

# HOUSE BILL NO. 4893

May 20, 2021, Introduced by Reps. Berman, Hoitenga, Maddock, Wozniak, Coleman and Whitsett  
and referred to the Committee on Communications and Technology.

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending sections 3 and 4 (MCL 445.903 and 445.904), section 3  
as amended by 2020 PA 296 and section 4 as amended by 2014 PA 251,  
and by adding section 3j.

## **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:

1 (a) Causing a probability of confusion or misunderstanding as  
2 to the source, sponsorship, approval, or certification of goods or  
3 services.

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

6 (c) Representing that goods or services have sponsorship,  
7 approval, characteristics, ingredients, uses, benefits, or  
8 quantities that they do not have or that a person has sponsorship,  
9 approval, status, affiliation, or connection that he or she does  
10 not have.

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

13 (e) Representing that goods or services are of a particular  
14 standard, quality, or grade, or that goods are of a particular  
15 style or model, if they are of another.

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

18 (g) Advertising or representing goods or services with intent  
19 not to dispose of those goods or services as advertised or  
20 represented.

21 (h) Advertising goods or services with intent not to supply  
22 reasonably expectable public demand, unless the advertisement  
23 discloses a limitation of quantity in immediate conjunction with  
24 the advertised goods or services.

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

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

29 (k) Representing to a party to whom goods or services are

1 supplied that the goods or services are being supplied in response  
2 to a request made by or on behalf of the party, when they are not.

3 (l) Misrepresenting that because of some defect in a consumer's  
4 home the health, safety, or lives of the consumer or his or her  
5 family are in danger if the product or services are not purchased,  
6 when in fact the defect does not exist or the product or services  
7 would not remove the danger.

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

11 (n) Causing a probability of confusion or of misunderstanding  
12 as to the legal rights, obligations, or remedies of a party to a  
13 transaction.

14 (o) Causing a probability of confusion or of misunderstanding  
15 as to the terms or conditions of credit if credit is extended in a  
16 transaction.

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

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

24 (r) Representing that a consumer will receive goods or  
25 services ~~"free"~~ **free** or ~~"without charge"~~, **without charge**, or using  
26 words of similar import in the representation, without clearly and  
27 conspicuously disclosing with equal prominence in immediate  
28 conjunction with the use of those words the conditions, terms, or  
29 prerequisites to the use or retention of the goods or services

1 advertised.

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

5 (t) Entering into a consumer transaction in which the consumer  
6 waives or purports to waive a right, benefit, or immunity provided  
7 by law, unless the waiver is clearly stated and the consumer has  
8 specifically consented to it.

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

17 (v) Taking or arranging for the consumer to sign an  
18 acknowledgment, certificate, or other writing affirming acceptance,  
19 delivery, compliance with a requirement of law, or other  
20 performance, if the merchant knows or has reason to know that the  
21 statement is not true.

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

26 (x) Taking advantage of the consumer's inability reasonably to  
27 protect his or her interests by reason of disability, illiteracy,  
28 or inability to understand the language of an agreement presented  
29 by the other party to the transaction who knows or reasonably

1 should know of the consumer's inability.

2 (y) Gross discrepancies between the oral representations of  
3 the seller and the written agreement covering the same transaction  
4 or failure of the other party to the transaction to provide the  
5 promised benefits.

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

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

10 (bb) Making a representation of fact or statement of fact  
11 material to the transaction such that a person reasonably believes  
12 the represented or suggested state of affairs to be other than it  
13 actually is.

14 (cc) Failing to reveal facts that are material to the  
15 transaction in light of representations of fact made in a positive  
16 manner.

17 (dd) Subject to subdivision (ee), representations ~~by~~ **as** the  
18 manufacturer of a product or package that the product or package is  
19 1 or more of the following:

20 (i) Except as provided in subparagraph (ii), recycled,  
21 recyclable, degradable, or is of a certain recycled content, in  
22 violation of guides for the use of environmental marketing claims,  
23 16 CFR part 260.

24 (ii) For container holding devices regulated under part 163 of  
25 the natural resources and environmental protection act, 1994 PA  
26 451, MCL 324.16301 to 324.16303, ~~representations by a manufacturer~~  
27 ~~that the container holding device~~ is degradable contrary to the  
28 definition provided in that act.

29 (ee) Representing that a product or package is degradable,

1 biodegradable, or photodegradable unless it can be substantiated by  
2 evidence that the product or package will completely decompose into  
3 elements found in nature within a reasonably short period of time  
4 after consumers use the product and dispose of the product or the  
5 package in a landfill or composting facility, as appropriate.

6 (ff) Offering a consumer a prize if ~~in order to claim the~~  
7 ~~prize~~ the consumer is required to submit to a sales presentation **to**  
8 **claim the prize**, unless a written disclosure is given to the  
9 consumer at the time the consumer is notified of the prize and the  
10 written disclosure meets all of the following requirements:

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

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

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

18 (iv) Fully describes the product, real estate, investment,  
19 service, membership, or other item that is or will be offered for  
20 sale, including the price of the least expensive item and the most  
21 expensive item.

22 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in  
23 connection with a home solicitation sale or telephone solicitation,  
24 including, but not limited to, having an independent courier  
25 service or other third party pick up a consumer's payment on a home  
26 solicitation sale during the period the consumer is entitled to  
27 cancel the sale.

28 (hh) Except as provided in subsection (3), requiring a  
29 consumer to disclose his or her Social Security number as a

1 condition to selling or leasing goods or providing a service to the  
2 consumer, unless any of the following apply:

3 (i) The selling, leasing, providing, terms of payment, or  
4 transaction includes an application for or an extension of credit  
5 to the consumer.

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

8 (iii) The disclosure is requested by a person to obtain a  
9 consumer report for a permissible purpose described in section 604  
10 of the fair credit reporting act, 15 USC 1681b.

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

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

27 (ii) If a credit card or debit card is used for payment in a  
28 consumer transaction, issuing or delivering a receipt to the  
29 consumer that displays any part of the expiration date of the card

1 or more than the last 4 digits of the consumer's account number.  
2 This subdivision does not apply if the only receipt issued in a  
3 consumer transaction is a credit card or debit card receipt on  
4 which the account number or expiration date is handwritten,  
5 mechanically imprinted, or photocopied. This subdivision applies to  
6 any consumer transaction that occurs on or after March 1, 2005,  
7 except that if a credit or debit card receipt is printed in a  
8 consumer transaction by an electronic device, this subdivision  
9 applies to any consumer transaction that occurs using that device  
10 only after 1 of the following dates, as applicable:

11 (i) If the electronic device is placed in service after March  
12 1, 2005, July 1, 2005 or the date the device is placed in service,  
13 whichever is later.

14 (ii) If the electronic device is in service on or before March  
15 1, 2005, July 1, 2006.

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

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

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

26 (ii) At least 1 member of the performing group was a member of  
27 the recording group and has a legal right to use the recording  
28 group's name, by virtue of use or operation under the recording  
29 group's name without having abandoned the name or affiliation with



1 the recording group.

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

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

9 (v) The performance or production is expressly authorized by  
10 the recording group.

11 (ll) Violating section 3e, 3f, 3g, 3h, 3i, **3j**, 3k, or 3l.

12 (2) The attorney general may promulgate rules to implement  
13 this act under the administrative procedures act of 1969, 1969 PA  
14 306, MCL 24.201 to 24.328. The rules must not create an additional  
15 unfair trade practice not already enumerated by this section.  
16 However, to assure national uniformity, rules must not be  
17 promulgated to implement subsection (1)(dd) or (ee).

18 (3) Subsection (1)(hh) does not apply to either of the  
19 following:

20 (a) Providing a service related to the administration of  
21 health-related or dental-related benefits or services to patients,  
22 including provider contracting or credentialing. This subdivision  
23 is intended to limit the application of subsection (1)(hh) and is  
24 not intended to imply that this act would otherwise apply to  
25 health-related or dental-related benefits.

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

27 **Sec. 3j. (1) A person engaged in trade or commerce that**  
28 **permits customers to enter into an agreement online for recurring**  
29 **services shall permit customers to cancel that agreement online.**

1           (2) An agreement that is contrary to this section is voidable  
2 by the customer.

3           (3) This section applies only to an agreement that takes  
4 effect or is extended, renewed, or modified after the effective  
5 date of the amendatory act that added this section.

6           (4) As used in this section:

7           (a) "Agreement" means a written contractual agreement between  
8 a person engaged in trade or commerce and a customer.

9           (b) "Recurring services" includes, but is not limited,  
10 telephone services, media subscriptions, gym memberships, newspaper  
11 subscriptions, internet services, and gaming passes.

12           Sec. 4. (1) This act ~~does not apply to either~~ applies to any  
13 unfair, unconscionable, or deceptive method, act, or practice  
14 described in this act and creates a cause of action against a  
15 company who engages in that method, act, or practice, except for  
16 any of the following:

17           (a) A ~~transaction or conduct specifically authorized under~~  
18 ~~laws administered by a regulatory board or officer acting under~~  
19 ~~statutory authority~~ method, act, or practice that is expressly  
20 permitted by a law of this state or the United States. This  
21 subdivision does not exempt a method, act, or practice that is not  
22 expressly permitted by a law of this state or the United States  
23 regardless of whether the general transaction or activity of which  
24 the method, act, or practice is a part is expressly permitted by a  
25 law of this state or the United States.

26           (b) An act done by ~~the~~ a publisher, owner, agent, or employee  
27 of a newspaper, periodical, directory, radio or television station,  
28 or other communications medium in the publication or dissemination  
29 of an advertisement unless the publisher, owner, agent, or employee

1 knows or, under the circumstances, reasonably should know of the  
 2 false, misleading, or deceptive character of the advertisement or  
 3 has a direct financial interest in the sale or distribution of the  
 4 advertised goods, property, or service.

5 (c) ~~(2)~~ Except for the purposes of an action filed by a person  
 6 under section 11, ~~this act does not apply to or create a cause of~~  
 7 ~~action for an~~ unfair, unconscionable, or deceptive method, act, or  
 8 practice that is made unlawful by any of the following:

9 (i) ~~(a)~~ The banking code of 1999, 1999 PA 276, MCL 487.11101 to  
 10 487.15105.

11 (ii) ~~(b)~~ 1939 PA 3, MCL 460.1 to 460.11.

12 (iii) ~~(c)~~ The motor carrier act, 1933 PA 254, MCL 475.1 to  
 13 ~~479.43.479.42.~~

14 (iv) ~~(d)~~ The savings bank act, 1996 PA 354, MCL 487.3101 to  
 15 487.3804.

16 (v) ~~(e)~~ The credit union act, 2003 PA 215, MCL 490.101 to  
 17 490.601.

18 (d) ~~(3)~~ ~~This act does not apply to or create a cause of action~~  
 19 ~~for an~~ An unfair, unconscionable, or deceptive method, act, or  
 20 practice that is made unlawful by chapter 20 of the insurance code  
 21 of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, if either of the  
 22 following is met:

23 (i) ~~(a)~~ The method, act, or practice occurred on or after March  
 24 28, 2001.

25 (ii) ~~(b)~~ The method, act, or practice occurred before March 28,  
 26 2001. However, this ~~subdivision~~ **subparagraph** does not apply to or  
 27 limit a cause of action filed with a court concerning a method,  
 28 act, or practice if the cause of action was filed in a court of  
 29 competent jurisdiction on or before June 5, 2014.

1       ~~(4) The burden of proving an exemption from this act is upon~~  
2 ~~the person claiming the exemption.~~

3       (2) A person that claims this act does not apply to a method,  
4 act, or practice because of an exemption described in subsection  
5 (1) or any other exemption from this act bears the burden of  
6 proving that exemption.

7       (3) As used in this section, "company" means a person that is  
8 engaged in trade or commerce, including, but not limited to, a  
9 person whose profession, occupation, conduct, activity, or  
10 transactions are regulated by a law of this state or the United  
11 States.