

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the Consumer Protection Procedures Act to clarify that the term “merchant” does not apply to the District, its agents, or its employees acting within the scope of their employment, except for the District of Columbia Housing Authority’s activities as a landlord.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Consumer Protection Clarification Emergency Declaration Resolution of 2024”.

Sec. 2. (a) There exists an immediate need to amend the Consumer Protection Procedures Act (“CPPA”) to clarify that the term “merchant” does not apply to the District, its agents, or its employees acting within the scope of their employment, except for the District of Columbia Housing Authority’s activities as a landlord.

(b) The Consumer Protection Procedures Act defines a “merchant” as “a person, whether organized or operating for profit or for a nonprofit purpose, who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice.” D.C. Official Code § 28-3901(a)(3). The CPPA explicitly includes “the District of Columbia Housing Authority’s

34 activities as a landlord” as it applies to landlord-tenant relations, but that provision of liability
35 “shall not be construed to otherwise apply this chapter to the District of Columbia or any agency
36 thereof.” D.C. Official Code § 28-3901(e). The Council enacted Section 28-3901(e) in 2022 as
37 part of emergency legislation, *see* Housing Authority Accountability Emergency Amendment
38 Act of 2022, D.C. Act 24-629, § 3, 69 D.C. Reg. 14026, 14029 (Nov. 11, 2022), and made this
39 subsection permanent in 2023, *see* Fiscal Year 2024 Budget Support Act of 2023, D.C. Law 25-
40 50, § 2133(a), 70 D.C. Reg. 10366, 10386 (July 28, 2023).

41 (c) In prior cases weighing the applicability of the CPPA to the District, the Court of
42 Appeals held that the District was not a merchant. *See, e.g., Snowden v. District of Columbia,*
43 949 A.2d 590, 599 (D.C. 2008) (“[W]e agree with the District and hold that it is not a merchant
44 for purposes of the CPPA.”). The Court of Appeals further made clear that the CPPA “was
45 designed to police trade practices arising only out of consumer-merchant relationships,” *Howard*
46 *v. Riggs Nat’l Bank*, 432 A.2d 701, 709 (D.C. 1981), and that only a “merchant” could commit
47 an unfair or deceptive trade practice, *DeBerry v. First Gov’t Mortg. & Invs. Corp.*, 743 A.2d 699,
48 701 (D.C. 1999). In recently enacting D.C. Official Code § 28-3901(e), the Council had intended
49 to maintain for the District a categorical exemption from CPPA liability.

50 (d) Omitting the District and its agencies from coverage under the CPPA plays an
51 important role in protecting the public fisc. Except for the District of Columbia Housing
52 Authority’s functions as a landlord, the District does not act as a “merchant” who “in the
53 ordinary course of business” sells or supplies consumer goods or services. If the District were a
54 “merchant,” it could be sued for its provision of public services and funds if someone believed
55 these provisions constituted an unfair or deceptive trade practice. Litigation of this type would
56 hinder the efficient provision of services and funds and increase legal expenses for the District.

57 (e) In September 2024, in *May v. River East at Grandview*, No. 21-CV-0612 (D.C. Sept.
58 12, 2024), however, the Court of Appeals held that neither its decision in *Snowder* nor D.C.
59 Official Code § 28-3901(e) provided the District with a categorical exemption from the CPPA
60 and that the District may be liable for unfair and deceptive trade practices under the CPPA when
61 it is acting as a merchant.

62 (f) The *May* decision could render the District liable under the CPPA for activities that
63 until now were routine provisions of services and funds and that the Council did not intend to be
64 subject to the CPPA.

65 (g) Emergency action is needed to clarify that, under the CPPA, the District is not a
66 “merchant” except where the District of Columbia Housing Authority acts as a landlord.

67 Sec. 3. The Council of the District of Columbia determines that the circumstances
68 enumerated in section 2 constitute emergency circumstances making it necessary that the
69 Consumer Protection Clarification Emergency Amendment Act of 2024 be adopted after a single
70 reading.

71 Sec. 4. This resolution shall take effect immediately.