

HOUSE BILL No. 4223

February 9, 1999, Introduced by Reps. Wojno, Gielegem, Dennis and Minore and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
(MCL 445.901 to 445.922) by adding section 3c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3C. (1) A COURT MAY IMPOSE A CIVIL FINE OF NOT MORE
2 THAN \$10,000.00 AGAINST A PERSON FOR EACH ACT OR OMISSION OF THAT
3 PERSON THAT VIOLATES THIS ACT AND ADVERSELY AFFECTS AN OLDER OR
4 DISABLED PERSON. THE FINE IMPOSED UNDER THIS SUBSECTION SHALL BE
5 IN ADDITION TO ANY OTHER PENALTY OR REMEDY PROVIDED FOR UNDER
6 THIS ACT. MONEY COLLECTED UNDER THIS SECTION SHALL FIRST BE
7 APPLIED TO ANY UNPAID DAMAGES AND ATTORNEY FEES ORDERED TO BE
8 PAID UNDER THIS ACT BEFORE IT IS APPLIED TO COLLECTION OF A CIVIL
9 FINE UNDER THIS SECTION. A FINE COLLECTED UNDER THIS SECTION

1 SHALL BE DEPOSITED IN THE STATE TREASURY AND CREDITED TO THE
2 OLDER AND DISABLED VICTIMS FUND CREATED IN SUBSECTION (4).

3 (2) IN DETERMINING WHETHER TO IMPOSE A CIVIL FINE UNDER THIS
4 SECTION, THE COURT SHALL CONSIDER THE FOLLOWING:

5 (A) WHETHER THE DEFENDANT'S CONDUCT WAS IN DISREGARD OF THE
6 RIGHTS OF AN OLDER OR DISABLED PERSON.

7 (B) WHETHER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE
8 DEFENDANT'S CONDUCT WAS DIRECTED TO AN OLDER OR DISABLED PERSON.

9 (C) WHETHER THE OLDER OR DISABLED PERSON WAS MORE VULNERABLE
10 TO THE DEFENDANT'S CONDUCT BECAUSE OF AGE, POOR HEALTH, INFIRMI-
11 TY, IMPAIRED UNDERSTANDING, RESTRICTED MOBILITY, OR DISABILITY
12 THAN OTHER PERSONS AND WHETHER THE OLDER OR DISABLED PERSON ACTU-
13 ALLY SUFFERED SUBSTANTIAL PHYSICAL, EMOTIONAL, OR ECONOMIC DAMAGE
14 RESULTING FROM THE DEFENDANT'S CONDUCT.

15 (D) WHETHER THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE
16 CONDUCT WOULD INFLICT MENTAL OR EMOTIONAL DISTRESS.

17 (E) WHETHER THE DEFENDANT'S CONDUCT CAUSED AN OLDER OR DIS-
18 ABLED PERSON TO SUFFER ANY OF THE FOLLOWING:

19 (i) LOSS OF OR ENCUMBRANCE UPON A PRIMARY RESIDENCE OF THE
20 OLDER OR DISABLED PERSON.

21 (ii) LOSS OF OR ENCUMBRANCE UPON THE OLDER OR DISABLED
22 PERSON'S PRINCIPAL EMPLOYMENT OR PRINCIPAL SOURCE OF INCOME.

23 (iii) LOSS OF FUNDS RECEIVED UNDER A PENSION OR RETIREMENT
24 PLAN OR A GOVERNMENT BENEFITS PROGRAM.

25 (iv) LOSS OF PROPERTY SET ASIDE FOR RETIREMENT OR FOR PER-
26 SONAL OR FAMILY CARE AND MAINTENANCE.

1 (v) LOSS OF ASSETS ESSENTIAL TO THE HEALTH AND WELFARE OF
2 THE OLDER OR DISABLED PERSON.

3 (F) ANY OTHER FACTORS THE COURT DETERMINES APPROPRIATE.

4 (3) THE OFFICE OF SERVICES TO THE AGING SHALL DEVELOP AND
5 IMPLEMENT A STATEWIDE EDUCATIONAL PROGRAM TO INFORM OLDER PERSONS
6 AND DISABLED PERSONS, LAW ENFORCEMENT AGENCIES, THE JUDICIAL
7 SYSTEM, SOCIAL SERVICES PROFESSIONALS, AND THE GENERAL PUBLIC OF
8 BOTH OF THE FOLLOWING:

9 (A) THE PREVALENCE AND PREVENTION OF CONSUMER CRIMES AGAINST
10 OLDER AND DISABLED PERSONS.

11 (B) THE PROVISIONS OF THIS ACT, INCLUDING THE PENALTIES FOR
12 VIOLATIONS OF THIS ACT AND THE REMEDIES AVAILABLE FOR VICTIMS OF
13 THOSE VIOLATIONS.

14 (4) THE OLDER AND DISABLED VICTIMS FUND IS CREATED WITHIN
15 THE STATE TREASURY.

16 (5) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
17 FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER
18 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER
19 SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND
20 INVESTMENTS. THE STATE TREASURER SHALL ANNUALLY PRESENT TO THE
21 OFFICE OF SERVICES TO THE AGING AN ACCOUNTING OF THE AMOUNT OF
22 MONEY IN THE FUND.

23 (6) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
24 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

25 (7) THE OFFICE OF SERVICES TO THE AGING SHALL EXPEND MONEY
26 FROM THE FUND TO IMPLEMENT A CONSUMER EDUCATION PROGRAM AS

1 REQUIRED BY SUBSECTION (3) AND TO PROVIDE OTHER SERVICES AS
2 REQUIRED BY LAW.

3 (8) AN ACTION MAY BE BROUGHT PURSUANT TO THIS SECTION UNDER
4 SECTION 5, 6, 10, OR 15.

5 (9) AS USED IN THIS SECTION:

6 (A) "DISABLED PERSON" MEANS A PERSON WHO HAS A DISABILITY AS
7 THAT TERM IS DEFINED IN SECTION 216 OF TITLE II OF THE SOCIAL
8 SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 416.

9 (B) "FUND" MEANS THE OLDER AND DISABLED VICTIMS FUND CREATED
10 PURSUANT TO SUBSECTION (4).

11 (C) "OFFICE OF SERVICES TO THE AGING" MEANS THE ENTITY CRE-
12 ATED BY SECTION 5 OF THE OLDER MICHIGANIANS ACT, 1981 PA 180, MCL
13 400.585.

14 (D) "OLDER PERSON" MEANS A PERSON WHO IS 60 YEARS OF AGE OR
15 OLDER.