

# Legislative Analysis



## CAR RENTAL SMOKING FEES

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

**House Bill 4902 as introduced**  
**Sponsor: Rep. Stephanie A. Young**  
**Committee: Judiciary**  
**Complete to 5-13-24**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4902 would amend the Michigan Consumer Protection Act to require a car rental company to provide, at the time of a price estimate for renting a vehicle as well as in the rental agreement, its smoking fee policy and the amount of the fee.

The bill also would require that the smoking fee policies of car rental companies allow a consumer to have the vehicle inspected during business hours and, when the vehicle is returned, to have the car rental company make a determination as to whether the smoking fee will be charged.

The bill would provide that a violation of the above is unlawful under the act as a deceptive business practice.

MCL 445.903h

### BACKGROUND:

#### Remedies

A person who suffers a loss due to a violation of the Michigan Consumer Protection Act can sue to recover \$250 or actual damages, whichever is greater, along with reasonable attorney fees. Any person can sue for a declaratory judgment that an act or practice is unlawful under the act or for an injunction against someone engaging or about to engage in such conduct. In addition, the attorney general or a prosecuting attorney can bring an action to permanently enjoin a person from engaging in an unlawful act or practice, and a court may assess a fine of up to \$25,000 if the conduct is found to be unlawful. The act also allows for a class action to be brought under certain circumstances.

#### Applicability

Section 4(1)(a) of the Michigan Consumer Protection Act provides that a transaction or conduct that is specifically authorized under laws administered by a regulatory board or officer acting under state or federal law is exempt from the act. In 1999, in *Smith v Globe Life Insurance Co.*, the Michigan Supreme Court held that this exemption applies when “the *general* transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited” (emphasis added). That is, rather than a business practice being exempt from the act if it is specifically authorized by law, the court held that a practice whose legality under the act is in dispute is exempt if the general activity being engaged in is authorized and regulated under law.<sup>1</sup> With regard to House Bill 4902, it is thus unclear whether the specific conduct the

<sup>1</sup> See <https://www.michbar.org/file/journal/pdf/pdf4article2070.pdf>

bill would prohibit would nonetheless be exempt from the Michigan Consumer Protection Act under *Smith* and subsequent court decisions. An appeal related to those decisions is currently before the Michigan Supreme Court.<sup>2</sup>

**FISCAL IMPACT:**

The bill would have no fiscal impact on the state or local units of government.

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

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<sup>2</sup> <https://www.courts.michigan.gov/courts/supreme-court/cases-awaiting-argument/165961-attorney-general-v-eli-lilly-and-company/>