

## CONSUMER PROTECTION: OLDER AND DISABLED PERSONS

### House Bill 4067 as passed by the House Second Analysis (8-6-97)

**Sponsor: Rep. Paul Wojno**  
**Committee: Consumer Protection**

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

The prevalence of deceptive consumer practices against elderly and disabled persons increasingly arouses concern. Often, these segments of the population are the target for unsolicited contracts and of dubious sales practices, many of which are outright scams. In many cases, advanced age, poor health, restricted mobility, or a physical or mental disability makes elderly and disabled persons more vulnerable to such victimization.

Although protection from such practices is already provided under the Consumer Protection Act, while a separate statute provides protection from telephone solicitations, few of these crimes are reported. Ignorance of consumer protection laws, embarrassment, or fear of being perceived as incompetent may keep many of these victims from reporting these 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 or disabled persons are victimized. The NAAG model legislation would, among other things, increase civil fines for violations to \$10,000; establish an "Elder and Disabled Victims Fund" for consumer education initiatives, and for the attorney general's use in prosecuting deceptive acts against elder and disabled persons; and establish and maintain referral procedures within state aging and adult services departments. Legislation has been proposed to adopt some of these recommendations.

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

House Bill 4067 would amend the Consumer Protection Act to provide for an additional civil fine of up to \$10,000 to be levied against individuals who violated the act by victimizing older or disabled persons. (Older persons would mean individuals who are over the age of 60 and disabled would include those who have a

disability as defined in section 216 of title II of the Social Security Act, chapter 531, 49 Stat. 620, 42 U.S.C. 416.) The bill would also specify that an action could be brought for a violation of the bill's provisions under sections of the act allowing the attorney general to bring an action for an injunction, accept an assurance of discontinuance from alleged violators, and/or bring a class action lawsuit. In addition, the bill would also specify that a prosecuting attorney could also pursue an action under the bill's provisions in the same fashion as the attorney general.

A court could impose a civil fine of no more than \$10,000, in addition to any other fine or penalty provided for in the Consumer Protection Act for each act or omission that violated the provisions of the act and adversely affected an older or disabled person. Amounts collected under the bill's provisions would be first applied to any unpaid damages or attorney fees that had been ordered by the court with any amount in excess being deposited in the Elder and Disabled Victims Fund. In making its determination as to the need for and amount of a potential civil fine for such violations, a court would be required to consider a number of issues, including:

\*\* Whether the defendant's conduct disregarded the rights of the older or disabled person.

\*\* Whether the defendant knew or should have known that his or her conduct was directed at an older or disabled person.

\*\* Whether the older or disabled person, because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, was more vulnerable to the defendant's conduct and whether the older or disabled person actually suffered substantial physical, emotional, or economic damage as a result of the defendant's conduct.

\*\* Whether the defendant knew or should have known that his or her conduct would cause mental or emotional distress.

**\*\*Whether the defendant's conduct caused an older or disabled person the loss of or encumbrance upon his or her primary residence, loss of or encumbrance upon his or her principal employment or principal source of income, loss of funds received under a pension or retirement plan or a government benefits plan, or loss of assets essential to his or her health or welfare.**

**\*\* Any other factors that the court deems appropriate.**

**Older and Disabled Victims Fund.** The bill would create the Older and Disabled Victims Fund in the state treasury. The state treasurer could deposit money or funds from whatever source into the fund, direct investments of the fund, and would be required to credit interest and earnings from fund investments to the fund. In addition, to the extent that the amounts exceeded any unpaid damages and attorney fees that had been ordered, money collected as fines for violations of the bill's provisions would be deposited in the state treasury and credited to the fund. Any money remaining in the fund at the end of the fiscal year would stay in the Older and Disabled Victims Fund rather than lapse into the general fund.

**Education programs.** The Office of Services to the Aging would be required to develop and implement a statewide educational program using money from the Older and Disabled Victims Fund. The purpose of this program would be to inform older persons and disabled persons, law enforcement agencies, the judicial system, social services professionals, and the general public about the prevalence and prevention of consumer crimes against older and disabled persons, as well as the bill's provisions, including the penalties and remedies for violations of those provisions. Money from the fund could be used to develop and implement this educational program and to provide other services as required by law. An annual accounting of the amount of money in the fund would be made by the treasurer and provided to the Office of Services to the Aging.

MCL 445.903c

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would increase costs and revenues for state government. However, the amount of those costs and revenues is undetermined and would depend upon the number of additional staff needed to develop and implement the statewide educational program within the Office of Services to the Aging and the additional civil fines imposed by the courts. (8-6-97)

### ***ARGUMENTS:***

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

Elderly and disabled citizens who are in poor health, disabled, deaf, or who have restricted mobility are frequently taken advantage of by unscrupulous tradespeople. The scams are many. Senior citizens are persuaded to buy insurance they don't need, or health devices that don't work. Often they are given outrageous estimates for repair work on their homes, or made to believe that repairs are needed, when, in fact, they are not. There are persons who monitor newspaper obituary columns, and, upon the death of a spouse, show up with an item, which, they claim, was ordered by the deceased. There have been bank scams where seniors were persuaded to withdraw their savings after being told -- by a person who flashed a fake I.D. -- that a "dishonest bank teller" was being watched and the withdrawal would be monitored so the suspect could be checked out. Seniors and disabled persons are especially vulnerable to those who threaten violence against them if they do resist sales propositions. The threats may be subtle, but the victim usually complies. It is important that appropriate punishment be inflicted on those who commit these crimes. It is equally important that consumer education be provided to make the public aware of this problem.

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

Often an unfair or deceptive trade practice results in harm to the consumer. Though covered under the Consumer Protection Act, senior citizens and disabled persons need this added protection. The 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, unscrupulous salespersons may be less willing to attempt to take advantage of elderly and/or disabled persons when they risk an additional \$10,000 fine for doing so.

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

Under the bill, a "disabled person" would be defined under Title II of the federal Social Security Act. The federal act defines "disability" to include, among other things, an inability to engage in gainful activity. Advocates for the developmentally disabled, however, suggest that this definition is too restrictive (there are many disabled person who are able to work), and that the bill be amended to include a broader definition, such as those contained in the federal Americans with Disabilities Act (ADA) or the federal Rehabilitation Act Amendments of 1992.

***Against:***

Since the Consumer Protection Act already provides for a \$25,000 penalty for unfair trade practices, the additional penalty provided in the bill is simply excessive. The bill only adds an increased penalty under certain circumstances that, in many cases, could depend upon very subjective considerations.

In addition, the bill might open the door to frivolous lawsuits against legitimate retailers and salespeople. For instance, 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:***

When deciding whether to impose 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 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.

***POSITIONS:***

The Michigan Legislative Committee of the American Association of Retired Persons supports the concept of the bill. (3-12-97)

The ARC Michigan supports the bill. (7-21-97)

The Michigan Consumer Federation supports the bill. (7-21-97)

The Michigan Trial Lawyers Association supports the bill. (7-21-97)

The Michigan Retailers Association opposes the bill. (7-10-97)

Analyst: W. Flory

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■ 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.