

UNITED STATES OF AMERICA



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FEDERAL TRADE COMMISSION

Washington, DC 20580

DEPARTMENT OF JUSTICE
Washington DC 20530

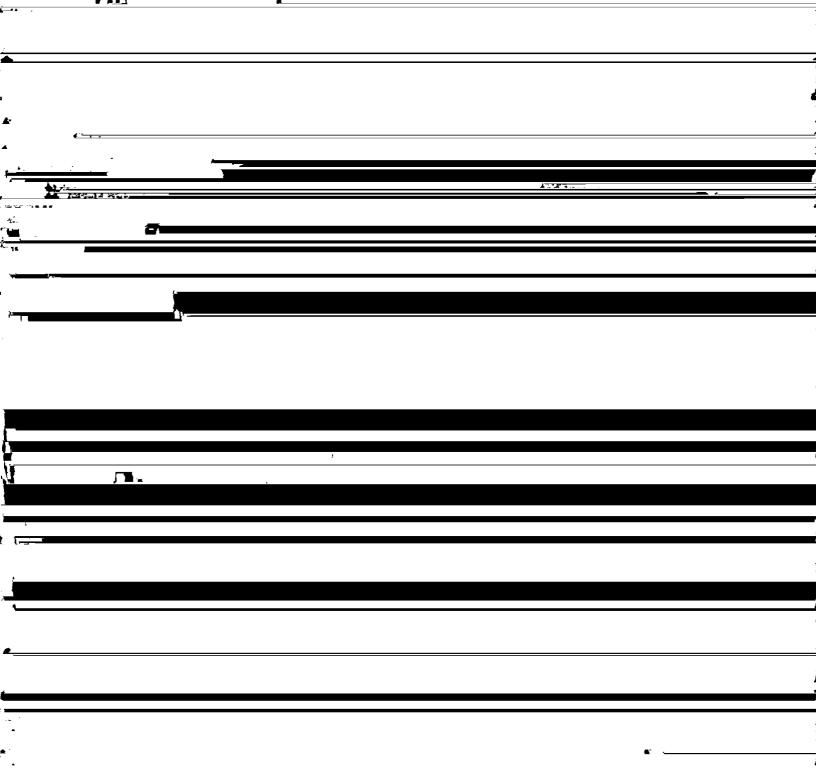
Interest and Experience of the FTC and the Department of Justice

Congress has charged the FTC with enforcing laws prohibiting unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.² Pursuant to this statutory mandate, the Commission encourages competition in the licensed professions, including real estate brokerage, to the maximum extent compatible with state and federal goals. The FTC has applied this mandate when we have been asked to analyze and comment on aspects of the real estate transaction. For example, the FTC has commented on numerous occasions in support of allowing non-attorneys to compete with attorneys in the provision of certain real estate settlement services.³ Further, in 2002, the Commission held a public workshop on barriers to electronic commerce in many industries, and gathered testimony on state restrictions that may impede competition from online real estate service providers.⁴

impede competition from online real estate service providers. ⁴
The Department of Justice is entrusted with enforcing this nation's antitrust laws. For more than 100 years, since the passage of the Sherman Antitrust Act, the Department of Justice has worked to promote free and unfettered competition in all sectors of the American economy through its civil and criminal enforcement programs. In particular, the Department has a long
history of enforcement efforts in the real estate area that includes several cases involving
restrictions on access to multiple listing services and other restraints limiting competition among real estate brokers. In July, the Department announced a settlement to a civil antitrust suit it filed
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regulation that prohibits Kentucky real estate brokers and sales associates from offering rebates and other inducements to attract customers.⁶

The FTC and the Department of Justice have sent joint letters to the Texas Real Estate Commission, the Alabama Senate, and Missouri Governor Blunt regarding proposed regulations and legislation that would impose minimum service requirements on real estate



reduce competition between fee-for-service brokers and full-service brokers, thus limiting consumer choice and likely increasing the price that some consumers in these states would pay for real estate brokerage. ¹⁰ The FTC and the Department of Justice also are planning to hold a

	It is becoming increasingly common for home sellers and home buyers to want some, but not all, of the traditional brokerage services. For example, some sellers might want help		
	advertising their homes, but want to negotiate the sales price themselves. Such consumers m	ight	
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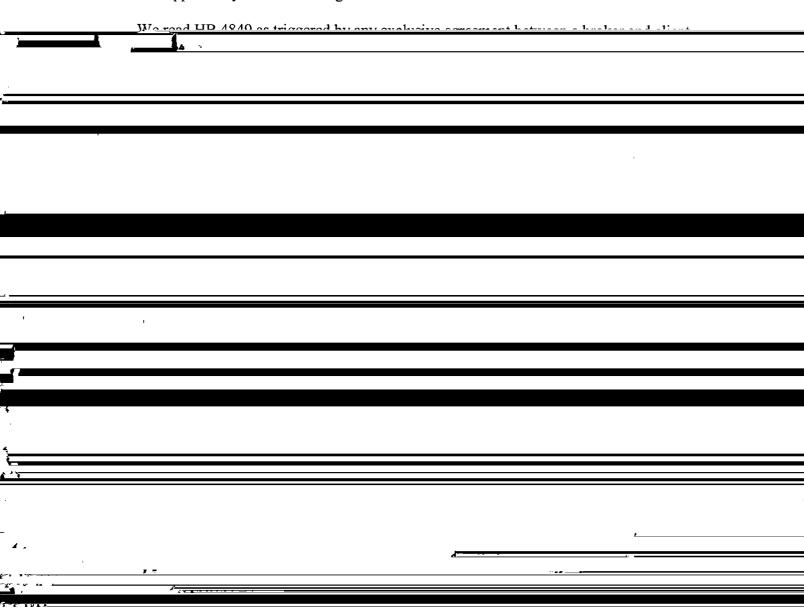
(E) Furnishing, or causing to be furnished, a complete and detailed closing statement as required by R 339.22311 of the Michigan Administrative Code.¹⁴

The Bill defines "service provision agreement," as "an agreement between the broker and the client that establishes an agency relationship through a listing agreement or a buyer agency agreement."¹⁵

The Proposed Legislation Likely Would Harm Consumers

Competition and consumer choice provide substantial benefits to consumers. As the U.S. Supreme Court has observed, "ultimately competition will produce not only lower prices, but also better goods and services." Indeed, as the Court stated:

[t]he assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain — quality, service, safety, and durability — and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.¹⁷



the local MLS. Therefore, consumers who live in areas that are served by MLSs with such rules and who wish only to have their house listed in the MLS must sign brokerage agreements that create an agency relationship and bring into play the minimum services requirements.

Currently, real estate professionals in Michigan offering fee-for-service options can enter
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choice to purchase a customized subset of services. If HB 4849 were enacted, however, Michigan real estate professionals who want to list homes on MLSs whose rules require a brokerage agreement that creates an exclusive agency relationship will have to provide the services enumerated by the statute.

The proposed legislation, if enacted, is likely to reduce competition and harm Michigan

likely will protect real estate professionals who choose to offer the full complement of services from having to compete with those who offer consumers more choices in the quantity and types of services. Because of this reduced competition, some consumers who prefer to purchase the full range of services from traditional real estate service professionals are likely to pay higher prices.²⁰

Fee-For-Service Options Present No Demonstrated Harm to Michigan Consumers

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hat consumers currently ar	e harmed by fee-for-service	e real estate brokerag	e. ²¹ Because HB 4849
loes not appear to be neces	sary to address any demor	strated consumer har	m, if enacted, it is
ikely to deprive Michigan	home buyers and sellers o	f the benefits of comp	etition without
roviding any countervailin	ng benefits.		

	estate agents be required to provide certain services, such as aid in negotiating the sales price of the home, unless the client specifically waives that right. Although we see no evidence
	indicating the need for any minimum service legislation, if the Michigan legislature nonetheless believes that such legislation is necessary, we urge it to consider the Ohio Task Force approach.
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	minimum service bills, such as House Bill 4849.
7	A disclosure and waiver model would appear to address concerns that proponents of
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could be amended to clarify that negotiations with a party that has chosen not to use his broker for such negotiations do not imply an agency relationship.²⁴

·	Although it may sometimes be necessary to regulate competition when marketplace
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	of competition. Although some would state that legislation like HB 4849 is necessary to protect
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We appreciate this opportunity to present our views and would be pleased to address any questions or comments regarding competition policies.

Respectfully Submitted,

By direction of the

Federal Trade Commission

Deborah Platt Majoras

Chairman

Federal Trade Commission

Thomas O. Barnett

Acting Assistant Attorney General

Antitrust Division

cc:

Tom Martin

Director, Office of Policy & Legislative Affairs

Michigan Department of Labor & Economic Growth