



**House
Legislative
Analysis
Section**

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PROHIBIT CERTAIN PRIZE OFFERS

**House Bill 5983 as passed by the House
Second Analysis (10-17-96)**

**Sponsor: Rep. James Ryan
Committee: Commerce**

THE APPARENT PROBLEM:

Most people regularly receive mail announcing that they have just won a prize of some sort, but often these prize offerings require the person to whom they're addressed to call a special 900 number or a similar pay-for-call number in order to claim the prize or have a chance to claim it. Usually, the customer does not find out until he or she calls that nothing has, in fact, actually been won. Telemarketers who engage in this sort of activity usually will try to keep those who do return the call on the phone as long as possible in order to earn money via the toll fees that accrue as the customer is kept talking. And, in some cases, customers are even asked to give information enabling the "prize offerer" to access via electronic fund transfer an account owned by the caller. These types of telephone scams reportedly have been especially effective in fooling senior citizens, some of whom have lost hundreds of dollars in the process. Legislation has been proposed that would prohibit this type of fraudulent telemarketing activity in Michigan.

THE CONTENT OF THE BILL:

The Michigan Consumer Protection Act prohibits persons from using unfair, unconscionable, or deceptive methods or practices in trade or commerce and defines such practices. The bill would add to the list of unlawful trade practices the offering of a prize or a chance to claim a prize to a consumer if the offer required the consumer to "give consideration." Under the bill, this term would include calling a pay-for-call telephone number or 900 prefix service telephone number, and any form of electronic transfer that resulted in the transfer of money to the offeror. Except in a class action, beginning January 1, 1997, someone who suffered loss due to a violation of the bill could bring an action to recover actual damages or \$10,000, whichever was greater, together with reasonable attorney fees.

The bill would not apply to any of the following:

- * An offer to sell goods at fair market value;

- * An offer of a prize or the chance (the bill reads "change") to claim one for consideration as allowed under the McCauley-Traxler-Law-Bowman-McNeely Lottery Act; or

- * An offer of a prize or a chance to claim one for consideration as permitted by the Traxler-McCauley-Law-Bowman Bingo Act.

MCL 445.903

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (10-17-96)

ARGUMENTS:

For:

It has been estimated that, nationwide, fraudulent telemarketing schemes such as the type which would be prohibited by the bill dupe unsuspecting Americans of as much as \$100 billion annually. It is thought that senior citizens are often targeted for these schemes because they tend to be more susceptible to falling for them, perhaps because their financial situation makes such offers seem attractive or simply because they live alone and are more likely to talk to someone over the phone who feigns interest in them, albeit for dubious reasons. The bill would discourage this type of fraudulent activity from occurring in Michigan by specifically prohibiting it and allowing someone who suffers loss as a result of such a scheme to, beginning January 1, 1997, bring an action to recover actual damages or \$10,000, whichever was greater, along with attorney fees. This would send a message to telemarketers, most of whom are headquartered in other states, that engaging in such surreptitious activity with Michigan citizens could be very costly to them.

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POSITIONS:

The attorney general's office supports the bill. (10-16-96)

The Michigan Consumer Federation has no position on the bill. (10-15-96)

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Analyst: T. Iversen

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.