

Legislative Analysis



ONLINE CONTRACTS FOR RECURRING SERVICES AND APPLICABILITY OF CONSUMER PROTECTION ACT

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

House Bill 4893 as introduced
Sponsor: Rep. Ryan Berman
Committee: Communications and Technology
Complete to 7-30-21

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

SUMMARY:

House Bill 4893 would amend the Michigan Consumer Protection Act to require businesses that allow customers to enter into a contract online for recurring services to also allow those customers to cancel the contract online. The bill would also revise provisions regarding exemptions from the act.

Online contracts for recurring services

The bill would add a new section to the act to provide that a person engaged in trade or commerce that allows customers to enter into a written contractual agreement online for *recurring services* must also allow customers to cancel that agreement online. An agreement that violated these provisions would be voidable by the customer. A violation of the new section would be unlawful as an unfair trade practice under the act.

Recurring services would include telephone services, media subscriptions, gym memberships, newspaper subscriptions, internet services, and gaming passes.

The bill would apply only to agreements that take effect or are extended, renewed, or modified after the date the bill takes effect.

Exemptions from the act

The act currently describes acts and practices to which it does not apply, including some that are prohibited under other Michigan laws. The bill would consolidate these exemptions into a single list. Instead of saying that the act “does not apply” to the listed exempted practices, or that it “does not apply to or create a cause of action for” them, the bill would state that the act applies to any unfair, unconscionable, or deceptive method, act, or practice described in the act and creates a cause of action against a *company* that engages in that method, act, or practice, except for the listed exemptions.

Company would mean a *person* that is engaged in *trade or commerce*, including a person whose profession, occupation, conduct, activity, or transactions are regulated by a law of Michigan or the United States.

Person means an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity.

Trade or commerce means the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service

or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity. The term “trade or commerce” does not include the purchase or sale of a franchise as defined in the Franchise Investment Law, but it does include a pyramid promotional scheme as defined in the Pyramid Promotional Scheme Act.

Among the exemptions, that act now states that 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.

The bill would rephrase the above exemption to provide that the act does not apply to a method, act, or practice that is expressly permitted by a law of Michigan or the United States. This provision would not exempt a method, act, or practice that is not expressly permitted by state or federal law even if that law does expressly permit the general transaction or activity that the method, act, or practice is a part of.

As under current law, a person claiming that a method, act, or practice is exempt from the act would have the burden of proving that exemption.

MCL 445.903 and MCL 445.904 and proposed MCL 443.903j

FISCAL IMPACT:

House Bill 4893 could result in increased costs for the Department of Attorney General due to an unknown potential increase in the caseloads related to enforcement of the bill and any related need for additional attorney and staff support. The need for additional personnel would depend on companies’ compliance with the bill’s requirements and the number of actionable claims submitted to the department for enforcement. If the department were not able to fulfill its role as required by the bill, the annual FTE cost of an attorney within the department is approximately \$180,000.

Legislative Analyst: E. Best
Fiscal Analyst: Michael Cnossen

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