

## AGGRESSIVE SOLICITATION PROHIBITION ACT

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**House Bill 5103 (reported from committee as H-3)**

**House Bill 5104 (reported without amendment)**

**Sponsor: Rep. Michael D. McCready**

**Committee: Criminal Justice**

**Complete to 6-6-16**

Analysis available at  
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**BRIEF SUMMARY:** House Bill 5103 creates a new act—the Aggressive Solicitation Prohibition Act—to prohibit soliciting another person in a public area under certain circumstances, make a violation of the act a state civil infraction with a maximum fine of \$100, and allow a local government to adopt or enforce a local ordinance relating to aggressive solicitation.

House Bill 5104 eliminates *begging in a public place* as an act constituting the crime of being a disorderly person.

The bills are tie-barred to each other, meaning that one bill cannot take effect unless the other is also enacted into law. The bills will take effect 90 days after enactment.

**FISCAL IMPACT:** The bills would result in a fiscal impact on state and local governments. See *Fiscal Information* below for a more detailed analysis.

### **THE APPARENT PROBLEM:**

In 2013, a federal appeals court struck down Michigan's ban on begging in a public place as being an unconstitutional infringement on free speech. Yet, the law remains on the books as a misdemeanor. Some feel that since the offense can no longer be enforced, it should be removed from the statutes.

In a related matter, residents and policymakers have raised concerns over what is referred to as "aggressive solicitation" or "aggressive panhandling." Reportedly, some people have been followed to their cars in parking lots by panhandlers asking for money, had a panhandler lean in through the car window, or had a panhandler knock on the car window. Such conduct on the part of a panhandler makes many feel threatened, and some have reported being afraid that if they didn't give the person money, they would have been physically harmed.

The act of solicitation has been upheld by the U.S. Supreme Court as being a form of speech that is protected under the U.S. Constitution. In striking down Michigan's ban on public begging, the federal appeals court reasoned that the prohibition was overbroad and thus prohibited "an entire category of activity that the First Amendment protects." *Speet v Schuette*, 726 F.3<sup>rd</sup> 867 (6<sup>th</sup> Cir. 2013) Some feel that Michigan should enact an updated prohibition that would narrowly target undesirable conduct associated with begging by focusing on prohibiting only solicitations of a more aggressive nature, and that would make a violation a civil infraction, rather than a criminal offense.

## ***THE CONTENT OF THE BILLS:***

House Bill 5104 amends the Michigan Penal Code (MCL 750.167). Section 167 lists the acts that constitute the crime of "disorderly person," a misdemeanor offense punishable by not more than 90 days in jail and/or a maximum fine of \$500. The bill eliminates "begging in a public place" as one of the listed acts, thereby effectively decriminalizing public begging.

House Bill 5103 creates a new act, entitled the "Aggressive Solicitation Prohibition Act." "Soliciting" would be defined as using any means of communication, including, but not limited to, spoken or written word, to request a donation or exchange of money or any other thing of value, regardless of the purpose or intended use of the money or other thing of value.

Under the bill, a person could not solicit another in a public area by doing any of the following:

- Intentionally and knowingly, or recklessly, making physical contact with or touching another person without that person's consent.
- Approaching or following a person in a manner intended to cause bodily harm.
- Continuing to solicit a person after that person has communicated that he or she does not want to be solicited.
- Intentionally and knowingly, or recklessly, obstructing the safe or free passage of a person being solicited.

"Public area" is defined in the bill to mean an area that is owned by a governmental entity and the public or a substantial group of persons has access to and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks and streets open to the general public, and doorways and entrances to buildings and dwellings.

Penalties. A violation would be a state civil infraction and the person would be subject to a fine of not more than \$100. However, the act would not prohibit a person from being charged with, convicted of, or punished for any other violation of law, including a violation of law arising out of the same transaction as the violation for soliciting.

Local ordinances. A county, city, township, or village would retain discretion to adopt an ordinance or enforce an existing ordinance that relates to aggressive solicitation.

## ***FISCAL INFORMATION:***

To the extent that House Bill 5103 results in a greater number of fines issued for civil infractions, it could have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of people who are held responsible for state civil infractions and fined. Increases in applicable fines would benefit local libraries, which are the constitutionally designated recipients of such revenues. Civil

infraction penalties would increase revenues going to the state Justice System Fund, which supports various justice-related endeavors in the judicial branch, and the departments of State Police, Corrections, and Health and Human Services. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

Depending on the number of people that have actually been charged for begging in a public place, House Bill 5104 could result in a decrease in costs for local units of government related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally designated recipients of those revenues.

### ***ARGUMENTS:***

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

House Bill 5104 removes from the books a law that can no longer be enforced—that is, begging in a public place. As discussed earlier, the law was struck down by a federal appeals court as being unconstitutional due to its infringement on a type of speech previously held by the U.S. Supreme Court to be constitutional. To avoid confusion, this now obsolete provision should be eliminated from Michigan's statutes.

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

Though the *Speet* opinion stated that begging is a form of solicitation protected by the First Amendment of the U.S. Constitution, the court also stated that Michigan could regulate begging if a law were "more narrowly tailored to the specific conduct" that the state sought to prohibit. Reportedly, communities across the nation are experiencing similar problems with panhandlers and adopting a variety of laws and ordinances to stem conduct deemed problematic. In a federal appeals case that is not binding on Michigan, but can offer guidance, the First Circuit upheld a local ordinance that prohibited a person from begging, panhandling, or soliciting another person in an aggressive manner by finding that the ordinance was narrowly tailored, left open adequate alternative channels of communication, and was thus a valid restriction on speech. *Thayer v City of Worcester*, 755 F.3<sup>rd</sup> 60 (1<sup>st</sup> Cir. 2014)

House Bill 5103 takes a similar approach. The bill does not regulate the content of speech, nor the type of person making a solicitation, or the reason for the solicitation, only the conduct associated with it. Thus, the bill would apply equally to a homeless person asking for money for food and a person collecting donations for a charity. The bill would only apply to solicitations made on public property (e.g., sidewalks, parks, and playgrounds), and then only to solicitations accompanied by aggressive measures such as grabbing the arm of a passerby or blocking the person's way. An individual who was holding a sign asking for help, a job, money, or donations to a charity, or who simply asked for the same, would not be in violation of the bill's provisions.

Proponents say the bill is needed because many urban areas are reporting an increase in the numbers of people soliciting money, the number of areas where solicitors gather, and the aggressive manner in which solicitations are made. Besides being a public safety matter, panhandlers congregating in shopping or dining districts or recreational areas can deter customers and tourists and so negatively impact a town's economic viability.

Most importantly, unlike the anti-begging law that was struck down, aggressive panhandling would not be a criminal offense. A violation would result in a civil fine which could not exceed \$100. Public safety would be increased because the public and the people soliciting would know where the boundaries are drawn. Regardless of how people feel about others asking for donations, it is a protected right of free speech. However, people also deserve to know they can walk, shop, or play without fear of being harmed if they don't give money to anyone who asks.

***For:***

House Bill 5103 would create a statewide prohibition, thus alleviating a local unit of government from having to adopt a separate ordinance, although the bill would allow local units to adopt their own regulation if they wished. The bill also would allow law enforcement to charge panhandlers or those soliciting others with other offenses if the person violated other state or local laws.

***Against:***

Courts have been clear: passive panhandling is a protected free speech right under the Constitution. Critics of the bill say that when the person making a solicitation for money or other things of consideration goes too far, there are already criminal laws in place to protect the public such as assault and battery, aggravated assault, and stalking that are sufficient to deal with problem panhandlers. Thus, House Bill 5103 is not needed.

In addition, say critics, if the bill is enacted, the public is more likely to remember that *something* about panhandling is against the law and believe that *all* panhandling is prohibited, rather than to remember the distinct elements listed in the bill that make only *certain behaviors exhibited by a panhandler* as being against the law. This could result in unnecessary complaints to law enforcement and the potential for some people soliciting within the bill's parameters to be erroneously fined.

Better enforcement of current laws regarding fraudulent or assaultive behaviors would properly put the focus on the behavior that is unacceptable—no matter what that behavior is attempting to accomplish. For example, protestors promoting a particular view point can be very intimidating and/or threatening, block a person's pathway, grab someone's arm, and exhibit all the same behaviors prohibited by the bill. For these and other reasons, many feel the bill would unfairly or unintentionally put a focus on a *category* of people, primarily those who are poor and more likely to ask for food, shelter, or a job rather than target specific, unwanted behaviors.

***Against:***

Other weaknesses that opponents have cited with House Bill 5103 include the following:

- Approaching or following a person *in a manner that is intended to cause bodily harm* when soliciting another would be grounds for a violation. However, it is not clear what is meant by this. Where approaching someone with an angry face or waving arms when following after someone while asking for money can be viewed as aggressive or intimidating, it is difficult to understand how the manner of an "approach" or "following" could be intended to cause bodily harm. Perhaps this element of the offense could be clarified.
- Most of the people likely to be fined under the bill will be indigent. Though a civil infraction does not include incarceration outright, failure to pay (even inability to pay) a civil fine can result in a contempt of court charge and jail time. If bench warrants are issued for those who don't pay, an increased burden may be placed on law enforcement officers, courts, and local jails to find and house a person who cannot, or will not, pay. That is, of course, if the person can be found, as many may be homeless or otherwise transient and difficult if not impossible to locate.
- Opponents believe the bill will unfairly target the poor, the homeless, and persons with mental illness who are asking for money needed for sustenance while overlooking similar behaviors exhibited by protestors exhibiting a particular viewpoint, such as those screaming obscenities at military funerals and acting aggressively toward people entering or leaving medical clinics where abortions are performed.
- State law requires a \$10 assessment to be added on top of any fines and costs levied for a civil infraction offense, thus making an infraction even more expensive for those who can least afford to pay.
- Civil infractions are not able to be tracked from one court jurisdiction to another, making enforcement and tracking of problem panhandlers even more difficult.
- The bill establishes a worrisome precedent of intolerance. Some communities have gone so far as to enact prohibitions against sitting or sleeping in public places that not only are intended to crack down on panhandling, but directly target the homeless under the guise of curbing crime or ridding an area of behaviors that bother residents and tourists and disrupt business. A better approach would be to create places where the homeless could go during the day when shelters are closed, increase funding to expand the ability of shelters to provide beds to all who need one, and increase mental health access and job training and placement.

### ***POSITIONS:***

A representative of the ACLU-MI testified in support of House Bill 5104 and in opposition to House Bill 5103. (5-24-16)

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