

SUBSTITUTE FOR  
HOUSE BILL NO. 5961

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending section 3 (MCL 445.903), as amended by 1996 PA 226.

**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 unlaw-  
3 ful and are defined as follows:

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

7       (b) Using deceptive representations or deceptive designa-  
8 tions of geographic origin in connection with goods or services.

9       (c) Representing that goods or services have sponsorship,  
10 approval, characteristics, ingredients, uses, benefits, or  
11 quantities that they do not have or that a person has

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1 sponsorship, approval, status, affiliation, or connection that he  
2 or she does not have.

3 (d) Representing that goods are new if they are deterio-  
4 rated, altered, reconditioned, used, or secondhand.

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

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

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

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

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

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

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

25 (l) Misrepresenting that because of some defect in a  
26 consumer's home the health, safety, or lives of the consumer or  
27 his or her family are in danger if the product or services are

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

3 (m) Causing a probability of confusion or of misunderstand-  
4 ing with respect to the authority of a salesperson, representa-  
5 tive, or agent to negotiate the final terms of a transaction.

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

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

12 (p) Disclaiming or limiting the implied warranty of mer-  
13 chantability 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 serv-  
20 ices "free", "without charge", or words of similar import without  
21 clearly and conspicuously disclosing with equal prominence in  
22 immediate conjunction with the use of those words the conditions,  
23 terms, or prerequisites to the use or retention of the goods or  
24 services advertised.

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

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

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

14 (v) Taking or arranging for the consumer to sign an acknowl-  
15 edgment, certificate, or other writing affirming acceptance,  
16 delivery, compliance with a requirement of law, or other per-  
17 formance, 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, dis-  
20 count, 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  
24 to protect his or her interests by reason of disability, illiter-  
25 acy, or inability to understand the language of an agreement  
26 presented by the other party to the transaction who knows or  
27 reasonably should know of the consumer's inability.

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1 (y) Gross discrepancies between the oral representations of  
2 the seller and the written agreement covering the same transac-  
3 tion or failure of the other party to the transaction to provide  
4 the promised benefits.

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

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

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

13 (cc) Failing to reveal facts that are material to the trans-  
14 action in light of representations of fact made in a positive  
15 manner.

16 (dd) Subject to subdivision (ee), representations by the  
17 manufacturer of a product or package that the product or package  
18 is 1 or more of the following:

19 (i) Except as provided in subparagraph (ii), recycled, recy-  
20 clable, degradable, or is of a certain recycled content, in vio-  
21 lation of guides for the use of environmental marketing claims  
22 published by the federal trade commission, 57 F.R. p 36363  
23 (August 13, 1992).

24 (ii) For container holding devices regulated under part 163  
25 ~~-(plastic degradable containers)-~~ of the natural resources and  
26 environmental protection act, ~~Act No. 451 of the Public Acts of~~  
27 ~~1994, being sections 324.16301 to 324.16303 of the Michigan~~

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1 ~~Compiled Laws~~ 1994 PA 451, MCL 324.16301 TO 324.16303,  
2 representations by a manufacturer that the container holding  
3 device is degradable contrary to the definition provided in that  
4 act.

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

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

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

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

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

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

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Sub. H.B. 5961 (H-1)\* as amended December 3, 1998

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1 (GG) SUBJECT TO SUBSECTION (2), REQUIRING A CONSUMER TO  
2 DISCLOSE HIS OR HER UNLISTED TELEPHONE NUMBER AS A CONDITION OF  
3 THE SALE OF A GOOD THAT IS ORDERED ON THE SELLER'S PREMISES AND  
4 TO BE IMMEDIATELY DELIVERED TO THE CONSUMER ON THE SELLER'S  
5 PREMISES, UNLESS THE CONSUMER IS PAYING FOR THE GOOD BY CHECK.  
6 AS USED IN THIS SUBDIVISION, "UNLISTED TELEPHONE NUMBER" MEANS A  
7 NUMBER NOT LISTED IN A PUBLIC TELEPHONE DIRECTORY.

8 (2) SUBSECTION (1)(GG) DOES NOT APPLY TO A DEPOSITORY INSTI-  
9 TUTION OR AN ENTITY AFFILIATED WITH A DEPOSITORY INSTITUTION.  
[ADDITIONALLY, SUBSECTION (1)(GG) DOES NOT APPLY TO A  
TELECOMMUNICATIONS PROVIDER OR A PROVIDER OF A CABLE SERVICE AS  
DEFINED IN SECTION 102 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991  
PA 179, MCL 484.2102.] AS

10 USED IN THIS SUBSECTION, "DEPOSITORY INSTITUTION" MEANS A BANK,  
11 SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT UNION  
12 CHARTERED UNDER STATE OR FEDERAL LAW AND MAINTAINING A PRINCIPAL  
13 OFFICE OR BRANCH IN THIS STATE.

14 (3) ~~(2)~~ The attorney general may promulgate rules to  
15 implement this act under the administrative procedures act of  
16 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~  
17 ~~24.201 to 24.328 of the Michigan Compiled Laws 1969 PA 306,~~  
18 MCL 24.201 TO 24.328. The rules shall not create an additional  
19 unfair trade practice not already enumerated by this section.  
20 However, to assure national uniformity, rules shall not be  
21 promulgated to implement subsection (1)(dd) or (ee).