

# HOUSE BILL No. 4228

February 10, 2009, Introduced by Reps. McMillin and Lund and referred to the Committee on Government Operations.

A bill to prohibit governmental entities from commercially competing against the private sector; and to provide for remedies and penalties.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "government competition against private enterprise act".

3           Sec. 2. The legislature finds and declares all of the  
4 following:

5           (a) Private enterprise is necessary to the health, welfare,  
6 and prosperity of this state.

7           (b) Government competes with private enterprise when it  
8 provides goods and services to the public beyond its government  
9 function.

1 (c) This act is intended to protect economic opportunities for  
2 private enterprise against unfair competition by government  
3 agencies and to enhance the efficient provision of goods and  
4 services to the public.

5 Sec. 3. As used in this act:

6 (a) "Commercial activity" means performing services or  
7 providing goods that can normally be obtained from private  
8 enterprise.

9 (b) "Essential services" means those services that are  
10 essential for the public, including, but not limited to, water  
11 supply, sewers, garbage and trash removal, recycling, utilities,  
12 streets and roads, public transportation, and correctional  
13 facilities.

14 (c) "Government agency" or "agency" means the state, a county,  
15 city, village, township, educational institution, or a department,  
16 agency, or subdivision thereof.

17 (d) "Government competition" means the provision of goods or  
18 services to the public by a government agency that are or can be  
19 offered by private enterprise.

20 (e) "Government functions" means those functions that are  
21 exclusively the prerogative of government, including, but not  
22 limited to, operation of the agency or department, fulfillment of  
23 the legal obligations of the agency, law enforcement, and the  
24 judicial system.

25 (f) "Necessary services" means those services that are  
26 critical for human safety and health, including, but not limited  
27 to, fire departments, emergency services, and medical services.

1 (g) "Private enterprise" means an individual, firm,  
2 partnership, corporation, association, or any other legal entity  
3 engaging in the manufacturing, processing, sale, offering for sale,  
4 rental, leasing, delivery, dispensing, distributing, or advertising  
5 of goods or services for profit.

6 (h) "Vital services" means those services that are normally  
7 available in a community, including, but not limited to, food  
8 stores, drugstores, child care, elder care, and telecommunications  
9 services.

10 Sec. 4. A government agency is prohibited from competing  
11 against private enterprise, including by intergovernmental or  
12 interagency agreement, and is prohibited from funding,  
13 capitalizing, securing the indebtedness of, or leasing the  
14 obligations of, or subsidizing, any charitable or not-for-profit  
15 institution which would use the support to compete against private  
16 enterprise.

17 Sec. 5. The following functions or services are excepted from  
18 this act:

19 (a) Government functions.

20 (b) Necessary services. Nothing in this act shall preclude a  
21 government agency from utilizing private enterprise to provide  
22 necessary services.

23 (c) The development, management, and operation of state parks,  
24 historical monuments, and hiking or equestrian trails.

25 (d) Essential services, except that, if private industry can  
26 provide essential services, government agencies shall entertain  
27 bids from private enterprise and, if practicable, contract with

1 private enterprise to provide essential services.

2 (e) Vital services, but only to the extent they are not  
3 available from private enterprise.

4 (f) Provisions of goods and services to students and invited  
5 guests of universities, community colleges, and public school  
6 districts.

7 Sec. 6. In cases of government competition against private  
8 enterprise that exist on the effective date of this act, the  
9 government agency may continue to engage in the competition but  
10 shall not exceed the scope of the competition. Nothing in this act  
11 shall preclude a government agency from contracting with private  
12 enterprise to provide goods or services to the public.

13 Sec. 7. (1) A cause of action may be initiated under this act  
14 to enjoin a government agency from participating in commercial  
15 activity resulting in competition against private enterprise.

16 (2) A civil action for injunctive relief under this act may  
17 request preliminary injunctive relief by alleging that a government  
18 agency is participating in commercial activity resulting in  
19 competition with private enterprise. Upon receipt of the complaint,  
20 the court shall order a preliminary hearing not later than 30 days  
21 from the date of the complaint.

22 (3) The court shall issue appropriate preliminary injunctive  
23 relief if at the preliminary hearing the plaintiff makes a prima  
24 facie showing of all of the following:

25 (a) The government agency is or is planning to participate in  
26 commercial activity.

27 (b) That commercial activity results or will result in

1 competition with private enterprise.

2 (c) The threat to private enterprise or public money is  
3 imminent.

4 (4) The plaintiff is not required to show that they have no  
5 adequate remedy at law or will suffer irreparable harm nor any  
6 other common law element applicable to obtaining preliminary  
7 injunctive relief.

8 (5) If after a final hearing on the merits, the court finds  
9 that a government agency is participating in commercial activity  
10 resulting in competition with private enterprise, the court shall  
11 grant permanent injunctive relief and shall issue orders as  
12 necessary to abate the government competition with private  
13 enterprise.

14 (6) The court may award actual damages including, but not  
15 limited to, costs, reasonable attorney fees, and all expenses and  
16 disbursements made by the plaintiff in bringing the action.