

Legislative Analysis



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GIFT CERTIFICATES

House Bill 4050 (H-1, Draft 1)
Sponsor: Rep. Fred Miller

House Bill 4317 (H-2, Draft 1)
Sponsor: Rep. Mark Meadows

House Bill 4680 (H-1, Draft 1)
Sponsor: Rep. Michael Sak

1st Committee: New Economy and Quality of Life
2nd Committee: Commerce

Complete to 9-17-07

A SUMMARY OF HOUSE BILLS 4050, 4317 & 4680 (PROPOSED SUBSTITUTES)

Each of these bills would amend the Michigan Consumer Protection Act (MCL 445.903 et al.) to prohibit retailers of goods and services from engaging in certain practices in connection with gift certificates. The bills would add three new sections to the MCPA and are tie-barred to one another, meaning none could take effect unless all were enacted.

House Bill 4050 would create a new Section 3E to provide an extensive list of prohibitions. It is described in detail later.

House Bill 4317 would add a new Section 3F which would prohibit charging an inactivity fee or other service fee to a consumer when using a gift certificate. The bill would also amend Section 3 to include all the prohibitions in the three new sections (3E, 3F, and 3G) among the general list of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade that are unlawful under the act.

House Bill 4680 would add a new Section 3G which would prohibit selling a gift certificate or gift card to a consumer that states an expiration date or that otherwise expires.

The Michigan Consumer Protection Act is enforced by the Attorney General and by local prosecutors. Also, individuals, firms, and other entities can bring private actions to enforce the law in some circumstances.

House Bill 4050

Generally, the bill would prohibit the following:

- Refusing to accept a gift certificate in payment for goods and services used or bought for use primarily for personal, family, or household purposes, including goods or services advertised on sale or as part of a liquidation or closeout.
- Restricting the holder of the certificate from using it consistent with its terms and conditions.
- Altering any term or condition after the certificate is issued.
- Failing to disclose any terms or conditions to a prospective purchaser. (The bill specifies how these terms and conditions are to be disclosed.)
- Failing to disclose any terms or conditions by printing them either on the certificate; on the envelope or packaging (if a toll-free number is on the certificate); or in a separate printed document.
- Failing, in any advertisement or promotion, to disclose through a notice that the certificate has terms or conditions.
- Refusing to apply a certificate or the balance of a certificate to the purchase price in cases where the purchase price of goods or services exceeds the value of the certificate or balance.

The bill defines "terms and conditions" so that the phrase includes, but is not limited to, a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

The term "gift certificate" would not include: a prepaid bank card; an electronic payment device linked to a deposit account; a prepaid discount card or program if an expiration date is clearly and conspicuously disclosed; a payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered; a gift certificate sold below face value or at a volume discount to an employee, to a nonprofit or charitable organization, or to an educational institution for fund-raising purposes; or a gift certificate distributed to a consumer or employee under an awards, rewards, loyalty, or promotional program, if there is no charge to the consumer or employee.

FISCAL IMPACT:

The bills could increase costs to the Department of Attorney General for enforcing the provisions of the bills. These costs, however, should be absorbable within the existing budget of the department.

House Bills 4317 and 4680 amend the Michigan Consumer Protection Act and list specific new violations. The provisions of that act impose a civil fine for the stated violations without classifying the violations as civil infractions or directing the fine revenue (MCL 445.905). In these cases, it is assumed that a provision of the

Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). (In cases where the statute states the violation is a civil infraction, the civil infraction fine would be dedicated to public libraries.)

Under House Bills 4317 and 4680, the court may assess the defendant with a civil fine of not more than \$25,000 for cases of persistent and knowing violation. In addition, a defendant who knowingly violates an injunction, order, decree or judgment, may be assessed an additional civil fine of not more than \$5,000 for each violation.

These bills would increase the state General Fund by an indeterminate amount, depending upon how many new civil fines are collected under the bills' provisions.

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