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Senate Bill 134 (as introduced 3-6-25)
Sponsor: Senator Sam Singh
Committee: Finance, Insurance, and Consumer Protection

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INTRODUCTION

The bill would expand protections under, and increase penalties for violations of, the Michigan Consumer Protection Act. Specifically, it would treat the unfair or deceptive provision of goods and services to nonprofit corporations, small businesses, and for the purpose of enhancing an individual's livelihood as a violation of the Act. It also would allow a court to fine a violator of the Act for separate violations, which generally would consist of each person affected by a violation of the Act. Finally, it would prescribe specific fines for violations of the Act that targeted individuals 80 years old or older and vulnerable adults.

Additionally, the bill would create the Consumer Protection and Antitrust Revolving Enforcement and Education Fund, prescribe the Fund's funding mechanism, and require the Attorney General (AG) to spend its money to enforce and educate about consumer protection.

FISCAL IMPACT

The bill could have a positive fiscal impact on the State and local units of government. The bill would increase the likelihood of civil fines of varying amounts, including up to \$50,000 for knowing violations targeting vulnerable adults. The amount of additional revenue is indeterminate and dependent on the number of fines imposed. Revenue collected from civil fines is used to support local libraries. Additionally, \$10 of the civil fine would be deposited into the State Justice System Fund. This Fund supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

The bill also would create revenue for the Consumer Protection and Antitrust Revolving Enforcement and Education Fund that it would create. The revenue would be generated from damages assessments in class actions brought by the AG of either actual damages or \$250 per class member. The amount of revenue created for the new fund would depend on how effective the AG was at enforcing the Act. Due to the likely increase in civil fine revenue under the bill, local governments would be positively affected to an unknown degree. The bill would not create new responsibilities for the AG; however, should the AG aggressively pursue enforcement actions under the bill, any increased administrative or legal expenses would likely be offset by damages revenue, which the AG would be able to access through the new Fund.

The bill would have a minimal fiscal impact on the Department of Treasury to administer the Fund. Any Additional costs would be supported with current appropriations.

MCL 445.902 et al.

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CONTENT

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

- Allow a court to assess a person who violated the Act a fine of up to \$25,000 for each separate violation of the Act, which would include each person solicited by a violation of the Act, each advertisement distributed in violation of the Act, and each misrepresentation or deceptive statement in a solicitation.**
- Prescribe specific civil fines for a violation of the Act that targeted an elderly individual or vulnerable adult.**
- Expand the definition of "trade and commerce" to include conduct of business in providing goods and services to nonprofit organizations and small businesses.**
- Allow the AG to bring a class action for a violation of the Act to recover actual damages or \$250, whichever was greater, for each class member.**
- Create the Consumer Protection and Antitrust Revolving Enforcement and Education Fund, require certain amounts of attorney fees and proceeds from specific cases against violators of the Act to be deposited into the Fund, and require the AG to spend money from the Fund upon appropriation to pay expenses related to the enforcement of consumer protection laws and to educate the public regarding consumer protection.**
- Allow the AG, if the AG had reason to believe a person had information relevant to an investigation of a violation of the Act, to serve that person with a written demand to appear and be examined under oath.**
- Modify the scope of the Act.**

Expanded Definition of "Trade and Commerce"

Currently, "trade or commerce" means the conduct of a business providing goods, property, or service primarily used for personal, family, or household purposes. The term includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity. Under the bill, "trade or commerce" would mean the conduct of a business providing, *directly or indirectly*, goods, property, or services that are primarily used for personal, family, household, *nonprofit organization*, or *small business purposes*. The term would include the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity, and *includes the provision of goods, property, or services for the purpose of enhancing an individual's education, income, or employability*.

"Nonprofit organization" would mean an entity incorporated to carry out any lawful purpose that does not involve pecuniary profit or gain for the entity's directors, officers, shareholders, or members.

"Small business" would mean a business concern incorporated or doing business in the State, including an affiliate of the business concern, that is independently owned and operated and that either employs fewer than 250 full-time employees or that has gross annual sales of less than \$6.0 million.

Assessment of Fines

Generally, the Michigan Consumer Protection Act prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce and provides fines

for violations of its prohibitions.¹ If the AG has probable cause to believe that a person is engaged or is about to engage in a method, act, or practice that is unlawful under the Act, the AG may bring an action to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action can be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in the State, in the Circuit Court of Ingham County.

The court may award costs to a prevailing party in an action described above. For a persistent and knowing violation of the Act, a court may assess the defendant a civil fine of up to \$25,000. Under the bill, a court could assess the defendant a civil fine of up to \$25,000 for *each* persistent and knowing violation of the Act, subject to the bill's provisions concerning separate violations described below.

Currently, the Act prescribes the following concerning the assessment of civil fines for separate violations:

- For a violation of advertising or conducting a live musical performance or production in the State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group, each performance or production is a separate violation.
- For a violation of misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger, the court can assess the defendant a civil fine of up to \$1,000 per violation.
- For a violation of misrepresentation described above, each day the violation occurs counts as a separate violation.

The bill would delete the specific provisions concerning the assessment of civil fines for separate violations described above, and instead, the bill specifies that the following would constitute a separate violation:

- Each person solicited by the person alleged to have violated.
- Each advertisement distributed by the person.
- Each misrepresentation or deceptive statement contained in a solicitation.
- Each time that an advertisement was received or was published, broadcast, or otherwise disseminated by the person.

Violations Targeting Elders or Vulnerable Adults

Under the bill, a person that used or had used a method, act, or practice that targeted an elder or vulnerable adult in violation of the Act would be subject to a civil fine of up to \$25,000 for each violation, unless the violation that targeted an elder or vulnerable adult was persistent and knowing, in which case the person would be subject to a civil fine of up to \$50,000 for each violation.

The bill would define "elder" as an individual who is 80 years of age or older. "Vulnerable adult" would mean any of the following:

¹ Section 3 of the Michigan Consumer Protection Act specifies methods, acts, and practices considered unfair, unconscionable, or deceptive, and therefore unlawful. These generally include causing probable confusion concerning the goods or services for sale and misrepresenting goods and services, among other things.

- An individual who is 18 years of age or older and who, because of age, developmental disability, mental illness, or physical disability, requires supervision or personal care or lacks the personal and social skills required to live independently, whether or not the individual has been determined by a court to be incapacitated.
- An adult as that term is defined in the Adult Foster Care Facility Licensing Act.²
- An adult as that term is defined in the Social Welfare Act.³

For a violation of the Act by a person that used a method, act, or practice that targeted an elder or vulnerable adult, each of the following would be considered a separate violation:

- Each elder or vulnerable adult solicited by the person.
- Each advertisement distributed by the person.
- Each misrepresentation or deceptive statement contained in a solicitation.
- Each time that the advertisement was received or was published, broadcast, or otherwise disseminated by the person.

In determining the amount of a civil fine above, a court could consider any of the following:

- Whether the violation was made in good or bad faith.
- The injury to the public.
- The person's ability to pay.
- The public's interest in eliminating the benefits to the person that were derived from the violation.
- The necessity of vindicating the authority of the State and the strong need to deter any future violation.

These civil fines would be in addition to any other civil fine or relief available under the Act or any other law of the State.

Class Action

Currently, the AG can bring a class action on behalf of persons residing in or injured in the State for actual damages for violations of the Act. Under the bill, the AG could bring a class action to recover actual damages or \$250, whichever was greater, for each class member.

Consumer Protection and Antitrust Revolving Enforcement and Education Fund

The bill would create the Consumer Protection and Antitrust Revolving Enforcement and Education Fund. The State Treasurer would have to deposit attorney fees, costs, and proceeds and damages and refunds in accordance with the bill in the Fund and could deposit money or assets received from any other source in the Fund. Except as otherwise directed by a court or agreed to by the parties, attorney fees, costs, and proceeds would have to be deposited into the Fund as follows:

- If the amount of the attorney fees, costs, and proceeds were not more than \$500,000, 100% of the amount of attorney fees, costs, and proceeds would have to be deposited into the Fund.

² Under the Adult Foster Care Facility Licensing Act, "adult" means a person who is 18 years old or older and is placed in an adult foster care family home or adult foster care small group home.

³ Under the Social Welfare Act, "adult" means a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

- If the amount of the attorney fees, costs, and proceeds were more than \$500,000 but not more than \$1.0 million, 100% of the first \$500,000 of attorney fees, costs, and proceeds and 50% of the remainder must be deposited into the Fund.
- If the amount of the attorney fees, costs, and proceeds were more than \$1.0 million, 100% of the first \$500,000 of attorney fees, costs, and proceeds, 50% of the next \$500,000 of attorney fees, costs, and proceeds, and 10% of the remainder would have to be deposited into the Fund.

Except as otherwise directed by a court or agreed to by the parties, the following damages or refunds would have to be deposited into the Fund:

- Any de minimus amount of damages or refunds.
- Any amount of the damages or refunds that relate to persons that could not be identified by the Department of Attorney General.

The State Treasurer would have to direct the investment of money in the Fund and credit interest and earnings from the investments to the Fund. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The Department of Attorney General would be the administrator of the Consumer Protection and Antitrust Revolving Enforcement and Education Fund for audits and would have to spend money from the Fund on appropriation only for the following purposes:

- To fund positions and pay expenses incurred by the AG related to the enforcement of the Act, a law relating to anti-competitive conduct within trade or commerce, or a law with a purpose of protecting charitable gifts or charitable assets.
- At the AG's discretion, to educate the public regarding consumer protection matters.

Under the bill, "attorney fees, costs, and proceeds" would mean attorney fees, costs, and proceeds obtained by the Department of Attorney General from a designated action. "Damages or refunds" would mean damages or refunds obtained by the Department of Attorney General from a designated action. "Designated action" would mean a judgment, settlement, compromise, or assurance of discontinuance or voluntary compliance, or other agreement relating to any of the following:

- An alleged violation of the Act or any other law with a purpose of protecting persons against fraudulent or other unfair or deceptive trade practices.
- Any alleged anti-competitive conduct within trade or commerce.
- An alleged violation of law with a purpose of protecting charitable gifts or charitable assets.

Written Demand to Appear for Examination

Under the bill, if the AG or a prosecuting attorney had reason to believe that a person had information or was in possession, custody, or control of any documentary material or tangible object that was relevant to an investigation of a violation of the Act, the AG, or a prosecuting attorney with the permission of or at the request of the AG, could, before bringing an action under the Act, serve the person with a written demand to do one or more of the following:

- Appear and be examined under oath.
- Answer interrogatories.
- Produce any documentary material or tangible object for inspection and copying.

A written demand would have to contain all the following:

- A description of the nature of the conduct that constituted the violation of the Act under investigation.
- If the demand required the appearance of the person, a reasonable time and place for the appearance.
- If the demand required written interrogatories, a copy of the written interrogatories and a reasonable time within which the person would have to answer the written interrogatories.
- If the demand required the production of any documentary material or tangible object, a description of the documentary material or tangible object with sufficient definiteness to permit the documentary material or tangible object to be fairly identified by the person; a reasonable time and place for production of the documentary material or tangible object; and the name of the person that would be the custodian of the documentary material.
- A notice that the person could file an objection to or reason for not complying with the written demand with the serving entity on or before the return date.
- A summary of the provisions concerning a person's right to petition the court as described below.

At any time before the return date or not later than 10 days after receiving the written demand, whichever was earlier, a person subject to the written demand could petition the Circuit Court of Ingham County for a protective order, stating good cause, to extend the return date for a reasonable time, modify the demand, or set aside the demand. If a person filed such a petition, the person would have to give the serving entity at least 10 days' notice of a hearing on the petition and the serving entity would have to be given an opportunity to respond to the petition.

If a person did not secure a protective order and the person did not comply with the written demand by the return date, the serving entity, on notice to the person, could apply to a court for an order compelling the person's compliance with the written demand. If a court contemplating the order found reasonable cause to believe that the Act was being, had been, or was about to be violated; that the person that was committing, had committed, or was about to commit the violation possessed information, documentary material, or a tangible object that was relevant to the investigation by the A.G. or prosecuting attorney; that the person had left the State or was about to leave the State; and that an order was necessary for the enforcement of the Act, the court could do the following:

- Require the person to comply with the written demand.
- Forbid the removal, concealment, withholding, destruction, mutilation, falsification, or alteration of any documentary material or tangible object that was relevant to the investigation in the possession, custody, or control of the person.

A person subject to a written demand or a court order that, with the intent to avoid, evade, or prevent compliance, in whole or in part, removed, concealed, withheld, destroyed, mutilated, falsified, or by any other means altered any documentary material or tangible object that was relevant to the investigation in the possession, custody, or control of the person would be subject to a civil fine of up to \$10,000 per violation.

Any testimony, answer, documentary material, or tangible object received by the Attorney General or a prosecuting attorney in accordance with a written demand or order would be confidential until the time that an enforcement action was brought by the AG or prosecuting attorney. The Attorney General or a prosecuting attorney could disclose any testimony, answer, documentary material, or tangible object that was relevant to the investigation in any of the following circumstances:

- If the disclosure were to a law enforcement official.

- If the AG or prosecuting attorney considered the disclosure necessary to enforce the Act.
- If disclosure were ordered by a court.
- If the disclosure were after confidentiality was waived by the person subject to the written demand and the person that had testified, answered interrogatories, or produced material.

Applicability of Act

Currently, the Act specifies that it does not apply to transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of the State or the United States. Instead, under the bill, the Act would not apply to a specific method, act, or practice that was expressly authorized under the laws of the State or the United States or by an agency, board, or officer administering these laws. The bill specifies that this would not exempt a method, act, or practice solely because either of the following applied:

- The method, act, or practice was a part of a general transaction that was specifically authorized under the laws of the State or the United States.
- The method, act, or practice, or the general transaction of which the method, act, or practice was a part, was subject to governmental regulation.

The bill would require the Act to be liberally construed to effectuate its purpose and specify that remedies provided by the Act would be in addition to any other remedy provided by law.

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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.