

# HOUSE BILL NO. 5933

March 17, 2022, Introduced by Reps. Manoogian, Bolden, Weiss, Anthony, Hood, Sowerby, Pohutsky, Young, Rabhi, Puri, Coleman, Aiyash, Morse and VanSingel and referred to the Committee on Commerce and Tourism.

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, 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:  
4           (a) Causing a probability of confusion or misunderstanding as

1 to the source, sponsorship, approval, or certification of goods or  
2 services.

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

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

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

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

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

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

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

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

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

28 (k) Representing to a party to whom goods or services are  
29 supplied that the goods or services are being supplied in response

1 to a request made by or on behalf of the party, when they are not.

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

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

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

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

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

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

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

29 (s) Failing to reveal a material fact, the omission of which

1 tends to mislead or deceive the consumer, and which fact could not  
2 reasonably be known by the consumer.

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

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

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

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

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

29 (y) Gross discrepancies between the oral representations of

1 the seller and the written agreement covering the same transaction  
2 or failure of the other party to the transaction to provide the  
3 promised benefits.

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

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

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

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

15 (dd) Subject to subdivision (ee), representing as the  
16 manufacturer of a product or package that the product or package is  
17 1 or more of the following:

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

22 (ii) For container holding devices regulated under part 163 of  
23 the natural resources and environmental protection act, 1994 PA  
24 451, MCL 324.16301 to 324.16303, degradable contrary to the  
25 definition provided in that act.

26 (ee) Representing that a product or package is degradable,  
27 biodegradable, or photodegradable unless it can be substantiated by  
28 evidence that the product or package will completely decompose into  
29 elements found in nature within a reasonably short period of time

1 after consumers use the product and dispose of the product or the  
2 package in a landfill or composting facility, as appropriate.

3 (ff) Offering a consumer a prize if the consumer is required  
4 to submit to a sales presentation to claim the prize, unless a  
5 written disclosure is given to the consumer at the time the  
6 consumer is notified of the prize and the written disclosure meets  
7 all of the following requirements:

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

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

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

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

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

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

29 (i) The selling, leasing, providing, terms of payment, or

1 transaction includes an application for or an extension of credit  
2 to the consumer.

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

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

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

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

24 (ii) If a credit card or debit card is used for payment in a  
25 consumer transaction, issuing or delivering a receipt to the  
26 consumer that displays any part of the expiration date of the card  
27 or more than the last 4 digits of the consumer's account number.  
28 This subdivision does not apply if the only receipt issued in a  
29 consumer transaction is a credit card or debit card receipt on

1 which the account number or expiration date is handwritten,  
2 mechanically imprinted, or photocopied. This subdivision applies to  
3 any consumer transaction that occurs on or after March 1, 2005,  
4 except that if a credit or debit card receipt is printed in a  
5 consumer transaction by an electronic device, this subdivision  
6 applies to any consumer transaction that occurs using that device  
7 only after 1 of the following dates, as applicable:

8 (i) If the electronic device is placed in service after March  
9 1, 2005, July 1, 2005 or the date the device is placed in service,  
10 whichever is later.

11 (ii) If the electronic device is in service on or before March  
12 1, 2005, July 1, 2006.

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

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

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

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

28 (iii) The live musical performance or production is identified  
29 in all advertising and promotion as a salute or tribute and the

1 name of the vocal or instrumental group performing is not so  
2 closely related or similar to that used by the recording group that  
3 it would tend to confuse or mislead the public.

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

6 (v) The performance or production is expressly authorized by  
7 the recording group.

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

9 (2) The attorney general may promulgate rules to implement  
10 this act under the administrative procedures act of 1969, 1969 PA  
11 306, MCL 24.201 to 24.328. The rules must not create an additional  
12 unfair trade practice not already enumerated by this section.  
13 However, to assure national uniformity, rules must not be  
14 promulgated to implement subsection (1)(dd) or (ee).

15 (3) Subsection (1)(hh) does not apply to either of the  
16 following:

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

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

24 **Sec. 3j. (1) A person engaged in trade or commerce that sells,**  
25 **leases, or offers to sell or lease a service or good to a consumer**  
26 **under a consumer contract with an automatic renewal provision shall**  
27 **disclose the automatic renewal provision clearly and conspicuously**  
28 **in not less than 10-point type in the contract or contract offer. A**  
29 **disclosure under this subsection must include all of the following:**

1 (a) That the contract will automatically renew if the consumer  
2 agrees to the contract.

3 (b) The length of the initial term of the contract and the  
4 length of each renewal period under the contract.

5 (c) The amount to be charged to the consumer for the initial  
6 term of the contract and the amount to be charged to the consumer  
7 for any renewal period, including, but not limited to, both of the  
8 following:

9 (i) The terms of any promotional or discounted price for a  
10 limited period of time.

11 (ii) If the contract or contract offer includes a free gift or  
12 trial, a clear and conspicuous explanation of the price that will  
13 be charged after the trial ends or the manner in which the pricing  
14 will change on conclusion of the free gift or trial period.

15 (d) If any terms of the contract will change on contract  
16 renewal, a list and explanation of those terms.

17 (e) The specific procedure by which the consumer may cancel  
18 the contract at the end of the initial term of the contract or any  
19 renewal period and, if the contract or contract offer includes a  
20 free gift or trial, the specific procedure by which the consumer  
21 may cancel the contract at the end of the free gift or trial  
22 period.

23 (f) Subject to subsection (4), an email address, mailing  
24 address, toll-free telephone number, or other cost-effective,  
25 timely, and easy-to-use mechanism that the consumer may use to  
26 cancel the contract.

27 (2) A person engaged in trade or commerce shall not  
28 automatically renew a consumer contract for a specified period of  
29 more than 2 months unless the person provides the consumer with

1 written or electronic notice before the end of the contract term  
2 that meets both of the following requirements:

3 (a) Sets forth in a clear and conspicuous manner in at least  
4 10-point type all of the following:

5 (i) That unless the consumer cancels the contract the contract  
6 will automatically renew.

7 (ii) A list and explanation of any terms of the contract that  
8 will change on contract renewal.

9 (iii) The specific procedure by which the consumer may cancel  
10 the contract.

11 (iv) Subject to subsection (4), an email address, mailing  
12 address, toll-free telephone number, or other cost-effective,  
13 timely, and easy-to-use mechanism that the consumer may use to  
14 cancel the contract.

15 (b) Is served on the consumer not less than 30 days and not  
16 more than 60 days before the last day on which the consumer may  
17 give notice of the consumer's intent to cancel the contract.

18 (3) A person engaged in trade or commerce shall not do any of  
19 the following:

20 (a) Fail to allow the consumer a minimum of 30 calendar days  
21 after the receipt of the written notice under subsection (2) to  
22 give notice of the consumer's intent to cancel the contract at the  
23 end of the initial term or at the end of any additional renewal  
24 period.

25 (b) Fail to honor a cancellation notice timely given by a  
26 consumer under this section, regardless of whether the person  
27 receives the cancellation notice before or after the expiration of  
28 the notice period.

29 (c) Charge an additional cost or penalty to cancel a contract

1 at the end of the initial term, at the end of any additional  
2 renewal period, or, if applicable, at the end of a free gift or  
3 trial period.

4 (4) A person engaged in trade or commerce must allow a  
5 consumer who accepts a consumer contract with an automatic renewal  
6 provision online to cancel the contract exclusively online.

7 (5) A consumer contract that is contrary to this section is  
8 voidable by the consumer.

9 (6) This section applies only to a contract that takes effect  
10 or is extended, renewed, or modified after the effective date of  
11 the amendatory act that added this section.

12 (7) As used in this section:

13 (a) "Automatic renewal provision" means a provision under  
14 which a consumer contract is renewed for a specified period unless  
15 the consumer gives notice of the consumer's intent to cancel the  
16 contract.

17 (b) "Clear and conspicuous" or "clearly and conspicuously"  
18 means in larger type than the surrounding text, or in contrasting  
19 type, font, or color to the surrounding text of the same size, or  
20 set off from the surrounding text of the same size by symbols or  
21 other marks, in a manner that clearly calls attention to the  
22 language.

23 (c) "Consumer contract" or "contract" means a contract for the  
24 sale or lease of a service or good to a consumer.