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BILL



ANALYSIS

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Senate Bill 75

Sponsor: Senator Henry E. Stallings, II

Committee: Financial Services

Date Completed: 1-23-95

SUMMARY OF SENATE BILL 75 as introduced 1-17-95:

The bill would amend the Michigan Consumer Protection Act to do the following:

- **Allow a court to impose a civil fine for a violation against an older or disabled person.**
- **Require fine revenue to be credited to a proposed "Older and Disabled Victims Fund".**
- **Require the Office of Services to the Aging (OSA) to develop and implement a Statewide educational program about consumer crimes against older and disabled persons.**
- **Require the OSA to spend money in the Fund to implement that program and provide other services.**

The Act prohibits "unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce", and provides for various remedies for violations. Among other things, the Attorney General or another person may seek injunctive relief, and a person may bring an action to recover actual damages. The bill provides that, in addition to imposing any other penalty or providing any other remedy under the Act, a court could impose a civil fine of up to \$10,000 against a person for each act or omission that violated the Act and adversely affected an older or disabled person. In determining whether to impose a civil fine, the court would have to consider the following:

- Whether the defendant's conduct was in disregard of the rights of an older or disabled person.
- Whether the defendant knew or should have known that his or her conduct was directed to an older or disabled person.
- Whether the older or disabled person was more vulnerable than other people to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, and whether the older or disabled person actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.
- Whether the defendant's conduct caused an older or disabled person to suffer any of the following: mental anguish; loss of or encumbrance upon the person's primary residence, principal employment, or principal source of income; loss of funds received under a pension or retirement plan or a government benefits program; loss of property set aside for retirement or for personal or family care and maintenance; or loss of assets essential to the person's health and welfare.

The bill would create the Older and Disabled Victims Fund in the State Treasury, and require that a fine collected under the bill be deposited into the State Treasury and credited to the Fund. The State Treasurer could receive money or assets from any source for deposit into the Fund. The

State Treasurer would have to direct the investment of the Fund and credit to it interest and earnings from investments. The State Treasurer also would be required annually to present to the OSA an accounting of the amount of money in the Fund. Money in the Fund at the close of the fiscal year would remain in the Fund.

The OSA would be required to develop and implement a Statewide educational program to inform older persons and disabled persons, law enforcement agencies, the judicial system, social services professionals, and the general public of both of the following:

- The prevalence and prevention of consumer crimes against older and disabled persons.
- The provisions of the Act, including the penalties for violations and the remedies available for victims.

The OSA would have to spend money from the proposed Fund to implement this program and to provide other services as required by law.

The bill would define "disabled person" as a person who had a disability as that term is defined in the Social Security Act (42 USC 416). "Older person" would mean someone who was 60 years old or older.

Proposed MCL 445.911a

Legislative Analyst: S. Margules

FISCAL IMPACT

There would be an indeterminate fiscal impact on the State as a result of the passage of Senate Bill 75.

The Office of Services to the Aging would see an increase in administrative costs to manage the proposed Fund and to develop and implement a Statewide educational program as required by the legislation.

Presumably, the Fund would offset any costs of implementing the legislation. Currently there are no data kept by the Attorney General's office on the number of consumer fraud complaints filed (by the elderly or otherwise).

Fiscal Analyst: L. Nacionales-Tafoya

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.