

We are writing to voice our opposition to Senate Bill 1022, specifically the repeal of the regulatory compliance exemption under the Michigan Consumer Protection Act (MCPA).

The MCPA currently does not apply to “[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.” In its *Globe* decision, the Michigan Supreme Court (MSC) interpreted this to mean the following: if a person or company is licensed or approved to engage in a certain business or profession, and the transaction at issue falls within the scope of that license, that conduct falls *outside* the MPCA.

While the *Globe* ruling (and subsequent rulings) do not give a *complete* exemption to regulated industries from the MCPA (i.e., if the person or business is operating outside the scope of the occupation or profession, there could be an MCPA claim), they do provide protections.

If the legislation is passed, nearly every industry and profession regulated under state and federal law will be subject to lawsuits, including class action lawsuits, under the MCPA, including:

- Hospitals
- Real estate brokers, agents, appraisers and schools
- Accountants
- Collection agents and agencies
- Insurance agents
- Personnel agents and agencies
- Employment agents and agencies
- Consultant agents and agencies
- Morticians
- Funeral homes
- Cemeteries
- Architects
- Engineers
- Surveyors
- Foresters
- Landscape architects
- Community planners
- Residential builders
- Residential maintenance and construction contractors
- Alcoholic beverage wholesalers and retailers
- Telecommunications companies
- Automakers
- Auto dealers and dealerships
- Owners/operators/developers of condo projects
- Residential builders and maintenance and construction contractors’ salespersons
- Chiropractors
- Dentists
- Audiologists
- Therapists
- Physicians
- Nurses
- Optometrists
- Nursing homes
- Pharmacists
- Physical therapists
- Counselors
- Podiatrists
- Psychologists
- Physician assistants
- Plumbers
- Medical device retailers
- Forensic polygraph examiners
- Land surveyors
- Occupational therapists
- Sanitarians
- Social workers
- Veterinarians
- Respiratory care professionals
- Mechanics
- Motor vehicle repair facilities
- Limousine companies
- Railroads
- Airlines
- Owners/operators of manufactured housing communities

- Local governments (relative to the services they provide)
- Investment brokers/advisors
- Finance Companies
- Mortgage brokers and lenders
- Casinos
- Horse racing tracks
- National banks
- Federal credit unions
- Firearm manufacturers and dealers
- Pharmaceutical companies
- Cosmetic retailers
- Grain dealers
- Livestock dealers
- Horse breeders
- Pet shops
- Dog pounds
- Animal shelters
- Barbershop schools
- Cosmetology schools
- Barbers
- Barber shops
- Cosmetologists
- Electrologists
- Manicurists
- Estheticians
- Hearing aid dealers, retailers and salespersons
- Insurers

Layering on another level of lawsuits does little to protect consumers and much to burden Michigan businesses. In fact, most of the businesses that would be affected by a decision overturning *Smith* and *Liss* are not large multinational corporations — they are small- to medium-sized businesses and individual practitioners who cannot afford to defend a wellspring of newly authorized consumer lawsuits.

We respectfully encourage you to preserve the current test under the MCL 445.904(1)(a), which effectively balances the interests of consumers with the interests of Michigan businesses and professional services providers. The MCPA provides consumers an avenue to redress injuries inflicted by “unfair, unconscionable, or deceptive methods, acts, or practices” (MCL 445.903), but it recognizes that, in highly regulated industries, regulations already exist to serve as safeguards against that kind of deceptive conduct (MCL 445.904(1)(a)). We encourage retention of this well-functioning and well-settled balance.

Thank you for your consideration. Please contact any of the individuals on this memo with questions.