

# Legislative Analysis

---



## GIFT CERTIFICATES

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4050 (Substitute H-3)**  
**Sponsor: Rep. Fred Miller**

**House Bill 4317 (Substitute H-2)**  
**Sponsor: Rep. Mark Meadows**

**House Bill 4680 (Substitute H-2)**  
**Sponsor: Rep. Michael Sak**

**1<sup>st</sup> Committee: New Economy and Quality of Life**  
**2<sup>nd</sup> Committee: Commerce**

**Complete to 10-16-07**

## A SUMMARY OF HOUSE BILLS 4050, 4317 & 4680 AS REPORTED FROM COMMITTEE

Each of these bills would amend the Michigan Consumer Protection Act (MCL 445.903 et al.) to prohibit retailers of goods and services from engaging in certain practices in connection with gift certificates. The bills would add three new sections to the MCPA and are tie-barred to one another, meaning none could take effect unless all were enacted.

One of the bills, House Bill 4050, is also tie-barred to Senate Bill 388, which remains in the House Committee on Commerce. That bill would amend the Uniform Unclaimed Property Act (MCL 567.222 et al.) to address when a gift certificate or gift card is considered abandoned property. (See the separate summary of that bill.)

House Bill 4050 would create a new Section 3E to provide an extensive list of prohibitions. It is described in detail later.

House Bill 4317 would add a new Section 3F which would prohibit charging an inactivity fee or other service fee to a consumer for the possession or use of a gift certificate. The bill would also amend Section 3 to include all the prohibitions in the three new sections (3E, 3F, and 3G) among the general list of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade that are unlawful under the act.

House Bill 4680 would add a new Section 3G which would prohibit selling a gift certificate or gift card to a consumer that expires within a period of less than five years.

The term "gift certificate" would include gift cards and other electronic payment devices.

The Michigan Consumer Protection Act is enforced by the Attorney General and by local prosecutors. Also, individuals, firms, and other entities can bring private actions to enforce the law in some circumstances.

## House Bill 4050

Generally, the bill would prohibit the following:

- Refusing to accept a gift certificate in payment for goods and services used or bought for use primarily for personal, family, or household purposes, including goods or services advertised on sale or as part of a liquidation or closeout. (This does not apply if the gift certificate has a legal expiration date and is presented for redemption after that date.)
- Restricting the holder of the certificate from using it consistent with its terms and conditions.
- Altering any term or condition after the certificate is issued.
- Failing to disclose any terms or conditions to a prospective purchaser. (The bill specifies how these terms and conditions are to be disclosed.)
- Failing to disclose any terms or conditions by conspicuously printing them either on the certificate; on the envelope or packaging (if a toll-free number is on the certificate); or in a separate printed document (if a toll-free number is on the certificate).
- Failing, in any advertisement or promotion, to disclose through a notice that the certificate has terms or conditions.
- Refusing to apply a certificate or the balance of a certificate to the purchase price in cases where the purchase price of goods or services exceeds the value of the certificate or balance.

The bill defines "terms and conditions" so that the phrase includes, but is not limited to, and expiration date or a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

The term "gift certificate" would not include: a general use, prepaid card or other electronic payment device issue or sponsored by a financial institution in a predetermined amount and usable at multiple, unaffiliated retailers or at automated teller machines; an electronic payment device linked to a deposit account; a prepaid telephone calling card; an electronic payment device used to access an account from which an individual can pay medical expenses, health care expenses, dependent care expenses or similar expenses on a pre-tax basis under the federal Internal Revenue Code; a prepaid discount card or program used to purchase identified goods and services at a price or percentage below the normal and customary price, if any expiration date is clearly and conspicuously disclosed; a payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered; a gift certificate sold below face value or at a volume discount to an employee, to a nonprofit or charitable organization, or

to an educational institution for fund-raising purposes; or a gift certificate distributed to a consumer or employee under an awards, rewards, loyalty, or promotional program, if there is no charge to the consumer or employee.

**FISCAL IMPACT:**

The bills could increase costs to the Department of Attorney General for enforcing the provisions of the bills. These costs, however, should be absorbable within the existing budget of the department.

House Bills 4317 and 4680 amend the Michigan Consumer Protection Act and list specific new violations. The provisions of that act impose a civil fine for the stated violations without classifying the violations as civil infractions or directing the fine revenue (MCL 445.905). In these cases, it is assumed that a provision of the Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). (In cases where the statute states the violation is a civil infraction, the civil infraction fine would be dedicated to public libraries.)

Under House Bills 4317 and 4680, the court may assess the defendant with a civil fine of not more than \$25,000 for cases of persistent and knowing violation. In addition, a defendant who knowingly violates an injunction, order, decree or judgment, may be assessed an additional civil fine of not more than \$5,000 for each violation.

These bills would increase the state General Fund by an indeterminate amount, depending upon how many new civil fines are collected under the bills' provisions.

Legislative Analyst: Chris Couch  
Fiscal Analyst: Mark Wolf  
Viola Bay Wild

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.