

**SUBSTITUTE FOR  
HOUSE BILL NO. 5486**

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  
6 services.

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

9           (c) Representing that goods or services have sponsorship,

1 approval, characteristics, ingredients, uses, benefits, or  
2 quantities that they do not have or that a person has sponsorship,  
3 approval, status, affiliation, or connection that he or she does  
4 not have.

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

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

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

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

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

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

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

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

26 (l) Misrepresenting that because of some defect in a consumer's  
27 home the health, safety, or lives of the consumer or his or her  
28 family are in danger if the product or services are not purchased,  
29 when in fact the defect does not exist or the product or services

1 would not remove the danger.

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

5 (n) Causing a probability of confusion or of misunderstanding  
6 as to the legal rights, obligations, or remedies of a party to a  
7 transaction.

8 (o) Causing a probability of confusion or of misunderstanding  
9 as to the terms or conditions of credit if credit is extended in a  
10 transaction.

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

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

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

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

27 (t) Entering into a consumer transaction in which the consumer  
28 waives or purports to waive a right, benefit, or immunity provided  
29 by law, unless the waiver is clearly stated and the consumer has

1 specifically consented to it.

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

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

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

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

24 (y) Gross discrepancies between the oral representations of  
25 the seller and the written agreement covering the same transaction  
26 or failure of the other party to the transaction to provide the  
27 promised benefits.

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

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

3 (bb) Making a representation of fact or statement of fact  
4 material to the transaction such that a person reasonably believes  
5 the represented or suggested state of affairs to be other than it  
6 actually is.

7 (cc) Failing to reveal facts that are material to the  
8 transaction in light of representations of fact made in a positive  
9 manner.

10 (dd) Subject to subdivision (ee), representing as the  
11 manufacturer of a product or package that the product or package is  
12 1 or more of the following:

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

17 (ii) For container holding devices regulated under part 163 of  
18 the natural resources and environmental protection act, 1994 PA  
19 451, MCL 324.16301 to 324.16303, degradable contrary to the  
20 definition provided in that act.

21 (ee) Representing that a product or package is degradable,  
22 biodegradable, or photodegradable unless it can be substantiated by  
23 evidence that the product or package will completely decompose into  
24 elements found in nature within a reasonably short period of time  
25 after consumers use the product and dispose of the product or the  
26 package in a landfill or composting facility, as appropriate.

27 (ff) Offering a consumer a prize if the consumer is required  
28 to submit to a sales presentation to claim the prize, unless a  
29 written disclosure is given to the consumer at the time the

1 consumer is notified of the prize and the written disclosure meets  
2 all of the following requirements:

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

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

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

10 (iv) Fully describes the product, real estate, investment,  
11 service, membership, or other item that is or will be offered for  
12 sale, including the price of the least expensive item and the most  
13 expensive item.

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

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

24 (i) The selling, leasing, providing, terms of payment, or  
25 transaction includes an application for or an extension of credit  
26 to the consumer.

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

29 (iii) The disclosure is requested by a person to obtain a

1 consumer report for a permissible purpose described in section 604  
2 of the fair credit reporting act, 15 USC 1681b.

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

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

19 (ii) If a credit card or debit card is used for payment in a  
20 consumer transaction, issuing or delivering a receipt to the  
21 consumer that displays any part of the expiration date of the card  
22 or more than the last 4 digits of the consumer's account number.  
23 This subdivision does not apply if the only receipt issued in a  
24 consumer transaction is a credit card or debit card receipt on  
25 which the account number or expiration date is handwritten,  
26 mechanically imprinted, or photocopied. This subdivision applies to  
27 any consumer transaction that occurs on or after March 1, 2005,  
28 except that if a credit or debit card receipt is printed in a  
29 consumer transaction by an electronic device, this subdivision

1 applies to any consumer transaction that occurs using that device  
2 only after 1 of the following dates, as applicable:

3 (i) If the electronic device is placed in service after March  
4 1, 2005, July 1, 2005 or the date the device is placed in service,  
5 whichever is later.

6 (ii) If the electronic device is in service on or before March  
7 1, 2005, July 1, 2006.

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

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

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

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

23 (iii) The live musical performance or production is identified  
24 in all advertising and promotion as a salute or tribute and the  
25 name of the vocal or instrumental group performing is not so  
26 closely related or similar to that used by the recording group that  
27 it would tend to confuse or mislead the public.

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



1 (v) The performance or production is expressly authorized by  
2 the recording group.

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

4 (2) The attorney general may promulgate rules to implement  
5 this act under the administrative procedures act of 1969, 1969 PA  
6 306, MCL 24.201 to 24.328. The rules must not create an additional  
7 unfair trade practice not already enumerated by this section.

8 However, to assure national uniformity, rules must not be  
9 promulgated to implement subsection (1)(dd) or (ee).

10 (3) Subsection (1)(hh) does not apply to either of the  
11 following:

12 (a) Providing a service related to the administration of  
13 health-related or dental-related benefits or services to patients,  
14 including provider contracting or credentialing. This subdivision  
15 is intended to limit the application of subsection (1)(hh) and is  
16 not intended to imply that this act would otherwise apply to  
17 health-related or dental-related benefits.

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

19 Enacting section 1. This amendatory act takes effect January  
20 1, 2023.