

Legislative Analysis



CONSUMER PROTECTION ACT: STATUTORY CONSTRUCTION OF EXEMPTIONS

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House Bill 4915

Sponsor: Rep. Robert Jones

Committee: Judiciary

Complete to 10-28-09

A SUMMARY OF HOUSE BILL 4915 AS INTRODUCED 5-12-09

The bill would amend the Michigan Consumer Protection Act, which prohibits certain business practices that deceive or mislead consumers. The act says it does not apply to a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of Michigan or the United States.

House Bill 4915 would specify, however, that the existence of a rule or statute or the grant of a license that regulates or authorizes a general transaction of a person engaged in trade or commerce does not exempt that person from the act. In addition, the bill specifies that the general exemption cited above does not exempt a person engaged in trade or commerce from the requirements of the act on the basis that the general conduct of the business of that person is regulated by law.

[Under the act, a consumer can bring an action to stop a business from using an illegal practice (injunctive relief), sue to recover actual damages or \$250 (whichever is greater) as well as reasonable attorneys' fees, or file a class action lawsuit. The state attorney general and county prosecutors can also initiate actions against businesses.]

Further, House Bill 4915 specifies that is the intent of the Legislature "to restore the current exemption [as described earlier] to its original construction in *Attorney General v Diamond Mortgage Co*, 141 Mich 603, 617 (1982), that a license is not specific authority for all the conduct and transactions of the licensee's business.

[The Michigan Consumer Protection Act also specifies that, except for certain actions by a private party, the act also does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by the Banking Code, Motor Carrier Act, Savings Bank Act, Credit Union Act, the Public Commission Service Act, or Chapter 20 of the Insurance Code. The act also exempts acts done by owners, publishers, agents, or employees of communication media (newspapers, television stations, etc.) in the publication or dissemination of advertisements unless the advertisements were known to the media personnel to be false, misleading, or deceptive or the media personnel had a direct financial interest in the sale or distribution of the advertised goods, service, or products. The bill would not amend these provisions.]

BACKGROUND INFORMATION:

In *Attorney General v Diamond Mortgage Co*, 141 Mich 603, 617 (1982), the legal question was raised as to whether the defendants were exempt under the Michigan Consumers Protection Act (MCPA). The case, which included other legal questions as well, was dismissed by both the trial and appellate courts. In the action, the attorney general contended that Diamond Mortgage's business practices violated the MCPA and the state's usury statutes.

As to the question of exemption under the MCPA, the court agreed with the attorney general "that Diamond's real estate broker's license does not exempt it from the Michigan Consumer Protection Act. While the license generally authorizes Diamond to engage in the activities of a real estate broker, it does not specifically authorize the conduct that plaintiff alleges is violative of the Michigan Consumer Protection Act, nor transactions that result from that conduct." The court also wrote that for that case, they needed to "only decide that real estate broker's license is not specific authority for all the conduct and transactions of the licensee's business."

FISCAL IMPACT:

House Bill 4915 would have an indeterminate fiscal impact on the Department of Attorney General and on the Judiciary. Increased costs would depend on the number and nature of additional cases brought by the Attorney General and/or consumers given the change in provisions of the Michigan Consumer Protection Act.

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