

# HOUSE BILL NO. 5200

October 24, 2023, Introduced by Reps. Liberati, Tsernoglou, Hope, Byrnes, Rheingans, Hood, Price, Morgan, Steckloff, McFall, MacDonell, Hill, Wilson and Breen and referred to the Committee on Regulatory Reform.

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending section 15 (MCL 445.915) and by adding section 8a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           **Sec. 8a. (1) If the attorney general or a prosecuting attorney**  
2 **has reasonable cause to believe that a person has information or is**  
3 **in possession, custody, or control of any documentary material or**  
4 **tangible object that is relevant to an investigation of a violation**  
5 **of this act, the attorney general, or a prosecuting attorney with**

1 the permission of the attorney general or at the request of the  
2 attorney general, may, before bringing any action under this act,  
3 serve the person with a written demand to do any of the following  
4 or a combination of any of the following:

5 (a) Appear and be examined under oath.

6 (b) Answer interrogatories.

7 (c) Produce any documentary material or tangible object for  
8 inspection and copying.

9 (2) A demand must contain all of the following:

10 (a) A description of the conduct constituting the violation of  
11 this act being investigated by the attorney general or the  
12 prosecuting attorney.

13 (b) A summary of subsections (3) and (4).

14 (c) If the demand requires the appearance of the person, the  
15 demand must also include all of the following:

16 (i) A reasonable time and place for the appearance.

17 (ii) A notice that the person may file an objection to or  
18 reason for not complying with the demand with the serving entity on  
19 or before the time described in subparagraph (i).

20 (d) If the demand requires written interrogatories, the demand  
21 must also include all of the following:

22 (i) A copy of the written interrogatories.

23 (ii) A reasonable time within which the person must answer the  
24 written interrogatories.

25 (iii) A notice that the person may file an objection to or  
26 reason for not complying with the demand with the serving entity on  
27 or before the time described in subparagraph (ii).

28 (e) If the demand requires the production of any documentary  
29 material or tangible object, the demand must also include all of

1 the following:

2 (i) A description of the documentary material or tangible  
3 object with sufficient definiteness to permit the documentary  
4 material or tangible object to be fairly identified by the person.

5 (ii) A reasonable time and place for production of the  
6 documentary material or tangible object.

7 (iii) A notice that the person may file an objection to or  
8 reason for not complying with the demand with the serving entity on  
9 or before the time described in subparagraph (ii).

10 (iv) The name of the person that will be the custodian of the  
11 documentary material or tangible object.

12 (3) At any time before the return date or within 10 days after  
13 receiving the demand, whichever is earlier, a person subject to the  
14 demand may petition the circuit court of Ingham County for a  
15 protective order to do any of the following:

16 (a) Extend the return date for a reasonable time.

17 (b) Modify the demand.

18 (c) Set aside the demand.

19 (4) If a person files a petition under subsection (3), the  
20 person must give the serving entity at least 10 days' notice of any  
21 hearing on the petition and the serving entity must be given an  
22 opportunity to respond to the petition.

23 (5) If a person does not secure a protective order under  
24 subsection (3) and the person does not comply with the demand by  
25 the return date, the serving entity, upon notice to the person, may  
26 apply to a court of competent jurisdiction for an order compelling  
27 the person's compliance with the demand.

28 (6) If the court contemplating the order under subsection (5)  
29 finds that there is reasonable cause to believe that this act is

1 being, has been, or is about to be violated, that the person  
2 subject to the demand is the person that is committing, has  
3 committed, or is about to commit the violation or is the person  
4 that possesses information, documentary material, or a tangible  
5 object that is relevant to the investigation by the attorney  
6 general or prosecuting attorney, that the person has left the state  
7 or is about to leave the state, and that the order is necessary for  
8 the enforcement of this act, the court may do either or both of the  
9 following:

10 (a) Require the person to comply with the demand.

11 (b) Forbid the removal, concealment, withholding, destruction,  
12 mutilation, falsification, or alteration of any document or  
13 tangible object that is in the possession, custody, or control of  
14 the person.

15 (7) A person subject to a demand or court order under this  
16 section, that with the intent to avoid, evade, or prevent  
17 compliance with the demand or order, in whole or in part, removes,  
18 conceals, withholds, destroys, mutilates, falsifies, or by any  
19 other means alters any documentary material or tangible object in  
20 the possession, custody, or control of the person may be ordered to  
21 pay a civil fine of not more than \$10,000.00.

22 (8) Except as otherwise provided in subsection (9), any  
23 testimony, answer, documentary material, or tangible object  
24 received by the attorney general or a prosecuting attorney in  
25 accordance with a demand or order under this section is  
26 confidential and not subject to disclosure until the time that an  
27 enforcement action is brought by the attorney general or  
28 prosecuting attorney under this act.

29 (9) The attorney general or a prosecuting attorney may

1 disclose any testimony, answer, document, or tangible object  
2 described in subsection (8) in any of the following circumstances:

3 (a) To a law enforcement official.

4 (b) As the attorney general or a prosecuting attorney  
5 considers necessary to enforce this act.

6 (c) If ordered by a court.

7 (d) If the confidentiality requirements described in  
8 subsection (8) are waived by both of the following:

9 (i) The person subject to the demand.

10 (ii) The person being investigated by the attorney general or  
11 prosecuting attorney.

12 (10) As used in this section:

13 (a) "Demand" means a demand under subsection (1).

14 (b) "Return date" means the date specified in subsection  
15 (2) (c) (ii), (d) (iii), or (e) (iii).

16 (c) "Serving entity" means the attorney general or prosecuting  
17 attorney that served the demand.

18 Sec. 15. ~~A~~ Except as otherwise provided in section 8a, a  
19 prosecuting attorney may conduct an investigation pursuant to ~~under~~  
20 this act and may institute and prosecute an action under this act  
21 in the same manner as the attorney general.