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BILL ANALYSIS



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House Bill 4050 (Substitute S-1)

House Bill 4317 (Substitute S-1)

House Bill 4680 (Substitute S-1)

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

Date Completed: 5-13-08

CONTENT

House Bills 4050 (S-1), 4317 (S-1), and 4680 (S-1) would amend the Michigan Consumer Protection Act to prohibit a retailer from doing any of the following:

- **Selling a gift certificate that expired in less than five years.**
- **Refusing to accept a gift certificate, except after an expiration date that was at least five years after the purchase date.**
- **Restricting the use of a gift certificate 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 that terms and conditions applied to a gift certificate or card, if there were terms and conditions.**
- **Refusing to accept a gift certificate and apply it to a purchase if its value were less than the purchase price.**
- **Charging an inactivity fee or other service fee for the possession or use of a gift certificate.**

House Bill 4317 (S-1) also would include violations of the prohibitions described above as unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.

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.)

House Bill 4050 (S-1)

The bill would add Section 3e to the Michigan Consumer Protection Act, to prohibit a person engaged in the retail sale of goods or services from doing any of the following in connection with a gift certificate issued for retail goods or services:

- Refusing to accept a gift certificate in payment for goods or services used or bought for use primarily for personal, family, or household purposes, including goods or services advertised on sale or pursuant to a liquidation or closeout, except for a gift certificate presented for redemption after an expiration date that did not violate Section 3g (proposed by House Bill 4680 (S-1)).
- Restricting the holder of a gift certificate from using it in a manner that was consistent with its stated terms and conditions.
- Altering any term or condition of a gift certificate after it was issued.
- If a gift certificate had any terms and conditions, failing to include in any advertisement or promotion for the gift certificate a notice stating that "terms and conditions are applied to gift certificates and gift cards".
- Refusing to accept the gift certificate and apply it to the purchase price of goods or services, if the value of the certificate or its remaining balance were less than the purchase price of the goods or services.

If a gift certificate had any terms or conditions, the bill would prohibit the retailer from failing to disclose the terms and conditions to a prospective buyer by doing any of the following:

- Conspicuously stating in a gift certificate offered for sale by mail that the "terms and conditions are applied to gift certificates and gift cards".
- Including a statement in a gift certificate offered for sale by electronic, computer, or telephonic means, that "terms and conditions are applied to gift certificates or gift cards" before the prospective buyer was able to purchase the certificate, or conspicuously including that statement in the electronic message offering the gift certificate for purchase.

If a gift certificate had any terms or conditions, the bill would prohibit the retailer from failing to disclose those terms and conditions by conspicuously printing them on one of the following:

- The gift certificate.
- The envelope or packaging containing the gift certificate, if a toll-free telephone number to gain access to those terms and conditions were printed on the gift certificate.
- A separate printed document delivered to the purchaser, if a toll-free telephone number to gain access to those terms and conditions were printed on the gift certificate.

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.
- 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 or regulations adopted pursuant to that 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 file 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 (49 USC 41101-41113 or 49 USC 41301-41313).

"Person engaged in the retail sale of goods" would include a person conducting a closeout, liquidation, or going-out-of-business sale on behalf of the person engaged in the retail sale of goods or that person's creditors.

"Use" of a gift certificate would include making purchases with or adding value to the gift certificate. "Terms and conditions" would include an expiration date or a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

House Bill 4317 (S-1)

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 court may award costs to the prevailing party and may assess a civil fine of up to \$25,000 for a persistent and knowing violation.

The bill would include in the list of unlawful methods, acts, or practices a violation of Section 3e, 3f, or 3g, as proposed by House Bills 4050 (S-1), 4317 (S-1), and 4680 (S-1), respectively.

Proposed Section 3f would prohibit a person engaged in the retail sale of goods or services from charging to a consumer 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.

House Bill 4680 (S-1)

The bill proposes Section 3g, which would 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.

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.

Fiscal Analyst: Joe Carrasco

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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.