



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## CRIMES AGAINST SENIOR CITIZENS

### House Bill 4278 (Substitute H-3) First Analysis (5-9-95)

**Sponsor: Rep. Clyde LeTarte**  
**Committee: Senior Citizens and  
Veterans' Affairs**

#### ***THE APPARENT PROBLEM:***

Among the most vulnerable of Michigan citizens are those in their later years. Usually on fixed incomes, many face daily struggles meeting financial, physical, and health needs. Yet, this group often finds itself targeted by unscrupulous salespeople taking advantage of their vulnerability to sell over-priced or unnecessary items or services. Newspapers daily report stories of these older victims being conned out of hundreds or thousands of dollars and even their life savings. Ignorance of consumer protection laws, embarrassment, or fear of being perceived as incompetent may keep many seniors from reporting scams or seeking legal relief.

On a national level, the problem led to the formation, in 1992, of a National Association of Attorneys General (NAAG) task force. The task force drafted model legislation which it proposed be integrated into the deceptive trade practice laws of the states, and which provides for stiff civil penalties in situations where elderly persons are victimized. The NAAG model legislation would, among other things, increase civil fines for violations to \$10,000. In Michigan, growing concern on the part of residents over the vulnerability of seniors was voiced to the governor in The Secchia Commission Report last year in the form of recommendations for county-based consumer protection programs, seminars on insurance and investments, anti-fraud regulations, and anti-fraud volunteers that would educate seniors about existing law and monitor activities such as telemarketing.

Currently, protection from deceptive sales practices is provided under the Consumer Protection Act, while a separate statute provides protection from telephone solicitations. However, it is proposed that legislation be adopted to further protect Michigan's senior citizens.

#### ***THE CONTENT OF THE BILL:***

House Bill 4278 would amend the Consumer Protection Act to allow -- in addition to any other penalty or remedy provided under the act -- the imposition of a civil fine of up to \$10,000 for a deceptive act against an older person. This would include, but not be limited to, sellers of financial securities and instruments. The bill would also require the Office of Services to the Aging to implement pilot consumer education programs on the prevalence of such crimes, and would establish an Older Victims Fund. (Under the bill, an "older person" would be defined as someone 60 years of age or older.)

Violations. The following, and any other factors the court deemed appropriate, would be taken into consideration in determining whether to impose a fine:

\*Whether the violator's conduct disregarded the rights of an older person.

\*Whether the violator knew, or should have known, that the conduct was directed to an older person. (Proof of not knowing or having reason to know could be offered as an affirmative defense by an alleged violator.)

\*Whether age, poor health, infirmity, impaired understanding, restricted mobility, or disability made the victim more vulnerable to the violator's conduct than other persons, and whether the victim actually suffered substantial physical, emotional, or economic damage resulting from the conduct.

\*Whether the violator's conduct caused an older person to suffer mental or emotional anguish; loss of or encumbrance upon a primary residence; loss of or encumbrance upon principal employment or

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source of income; loss of pension, retirement plan, or government benefits funds; loss of property set aside for retirement, personal, or family care and maintenance; or loss of assets essential to the person's health and welfare.

**Older Victims Fund.** An older victims fund would be created within the state treasury. Fines collected under the provisions of the bill, and money or assets from other sources, including the interest and earnings from fund investments, would be credited to the fund. Money in the fund at the close of the fiscal year would remain there and would not lapse to the general fund. An annual accounting would be presented to the Office of Services to the Aging by the state treasurer.

**Public education programs.** Under the bill, the Office of Services to the Aging, in conjunction with the Department of Attorney General, Department of Commerce, and the Insurance Bureau, would be required to develop and implement one or more pilot educational programs, including a toll-free telephone number, to inform older persons, law enforcement agencies, the judicial system, social services professionals, and the general public of the prevalence and prevention of consumer crimes against older persons, and of the provisions of the act, including the penalties imposed for violations and the remedies available for victims. The office, along with the other departments and agencies, would also determine the specific content of and designate geographical locations for implementing each pilot program.\* The office would expend money from the Older Victims Fund to implement the consumer education pilot programs. At the end of each pilot program's first year, the office would provide a report evaluating the effectiveness of that pilot program to the governor and the standing committees of the House and Senate that address senior citizen issues.

MCL 445.901

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency reports that the bill would have additional costs and revenues, but at this time the fiscal impact is indeterminate. (5-8-95)

### **ARGUMENTS:**

#### ***For:***

The consumer education programs that would be created under the bill would go far in decreasing incidences of consumer fraud against the elderly by increasing awareness on the part of older persons as to existing laws and deceptive practices. In addition, establishment of a toll-free number could quickly provide older people with information on identifying possible scams and how to protect themselves, along with available remedies.

#### ***For:***

Often an unfair or deceptive trade practice results in harm to the consumer. Though covered under the Consumers Protection Act, senior citizens need this added protection. For instance, under the Home Solicitation Sales Act (MCL 445.111), sales over \$25 made at the home of the buyer through phone or door-to-door solicitations can be cancelled within three days. However, in the case of a person suffering from impaired memory, the sale can easily be forgotten until too late to cancel. Also, many elderly persons have assistance with financial matters from relatives or friends. Often, the three days have expired before the sale comes to the attention of the care giver. Though this bill would not extend the cancellation period, it would provide a penalty for those unscrupulous sellers that take advantage of older people. In addition, if the contract was likely to cause substantial harm to an older person, a seller faced with a \$10,000 fine may voluntarily cancel a potentially damaging contract.

#### ***Against:***

Due to the broad nature of the bill's language, the bill might open the door to frivolous lawsuits against legitimate retailers and salespeople. For instance, whether an older person is "more vulnerable" than others can have many interpretations. Further, a salesperson may not know if the sale of a service or product would represent "substantial physical, emotional, or economic damage" if the older person did not disclose details of his or her health or financial status that may not be easily apparent to the seller.

***Response:***

In consideration of imposing a fine, the bill would specifically require that the older person "actually suffered substantial physical, emotional, or economic damage" by the defendant's conduct. Therefore, the bill should not infringe on legitimate salespersons and would target only those who intentionally prey on older persons through the use of deceptive sales practices.

***Rebuttal:***

Though legitimate retailers may not actually be subject to a fine, the bill would open them up to lawsuits. Therefore, many innocent retailers may be forced to hire attorneys, pay legal fees, or even settle out of court in order to keep costs down.

***Against:***

The bill could create a conflict of interest on the part of the Office of Services to the Aging; the same agency that would receive the fine revenues would also be the enforcing agency.

***Against:***

The bill would reverse the standard burden of proof from being innocent until proven guilty to being guilty unless the seller can prove that he or she did not know that his or her conduct was directed toward an older person.

***POSITIONS:***

The Office of Services to the Aging supports the bill. (5-9-95)

The Department of Commerce has no position on the bill at this time. (5-9-95)

The Department of Attorney General has no position on the bill at this time. (5-9-95)

The Michigan Retailers Association opposes the bill. (5-9-95)