



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5127 (as reported without amendment)
 Sponsor: Representative Paul Tesanovich House
 Committee: Commerce
 Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 4-2-96

RATIONALE

Most people regularly receive mail announcing that they have won a prize of some sort, such as free accommodations at a resort or a free television set. In addition, many people may fill out entries to win a prize at county fairs, flea markets, and similar forums. While these prize announcements and entries may be legitimate, they often fail to disclose that the consumer must submit to a sales presentation, or buy something else, in order to collect the prize. Reportedly, unwary consumers sometimes travel many miles before they are told of this sort of condition. It has been suggested that organizations that subject prize-winners to a sales presentation should be required to make a written disclosure fully describing the prize and all of the terms and conditions for claiming it.

CONTENT

The bill would amend the Michigan Consumer Protection Act to extend the Act's definition of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce, to offering a consumer a prize if the consumer were required to submit to a sales presentation in order to claim the prize, unless a written disclosure were given to the consumer at the time he or she was notified of the prize. A written disclosure would have to meet all of the following:

- Be written or printed in at least 10-point bold type.
- Fully describe the prize, including its cash value, won by the consumer.
- Contain all the terms and conditions for claiming the prize, including a statement that the consumer was required to submit to a sales presentation.
- Fully describe the product, real estate, investment, service, membership, or other

item that was or would be offered for sale, including the price of the least expensive item and the most expensive item.

MCL 445.903

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

This is a consumer protection measure designed to ensure that consumers were made aware of the conditions placed on their ability to claim a prize. Such a "prize" actually might be something provided in exchange for an individual's agreeing to buy something else or submitting to a sales pitch. The bill not only would require the disclosure of such conditions up front, but also would require the inclusion of a price list when a person was required to submit to a sales presentation. Failure to comply with these requirements would amount to an unfair, unconscionable, or deceptive trade practice, and a violator could be liable for civil penalties and actual damages under the Consumer Protection Act. Reportedly, a similar law recently was enacted by the State of New York.

Response: Many, if not most, of the inducements in question come from out-of-State businesses, which would not be affected by this legislation.

Opposing Argument

It is not necessary to require sellers to disclose the price of their products or to provide detailed product descriptions in an initial solicitation. As long as consumers were aware that an offer was, in fact, a type of advertisement and not just an

offer of a free gift, they should be adequately protected. Other forms of advertising do not have to disclose the price of goods or services (except for credit sales), and it would be unfair to impose this requirement on one segment of the business community.

Opposing Argument

It would be reasonable to exempt relatively small gifts from the bill's disclosure requirements. For example, if a consumer receives an offer in the mail for a free hot dog and soda at a local car dealership, he or she should not be surprised to be met at the door by a car salesperson.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman

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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.