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REPEAL FORTUNE TELLING BAN

House Bill 5181 as introduced
First Analysis (11-17-93)

Sponsor: Rep. Dick Allen
Committee: Consumers

THE APPARENT PROBLEM:

Michigan's law prohibiting, and criminalizing, fortune telling was enacted in 1931, replacing a number of laws dating back to 1913. Without ever defining "fortune telling," the act refers to a number of prohibited actions: pretending to predict future events; pretending to tell fortunes or future events; pretending to enable people to get or recover lost or stolen property; pretending to give success in "business, enterprise, speculation or games of chance"; and pretending to make someone dispose of property, business, or valuable things in favor of another. The law also mentions specific ways of telling fortunes: by "cards, tokens, trances, the inspection of the hands [palmistry] or the conformation of the skull [phrenology] of any person, mind-reading so-called, . . . consulting the movements of the heavenly bodies [astrology], clairvoyance, or "other means" or "other devices." The law exempts only services conducted by duly ordained ministers of any "spiritualist" church incorporated under Michigan law.

Apparently, some local ordinances, based on this state law banning "fortune telling," have led to abuses on the part of local law enforcement agencies, with a particularly egregious case occurring last July in Battle Creek, when police raided a local restaurant that was holding a "psychic night." Without warrants, police seized money from both the 200 patrons and psychics present and ordered the patrons to leave the premises. To date, no charges or arrests have been made, the city hasn't returned any of the confiscated money, and the restaurant owners say that they have lost between \$5,000 and \$7,000 each week since the raid. A lawsuit has been filed on behalf of the victims of the raid, and a long court battle is expected. Legislation has been introduced that would prevent future such situations from arising.

THE CONTENT OF THE BILL:

Chapter XLII of the Michigan Penal Code (Public Act 328 of 1931) prohibits fortune telling (pretending to predict future events) for money or gain. Sections 267 and 268 make it a misdemeanor to pretend, for money or gain, to predict future events by a number of different means: Section 267 references cards, tokens, trances, inspecting someone's hands (palmistry) or head (phrenology), mind reading, or astrology; while Section 268 prohibits all "other means." Section 269 makes it a misdemeanor to pretend to recover lost or stolen property or to make someone successful in business or games of chance through palmistry, phrenology, clairvoyance, astrology or fortune telling by cards or other means. Section 270 specifies what may be given in evidence for an indictment and exempts from the chapter's provisions services conducted by "duly ordained" ministers of "spiritualist" churches incorporated in Michigan.

The bill would repeal this chapter of the penal code.

MCL 750.267 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Michigan's 80-year-old ban on "fortune telling," which may have been enacted in response to "gypsies," should be repealed for a number of reasons. There already are at least 15 existing fraud laws under which fraudulent activities can be prosecuted, while at the same time there is no evidence -- either from the attorney general's office or the state police -- that fortune telling fraud is a

problem in Michigan. The state police reported 18 complaints during all of 1992, saying that "the bulk, if not all of these, came under the category of gypsies accused of defrauding homeowners." California reportedly stopped keeping statistics in the 1970s, when its last recorded number of cases of fortune telling fraud fell below a dozen.

Secondly, the act can be seen as imposing unreasonable and unnecessary restrictions on innovative small business marketing promotions. Apparently restaurants have been using so-called "psychic nights" and other forms of "fortune telling" as successful ways to attract patrons who enjoy such diversions during meals. Such marketing techniques are in no way intended to defraud restaurant-goers, and apparently have proved very popular. However, arbitrary law enforcement raids against these popular activities have taken place, with authorities citing the state law as the basis for their actions.

The law, in addition, clearly is unconstitutional. The California State Supreme Court ruled in 1985 that a statute similar to Michigan's was unconstitutional, and in fact such laws have been voided in courts in Oregon, Illinois, and Connecticut, which cited provisions in the U.S. Constitution guaranteeing the rights of citizens to freely speak, write, and publish their thoughts on all subjects. Similar repeals reportedly are under consideration in nine other states.

The law, by not defining what it means by "pretending to foretell future events" is over-broad, to the point where it conceivably could encompass a range of activities such as newspaper horoscopes, weather forecasters, sportscasters, stock market and financial consultants, and even anyone -- such as the House and Senate Fiscal Agencies and the state Department of Management and Budget -- who predicated budgets based on economic forecasts! By not defining fortune telling, and lumping all manner of paranormal activities under this one name, the law assumes that all of these activities are "fortune telling" and therefore criminal. This in effect denies citizens their rights to due process of law, by presuming guilt, rather than innocence. By assuming that all "fortune tellers" are fraudulent, the law also fails to recognize those people who sincerely believe that their fortune telling services are legitimate. Failure to define the activity of "pretending" to predict the future also means that the law doesn't provide proper notice to people as to what specific conduct is criminal, while at the

same time failing to provide law enforcement officers with clear guidelines. Instead, law enforcement officers are left with the discretion to enforce the law on an arbitrary basis.

Law enforcement representatives also point out that repeal of this law would allow the criminal justice system to properly focus on serious crime, while still being able to prosecute scams and other kinds of fraud under other existing laws.

Finally, there is no good reason why the citizens of Michigan should not be able to have their palms read, or their horoscopes given, or their fortunes told. What people, as individuals, choose to believe should be left up to the individual, without the government's interference. Surely if the state can entice people to play the lottery with promises of future fortunes, those same people should be able to go to fortune tellers to have their fortunes told. If the seller of one of these services violated an existing consumer protection law, they are subject to the same enforcement of the law as is any other service provider in the state. No law can protect citizens from using bad judgement or lack of discernment when dealing with any segment of the population. This is the responsibility of the individual, not the state.

POSITIONS:

The following groups submitted letters in support of the bill:

The American Civil Liberties Union/Michigan (11-16-93)

The Michigan Sheriffs' Association (11-9-93)

The Michigan Police Legislative Coalition [a coalition composed of officers from the Detroit Police Officers Association, the Michigan State Police Command Officers Association, the Police Officers Labor Council, the Detroit Lieutenants and Sergeants Association, the Michigan State Troopers Association, and the Michigan Association of Police] (11-16-93)

The Michigan Licensed Beverage Association (11-9-93)

The Michigan Restaurant Association (11-12-93)