



**House
Legislative
Analysis
Section**

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EXEMPT NONPROFITS FROM FRANCHISE LAW

House Bill 4831 as introduced
First Analysis (7-27-89)

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Sponsor: Rep. James M. Middaugh
Committee: Corporations and Finance

Mich. State Law Library

THE APPARENT PROBLEM:

The Franchise Investment Law regulates both the buyer (franchisee) and seller (franchisor) of a franchise, and generally applies to all written or oral arrangements between a franchisor and a franchisee in connection with the offer or sale of a franchise. Currently, organizations operated on a non-profit basis fall within the act's provisions, even though federal franchise laws exempt certain nonprofits from having to be licensed if they meet specific criteria. A recent lawsuit by the attorney general claimed that a particular hotel franchise technically falls under the confines of the act, even though the organization believes it qualifies as a nonprofit organization that should be exempt from the act. Thus, some people have proposed amending Michigan's franchise law to exempt certain qualified non-profit organizations.

THE CONTENT OF THE BILL:

The bill would amend the Franchise Investment Law to specify that a nonprofit organization operated on a cooperative basis by and for independent retailers would be exempt from the act when all of the following applied:

- control and ownership of each member (within the organization) was substantially equal;
- membership was limited to those who used the organization's services;
- transfer of ownership was prohibited or limited;
- members received no return on capital investment;
- substantially equal economic benefits passed to the members on the basis of patronage in the organization;
- members were not personally liable for the organization's obligations in the absence of a direct undertaking or authorization by the members;
- the organization's wholesale goods and services were furnished primarily to the members;
- no part of the receipts, income, or profit of the organization were paid to any profit-making entity except for "arms-length" payments for necessary goods and services; and
- members were not required to purchase goods or services through any profit-making entity.

MCL 445.1504a

FISCAL IMPLICATIONS:

According to the Department of Attorney General, the bill would have minimal fiscal implications for the state. (7-27-89)

ARGUMENTS:

For:

The bill simply would bring Michigan law into line with federal franchise laws regarding nonprofit organizations. The criteria proposed in the bill for allowing a nonprofit to be exempt are similar to criteria established in federal law. Organizations that did not meet all these conditions, however, would still have to be licensed under state law.

Against:

The bill would amend Section 4 of the act, which defines what type of businesses are required to be licensed under the act. By adding the nonprofit exemption to this section the bill may actually be excluding nonprofits from the act altogether, which is not the intent of the bill. The nonprofit exemption should instead be placed in Section 6 of the act, which covers exemptions from the act.

POSITIONS:

The Michigan Lodging Association supports the bill. (7-26-89)

Best Western International supports the bill. (7-26-89)

The Department of Attorney General has no position on the bill. (7-26-89)

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