

Legislative Analysis



CONSUMER PROTECTION ACT: CLARIFY TO WHOM ACT APPLIES

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

House Bill 4217

Sponsor: Rep. Robert Jones

Committee: Judiciary

Complete to 3-20-07

A SUMMARY OF HOUSE BILL 4217 AS INTRODUCED 2-6-07

The Consumer Protection Act prohibits certain business practices that deceive or mislead consumers. 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.

The act does not apply to either a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States or 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. Except for an action 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.

House Bill 4217 would amend the Michigan Consumer Protection Act to revise the provisions described above. First, the bill would specify that *the act applies to any unfair, unconscionable, or deceptive method, act, or practice and that it creates a cause of action against a company who engages in that method, act, or practice*, except for the list of exceptions provided under current law described above. "Company" would mean a person engaged in trade or commerce, including, but not limited to, a person whose profession, occupation, conduct, or transactions are regulated by a statute, rule, or regulation of this state or the United States.

Next, the bill would delete the exception currently provided for a transaction or conduct that was specifically authorized under laws administered by a regulatory board or officer acting under statutory authority, and instead would exempt a *method, act, or practice that is expressly permitted by a statute, rule, or regulation* of this state or the U.S.

Further, the act currently says that the burden of proving an exemption from this act is upon the person claiming the exemption. The bill would delete this language and instead

specify that a person who claims the act does not apply to a method, act, or practice because of an exception listed in subsection (1), as described above, or any other exemption from the act bears the burden of proving that exception or exemption.

MCL 445.904

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Susan Stutzky

■ 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.