

# HOUSE BILL NO. 5202

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

A bill to amend 1976 PA 331, entitled  
"Michigan consumer protection act,"  
by amending sections 2 and 3 (MCL 445.902 and 445.903), section 2  
as amended by 2018 PA 189 and section 3 as amended by 2022 PA 152.

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

- 1           Sec. 2. (1) As used in this act:  
2           (a) Subject to subsection (2), "business opportunity" means  
3 the sale or lease of any products, equipment, supplies, or services  
4 for the purpose of enabling the purchaser to start a business, and

1 in which the seller represents 1 or more of the following:

2 (i) That the seller will provide locations or assist the  
3 purchaser in finding locations for the use or operation of vending  
4 machines, racks, display cases, or other similar devices, or  
5 currency operated amusement machines or devices, on premises  
6 ~~neither that are not~~ owned ~~nor or~~ leased by the purchaser or  
7 seller.

8 (ii) That the seller may, in the ordinary course of business,  
9 purchase any or all products made, produced, fabricated, grown,  
10 bred, or modified by the purchaser using whole or in part the  
11 supplies, services, or chattels sold to the purchaser.

12 (iii) The seller guarantees that the purchaser will derive  
13 income from the business opportunity that exceeds the price paid  
14 for the business opportunity; or that the seller will refund all or  
15 part of the price paid for the business opportunity, or repurchase  
16 any of the products, equipment, supplies, or chattels supplied by  
17 the seller, if the purchaser is unsatisfied with the business  
18 opportunity. As used in this subparagraph, "guarantee" means a  
19 written or oral representation that would cause a reasonable person  
20 in the purchaser's position to believe that income is assured.

21 (iv) That the seller will provide a sales program or marketing  
22 program which will enable the purchaser to derive income from the  
23 business opportunity that exceeds the price paid for the business  
24 opportunity. This subparagraph does not apply to the sale of a  
25 marketing program made in conjunction with the licensing of a  
26 federally registered trademark or a federally registered service  
27 mark, or to the sale of a business opportunity for which the  
28 purchaser pays less than \$500.00 in total for the business  
29 opportunity from any time before the date of sale to any time

1 within 6 months after the date of sale.

2 (b) "Documentary material" includes the original or copy of a  
3 book, record, report, memorandum, paper, communication, tabulation,  
4 map, chart, photograph, mechanical transcription, or other tangible  
5 document or recording, wherever situated.

6 (c) "Goods" includes, but is not limited to, a legal  
7 pharmaceutical product.

8 (d) ~~(e)~~—"Performing group" means a vocal or instrumental group  
9 seeking to use the name of another group that has previously  
10 released a commercial sound recording under that name.

11 (e) ~~(d)~~—"Person" means an individual, corporation, limited  
12 liability company, trust, partnership, incorporated or  
13 unincorporated association, or other legal entity.

14 (f) ~~(e)~~—"Recording group" means a vocal or instrumental group  
15 that meets both of the following:

16 (i) At least 1 of the members of the group has previously  
17 released a commercial sound recording under the group's name.

18 (ii) At least 1 of the members of the group has a legal right  
19 to use the group's name, by virtue of use or operation under the  
20 group's name without abandoning the name of or affiliation with the  
21 group.

22 (g) ~~(f)~~—"Sound recording" means a work that results from the  
23 fixation on a material object of a series of musical, spoken, or  
24 other sounds regardless of the nature of the material object, such  
25 as a disk, tape, or other phono-record, in which the sounds are  
26 embodied.

27 (h) ~~(g)~~—"Trade or commerce" means the conduct of a business  
28 providing goods, property, or service primarily for personal,  
29 family, or household purposes and includes the advertising,

1 solicitation, offering for sale or rent, sale, lease, or  
2 distribution of a service or property, tangible or intangible,  
3 real, personal, or mixed, or any other article, or a business  
4 opportunity. ~~"Trade or commerce"~~ **Trade or commerce** does not include  
5 the purchase or sale of a franchise, as **that term is** defined in  
6 section 2 of the franchise investment law, 1974 PA 269, MCL  
7 445.1502, but does include a pyramid promotional scheme, as **that**  
8 **term is** defined in section 2 of the pyramid promotional scheme act,  
9 **2018 PA 186**, MCL 445.2582.

10 (2) As used in this act, "business opportunity" does not  
11 include a sale of a franchise, as **that term is** defined in section 2  
12 of the franchise investment law, 1974 PA 269, MCL 445.1502, or the  
13 sale of an ongoing business if the owner of the business sells and  
14 intends to sell only that single business opportunity.

15 Sec. 3. (1) Unfair, unconscionable, or deceptive methods,  
16 acts, or practices in the conduct of trade or commerce are unlawful  
17 and are defined as follows:

18 (a) Causing a probability of confusion or misunderstanding as  
19 to the source, sponsorship, approval, or certification of goods or  
20 services.

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

23 (c) Representing that goods or services have sponsorship,  
24 approval, characteristics, ingredients, uses, benefits, or  
25 quantities that they do not have or that a person has sponsorship,  
26 approval, status, affiliation, or connection that ~~he or she~~ **the**  
27 **person** does not have.

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

1 (e) Representing that goods or services are of a particular  
2 standard, quality, or grade, or that goods are of a particular  
3 style or model, if they are of another.

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

6 (g) Advertising or representing goods or services with intent  
7 not to dispose of those goods or services as advertised or  
8 represented.

9 (h) Advertising goods or services with intent not to supply  
10 reasonably expectable public demand, unless the advertisement  
11 discloses a limitation of quantity in immediate conjunction with  
12 the advertised goods or services.

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

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

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

20 (l) Misrepresenting that because of some defect in a consumer's  
21 home the health, safety, or lives of the consumer or ~~his or her~~ **the**  
22 family **of the consumer** are in danger if the product or services are  
23 not purchased, when in fact the defect does not exist or the  
24 product or services would not remove the danger.

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

28 (n) Causing a probability of confusion or of misunderstanding  
29 as to the legal rights, obligations, or remedies of a party to a

1 transaction.

2 (o) Causing a probability of confusion or of misunderstanding  
3 as to the terms or conditions of credit if credit is extended in a  
4 transaction.

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

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

12 (r) Representing that a consumer will receive goods or  
13 services free or without charge, or using words of similar import  
14 in the representation, without clearly and conspicuously disclosing  
15 with equal prominence in immediate conjunction with the use of  
16 those words the conditions, terms, or prerequisites to the use or  
17 retention of the goods or services advertised.

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

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

25 (u) Failing, in a consumer transaction that is rescinded,  
26 canceled, or otherwise terminated in accordance with the terms of  
27 an agreement, advertisement, representation, or provision of law,  
28 to promptly restore to ~~the~~ **any** ~~person or persons~~ entitled to it a  
29 deposit, down payment, or other payment, or in the case of property

1 traded in but not available, the greater of the agreed value or the  
2 fair market value of the property, or to cancel within a specified  
3 time or an otherwise reasonable time an acquired security interest.

4 (v) Taking or arranging for the consumer to sign an  
5 acknowledgment, certificate, or other writing affirming acceptance,  
6 delivery, compliance with a requirement of law, or other  
7 performance, if the merchant knows or has reason to know that the  
8 statement is not true.

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

13 (x) Taking advantage of the consumer's inability reasonably to  
14 protect ~~his or her~~ **the consumer's** interests by reason of  
15 disability, illiteracy, or inability to understand the language of  
16 an agreement presented by the other party to the transaction who  
17 knows or reasonably should know of the consumer's inability.

18 (y) Gross discrepancies between the oral representations of  
19 the seller and the written agreement covering the same transaction  
20 or failure of the other party to the transaction to provide the  
21 promised benefits.

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

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

26 (bb) Making a representation of fact or statement of fact  
27 material to the transaction such that a person reasonably believes  
28 the represented or suggested state of affairs to be other than it  
29 actually is.

1 (cc) Failing to reveal facts that are material to the  
2 transaction in light of representations of fact made in a positive  
3 manner.

4 (dd) Subject to subdivision (ee), representing as the  
5 manufacturer of a product or package that the product or package is  
6 1 or more of the following:

7 (i) Except as provided in subparagraph (ii), recycled,  
8 recyclable, degradable, or is of a certain recycled content, in  
9 violation of guides for the use of environmental marketing claims,  
10 16 CFR part 260.

11 (ii) For container holding devices regulated under part 163 of  
12 the natural resources and environmental protection act, 1994 PA  
13 451, MCL 324.16301 to 324.16303, degradable contrary to the  
14 definition provided in that act.

15 (ee) Representing that a product or package is degradable,  
16 biodegradable, or photodegradable unless it can be substantiated by  
17 evidence that the product or package will completely decompose into  
18 elements found in nature within a reasonably short period of time  
19 after consumers use the product and dispose of the product or the  
20 package in a landfill or composting facility, as appropriate.

21 (ff) Offering a consumer a prize if the consumer is required  
22 to submit to a sales presentation to claim the prize, unless a  
23 written disclosure is given to the consumer at the time the  
24 consumer is notified of the prize and the written disclosure meets  
25 all of the following requirements:

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

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



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

4           (iv) Fully describes the product, real estate, investment,  
5 service, membership, or other item that is or will be offered for  
6 sale, including the price of the least expensive item and the most  
7 expensive item.

8           (gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in  
9 connection with a home solicitation sale or telephone solicitation,  
10 including, but not limited to, having an independent courier  
11 service or other third party pick up a consumer's payment on a home  
12 solicitation sale during the period the consumer is entitled to  
13 cancel the sale.

14           (hh) Except as provided in subsection (3), requiring a  
15 consumer to disclose ~~his or her~~ **the consumer's** Social Security  
16 number as a condition to selling or leasing goods or providing a  
17 service to the consumer, unless any of the following apply:

18           (i) The selling, leasing, providing, terms of payment, or  
19 transaction includes an application for or an extension of credit  
20 to the consumer.

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

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

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

29           (v) The disclosure is requested from an individual to effect,

1 administer or enforce a specific telephonic or other electronic  
2 consumer transaction that is not made in person but is requested or  
3 authorized by the individual if it is to be used solely to confirm  
4 the identity of the individual through a fraud prevention service  
5 database. The consumer good or service must still be provided to  
6 the consumer on verification of ~~his or her~~ **the consumer's** identity  
7 if ~~he or she~~ **the consumer** refuses to provide ~~his or her~~ **the**  
8 **consumer's** Social Security number but provides other information or  
9 documentation that can be used by the person to verify ~~his or her~~  
10 **the consumer's** identity. The person may inform the consumer that  
11 verification through other means than use of the Social Security  
12 number may cause a delay in providing the service or good to the  
13 consumer.

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

27 (i) If the electronic device is placed in service after March  
28 1, 2005, July 1, 2005 or the date the device is placed in service,  
29 whichever is later.

1           (ii) If the electronic device is in service on or before March  
2 1, 2005, July 1, 2006.

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

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

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

13           (ii) At least 1 member of the performing group was a member of  
14 the recording group and has a legal right to use the recording  
15 group's name, by virtue of use or operation under the recording  
16 group's name without having abandoned the name or affiliation with  
17 the recording group.

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

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

25           (v) The performance or production is expressly authorized by  
26 the recording group.

27           **(ll) Failure, on the part of a manufacturer or producer, to**  
28 **accurately represent the risks involved in the intended use of a**  
29 **prescription, over-the-counter drug, medication, herbal product,**

1 **dietary supplement, or botanical extract.**

2 ~~(mm) (h)~~—Violating section 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, or  
3 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 90 days  
20 after the date it is enacted into law.