or tribute and the
29 name of the vocal or instrumental group performing is not so

1 closely related or similar to that used by the recording group that
2 it would tend to confuse or mislead the public.

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

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

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

8 **(mm) Violating the motor vehicle financial protection products**
9 **act, 2009 PA 229, 492.21 to 492.34.**

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

16 (3) Subsection (1)(hh) does not apply to either of the
17 following:

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

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

25 Enacting section 1. This amendatory act does not take effect
26 unless House Bill No. 5429 of the 101st Legislature is enacted into
27 law.