



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4050 (Substitute S-2 as reported)  
House Bill 4317 (Substitute S-1 as reported)  
House Bill 4680 (Substitute S-1 as reported)  
Sponsor: Representative Fred Miller (H.B. 4050)  
Representative Mark Meadows (H.B. 4317)  
Representative Michael Sak (H.B. 4680)  
First House Committee: New Economy and Quality of Life  
Second House Committee: Commerce  
Senate Committee: Commerce and Tourism

**CONTENT**

House Bill 4050 (S-2) would amend the Michigan Consumer Protection Act to prohibit a person engaged in the retail sale of goods or services from doing any of the following:

- Refusing to accept a gift certificate, except after an expiration date that was at least five years after the purchase date.
- Restricting the holder of a gift certificate from using it in a manner that was consistent with its terms and conditions.
- Altering terms or conditions of a gift certificate after it was issued.
- Failing to disclose the terms and conditions of a gift certificate or card, or failing to disclose that terms and conditions applied.
- Refusing to accept a gift certificate and apply it to a purchase if its value were less than the purchase price.

House Bill 4317 (S-1) would amend the Act to prohibit a person engaged in the retail sale of goods or services from charging an inactivity fee or other service fee for the possession or use of a gift certificate. "Service fee" would not include any fee charged to and paid by a consumer in connection with the sale of a gift certificate, unless the fee were deducted or debited from the face value of the gift certificate.

In addition, the Act provides that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful, and contains a list of such practices. The Attorney General may bring an action to enjoin a method, act, or practice that violates the Act. The bill would include in the list of unlawful methods, acts, or practices a violation of the prohibitions proposed by House Bills 4050 (S-2), 4317 (S-1), and 4680 (S-1).

House Bill 4680 (S-1) would amend the Act to prohibit a person engaged in the retail sale of goods or services from selling to a consumer a gift certificate that expired within a period of less than five years.

For purposes of all three bills, "gift certificate" would mean a written promise or a gift card or other electronic payment device that meets all of the following:

- Is usable at a single retailer, at an affiliated group of retailers that share the same name, mark, or logo, or at multiple, unaffiliated retailers or service providers.
- Is issued in a specified amount.
- May or may not be increased in value or reloaded.
- Is purchased or loaded on a prepaid basis for the future purchase or delivery of goods or services.
- Is honored upon presentation.

"Gift certificate" would not include any of the following:

- A general use, prepaid card or other electronic payment device issued or sponsored by a financial institution in a predetermined amount and usable at multiple, unaffiliated retailers or at automated teller machines.
- An electronic payment device linked to a deposit account.
- A prepaid telephone calling card regulated under State or Federal law or a prepaid card for wireless telephone service.
- An electronic payment device used to gain access to an account from which an individual may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis under the Internal Revenue Code.
- A prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price, if any expiration date of the prepaid discount card or program were 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.
- 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.
- A gift certificate distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program, if the consumer or employee is not required to give consideration for the gift certificate.

The term also would not include an electronic credit voucher issued by the holder of a certificate issued under Chapter 411 (Air Carrier Certificates) or a permit issued under Chapter 413 (Foreign Air Transportation) of Title 49 of the U.S. Code.

The bills would take effect on November 1, 2008, and are tie-barred to each other and to Senate Bill 388. (Senate Bill 388 (H-2), as passed by the House, would amend the Uniform Unclaimed Property Act to include in that Act's definition of "intangible property" gift certificates and gift cards, except for a gift certificate issued for retail goods or services by a person engaged in the retail sale of goods or services.)

Proposed MCL 445.903e (H.B. 4050)  
 MCL 445.903 et al. (H.B. 4317)  
 Proposed MCL 445.903g (H.B. 4680)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The Office of Attorney General's existing budget should be able to absorb any additional costs associated with enforcing the Michigan Consumer Protection Act or promulgating any new rules to implement it due to these proposed changes.

Date Completed: 5-21-08

Fiscal Analyst: Joe Carrasco

Floor\hb4050

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.