

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 283

(Senator Jimeno, *et al.*)

Finance

Economic Matters

Consumer Protection - Maryland Consumer Protection Act - Private Rights of
Action

This bill prohibits a person from bringing a private civil action under the Maryland Consumer Protection Act for injuries sustained as a result of the professional services provided by a "health care provider." Under the bill, a health care provider includes a hospital or certain related institutions, a physician, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a licensed or authorized physical therapist.

The bill is effective July 1, 2003.

Fiscal Summary

State Effect: Excluding the professional services of a health care provider from the scope of the Maryland Consumer Protection Act would not materially affect the finances or operations of the Consumer Protection Division within the Office of the Attorney General.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Under the Maryland Consumer Protection Act, a person may not engage in any unfair or deceptive trade practice in: (1) the sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; or (2) the offer for sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service.

In addition to any action by the Consumer Protection Division or the Attorney General, a person may bring a private civil action to recover for injury or loss sustained as a result of a practice prohibited by the Act. A court may award attorney's fees to a prevailing plaintiff in such an action. The court may award attorney's fees to a defendant if the court finds that an action was brought in bad faith or was frivolous.

The Act does not apply to the professional services of accountants, architects, engineers, clergymen, attorneys, veterinarians, insurance companies, insurance producers, Christian Science practitioners, surveyors, chiropractors, optometrists, physical therapists, podiatrists, real estate professionals, or medical or dental practitioners. The Act generally does not apply to the advertising medium (television or radio station, newspaper publisher, etc.) for advertisements that violate the Act, nor does it apply to a public service company to the extent that the company's services and operations are regulated by the Public Service Commission.

Background: The Consumer Protection Division is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. The division may attempt conciliation, issue cease and desist orders, or seek action in court, including an injunction, to enforce the Maryland Consumer Protection Act.

To date, three Maryland trial courts have held that the Consumer Protection Act applies to hospitals that have been alleged to have breached the applicable standard of care in the provision of physician or nursing services.

Small Business Effect: Small business health care providers that are not already excluded from the Consumer Protection Act's scope would no longer be subject to legal action under the Act.

Additional Information

Prior Introductions: None.

Cross File: HB 294 (Delegate Sophocleus) – Economic Matters.

Information Source(s): Department of Health and Mental Hygiene, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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