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# HOUSE BILL NO. 5967

14 March 24, 2022, Introduced by Reps. Beeler, Hertel, Witwer and Damoose and referred to the  
15 Committee on Regulatory Reform.

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17 A bill to amend 1976 PA 331, entitled "Michigan consumer  
18 protection act," by amending section 3 (MCL 445.903), as amended by  
19 2021 PA 46. **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:** Sec. 3. (1)  
20 Unfair, unconscionable, or deceptive methods, acts, or practices in  
21 the conduct of trade or commerce are unlawful and are defined as  
22 follows:

23 (a) Causing a probability of confusion or misunderstanding as  
24 to the source, sponsorship, approval, or certification of goods or

25  
26 services.

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

29 (c) Representing that goods or services have sponsorship,  
30 approval, characteristics, ingredients, uses, benefits, or  
31 quantities that they do not have or that a person has sponsorship,  
32 approval, status, affiliation, or connection that he or she does  
33 not have.

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

36 (e) Representing that goods or services are of a particular  
37 standard, quality, or grade, or that goods are of a particular  
38 style or model, if they are of another.

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

41 (g) Advertising or representing goods or services with intent  
42 not to dispose of those goods or services as advertised or  
43 represented.

44 (h) Advertising goods or services with intent not to supply  
45 reasonably expectable public demand, unless the advertisement  
46 discloses a limitation of quantity in immediate conjunction with  
47 the advertised goods or services.

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

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

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

55 (l) Misrepresenting that because of some defect in a consumer's home  
56 the health, safety, or lives of the consumer or his or her  
57 family are in danger if the product or services are not

58 purchased, when in fact the defect does not exist or the product or  
59 services would not remove the danger.

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

63 (n) Causing a probability of confusion or of misunderstanding  
64 as to the legal rights, obligations, or remedies of a party to a  
65 transaction.

66 (o) Causing a probability of confusion or of misunderstanding  
67 as to the terms or conditions of credit if credit is extended in a  
68 transaction.

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

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

76 (r) Representing that a consumer will receive goods or  
77 services free or without charge, or using words of similar import  
78 in the representation, without clearly and conspicuously disclosing  
79 with equal prominence in immediate conjunction with the use of  
80 those words the conditions, terms, or prerequisites to the use or  
81 retention of the goods or services advertised.

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

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

89 (u) Failing, in a consumer transaction that is rescinded,  
90 canceled, or otherwise terminated in accordance with the  
91 terms of an agreement, advertisement, representation, or

92 provision of law, to promptly restore to the person or persons  
93 entitled to it a deposit, down payment, or other payment, or in the  
94 case of property traded in but not available, the greater of the  
95 agreed value or the fair market value of the property, or to cancel  
96 within a specified time or an otherwise reasonable time an acquired  
97 security interest.

98 (v) Taking or arranging for the consumer to sign an  
99 acknowledgment, certificate, or other writing affirming acceptance,  
100 delivery, compliance with a requirement of law, or other  
101 performance, if the merchant knows or has reason to know that the  
102 statement is not true.

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

107 (x) Taking advantage of the consumer's inability reasonably  
108 to protect his or her interests by reason of disability,  
109 illiteracy, or inability to understand the language of an agreement  
110 presented by the other party to the transaction who knows or  
111 reasonably should know of the consumer's inability.

112 (y) Gross discrepancies between the oral representations of  
113 the seller and the written agreement covering the same transaction  
114 or failure of the other party to the transaction to provide the  
115 promised benefits.

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

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

120 (bb) Making a representation of fact or statement of fact  
121 material to the transaction such that a person reasonably believes  
122 the represented or suggested state of affairs to be other than it  
123 actually is.

124 (cc) Failing to reveal facts that are material to the  
125 transaction in light of representations of fact made in a positive  
126 manner.

127 (dd) Subject to subdivision (ee), representing as the  
128 manufacturer of a product or package that the product or package is  
129 1 or more of the following:

130 (i) Except as provided in subparagraph (ii), recycled,  
131 recyclable, degradable, or is of a certain recycled content, in  
132 violation of guides for the use of environmental marketing claims,  
133 16 CFR part 260.

134 (ii) For container holding devices regulated under part 163 of  
135 the natural resources and environmental protection act, 1994 PA  
136 451, MCL 324.16301 to 324.16303, degradable contrary to the  
137 definition provided in that act.

138 (ee) Representing that a product or package is degradable,  
139 biodegradable, or photodegradable unless it can be substantiated by  
140 evidence that the product or package will completely decompose into  
141 elements found in nature within a reasonably short period of time  
142 after consumers use the product and dispose of the product or the  
143 package in a landfill or composting facility, as appropriate.

144 (ff) Offering a consumer a prize if the consumer is required  
145 to submit to a sales presentation to claim the prize, unless a  
146 written disclosure is given to the consumer at the time the  
147 consumer is notified of the prize and the written disclosure meets  
148 all of the following requirements:

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

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

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

156 (iv) Fully describes the product, real estate, investment,  
157 service, membership, or other item that is or will be offered for  
158 sale, including the price of the least expensive item and the most  
159 expensive item.

160 (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in  
161 connection with a home solicitation sale or telephone solicitation,  
162 including, but not limited to, having an independent courier  
163 service or other third party pick up a consumer's payment on a home  
164 solicitation sale during the period the consumer is entitled to  
165 cancel the sale.

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

170 (i) The selling, leasing, providing, terms of payment, or  
171 transaction includes an application for or an extension of credit  
172 to the consumer.

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

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

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

181 (v) The disclosure is requested from an individual to effect,  
182 administer or enforce a specific telephonic or other electronic  
183 consumer transaction that is not made in person but is requested or  
184 authorized by the individual if it is to be used solely to confirm  
185 the identity of the individual through a fraud prevention service  
186 database. The consumer good or service must still be provided to

187 the consumer on verification of his or her identity if he

188 or she refuses to provide his or her Social Security number

189 but provides other information or documentation that can be used by  
190 the person to verify his or her identity. The person may inform the  
191 consumer that verification through other means than use of the  
192 Social Security number may cause a delay in providing the service  
193 or good to the consumer.

194 (ii) If a credit card or debit card is used for payment in a  
195 consumer transaction, issuing or delivering a receipt to the  
196 consumer that displays any part of the expiration date of the card  
197 or more than the last 4 digits of the consumer's account number.  
198 This subdivision does not apply if the only receipt issued in a  
199 consumer transaction is a credit card or debit card receipt on which  
200 the account number or expiration date is handwritten, mechanically  
201 imprinted, or photocopied. This subdivision applies to any consumer  
202 transaction that occurs on or after March 1, 2005, except that if a  
203 credit or debit card receipt is printed in a consumer transaction by  
204 an electronic device, this subdivision applies to any consumer  
205 transaction that occurs using that device only after 1 of the  
206 following dates, as applicable:

207 (i) If the electronic device is placed in service after March  
208 1, 2005, July 1, 2005 or the date the device is placed in service,  
209 whichever is later.

210 (ii) If the electronic device is in service on or before March  
211 1, 2005, July 1, 2006.

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

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

219 (i) The performing group is the authorized registrant and  
220 owner of a federal service mark for that group registered in the

221 United States Patent and Trademark Office.

222 (ii) At least 1 member of the performing group was a member of  
223 the recording group and has a legal right to use the recording  
224 group's name, by virtue of use or operation under the recording  
225 group's name without having abandoned the name or affiliation with  
226 the recording group.

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

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

234 (v) The performance or production is expressly authorized by  
235 the recording group.

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

237 (mm) **Violating the motor vehicle financial protection**  
238 **products act, 2009 PA 229, 492.21 to 492.34.**

239 (2) The attorney general may promulgate rules to implement  
240 this act under the administrative procedures act of 1969, 1969 PA  
241 306, MCL 24.201 to 24.328. The rules must not create an additional  
242 unfair trade practice not already enumerated by this section.  
243 However, to assure national uniformity, rules must not be  
244 promulgated to implement subsection (1)(dd) or (ee).

245 (3) Subsection (1)(hh) does not apply to either of the  
246 following:

247 (a) Providing a service related to the administration of  
248 health-related or dental-related benefits or services to patients,  
249 including provider contracting or credentialing. This subdivision  
250 is intended to limit the application of subsection (1)(hh) and is  
251 not intended to imply that this act would otherwise apply to  
252 health-related or dental-related benefits.

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

255 Enacting section 1. This amendatory act does not take effect  
256 unless House Bill No. 5429 of the 101st Legislature is enacted into  
257 law.

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