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# Reviving Michigan's Consumer Protection Act

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Among the controversial rulings by the Michigan Supreme Court in the last decade, the most notorious may be *Smith v. Globe Life Insurance Co.* 460 Mich 446; 597 NW2d 28 (1999). The Court's decision in *Globe Life* largely gutted our Consumer Protection Act (MCPA) by immunizing most licensed businesses against claims of unfair dealing.

A brief history of the issue may explain why consumer groups are pressing our Legislature to redress the Court's perverse construction of the statute.

## MCPA's Coverage and Approach

Passed with strong bipartisan support in 1976, the MCPA was designed to give consumers comprehensive protection against unfair, unconscionable, or deceptive practices in the sale of goods and services.

The Act defined 29 prohibited unfair "methods, acts, or practices" such as grossly excessive prices or boilerplate forms that might confuse consumers of their legal rights. Critically, the MCPA also included attorney fees provisions to encourage the private bar to complement enforcement by the Attorney General and state regulators.

In negotiating the measure, legislators accepted suggestions from state agencies — principally the Department of Commerce — on how to enlist regulatory bureaus' expertise in policing the new consumer protections.

The Act's drafters rejected the idea that insurers, banks, and other businesses already subject to administrative regulation would be totally exempted from the new statute.

of credit life insurance coverage was false and misleading and that benefits had been denied based upon underwriting criteria not disclosed by either the insurance application or the certificate.

There was no evidence that regulators had specifically approved the use of the forms at issue.

Justice Young's opinion for the Court in *Globe Life* distorted the Diamond Mortgage opinion.

He posited that Diamond Mortgage "instructs that the focus is on whether the transaction, not the alleged misconduct, is 'specifically authorized.'"

Without further reasoning why a general business license warranted a "global" immunity from a consumer protection statute, the Court concluded that the relevant inquiry under the exemption was:

"[N]ot whether the specific misconduct alleged by the plaintiffs is specifically authorized.

Rather, it is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited."

*Globe Life* failed to seriously consider the statute's framework and dismantled a crucial balance struck by the Legislature in reaching compromise on the Act.

Under this ruling, serious claims of unfair practices by heating and plumbing contractors, home builders, and others have been summarily dismissed on the simple grounds that the defendant is licensed.

The Legislature never intended such an