

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4080 (as reported with amendments)
Sponsor: Representative Mary Ann Middaugh
House Committee: Energy and Technology
Senate Committee: Technology and Energy

Date Completed: 6-26-02

RATIONALE

Section 540e of the Michigan Penal Code makes it a misdemeanor, punishable by imprisonment for up to six months and/or a maximum fine of \$500, for a person maliciously to use any service provided by a communications common carrier with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another, by engaging in certain specified activities. One of the prohibited activities is threatening physical harm or damage to any person or property in the course of a telephone conversation. It has been pointed out that this prohibition, as well as other prohibited activities cited in Section 540e, was placed in statute before voice mail, answering machines, and other types of communications devices that have the capability to take messages became commonly used. This means that people can leave messages involving threats, obscene language, and other prohibited behavior without the threat of prosecution, because there is no actual conversation between two people. Reportedly, this led to a situation in which an individual who threatened a Family Independence Agency worker by voice mail could not be prosecuted. It has been suggested that Section 540e be revised to reflect the development of new technologies and their use in communicating threatening messages.

CONTENT

The bill would amend the Michigan Penal Code to extend current prohibited behavior pertaining to telephone usage to the use of a "telecommunications service or device"; increase the maximum fine for maliciously using a

telecommunications service from \$500 to \$1,000; and extend the prohibited conduct to making a threat or using offensive language in a message through the use of a telecommunications service or device. The bill also would refer to a "telecommunications service provider", rather than a communications common carrier.

Prohibited conduct currently includes doing the following in the course of a telephone conversation: threatening physical harm or damage to any person or property, or using any vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act. The bill would prohibit this conduct in the course of a conversation or message through the use of a telecommunications service or device.

Another prohibited activity is deliberately refusing or failing to disengage a connection between a telephone and another telephone or between a telephone and other equipment provided for the transmission of messages by telephone, thereby interfering with any communications service. The bill instead would prohibit deliberately refusing or failing to disengage a connection between two telecommunications devices or between a telecommunication device and other equipment provided for the transmission of messages through the use of a telecommunications service or device.

Also, prohibited conduct currently includes deliberately calling a telephone of another person in a repetitive manner that causes interruption in telephone service or prevents the person from using his or her telephone

service. The bill would amend this provision to prohibit deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that caused interruption in telecommunications service or prevented the person from using his or her telecommunications service or device.

The bill would define "telecommunications", "telecommunications service", and "telecommunications device" as those terms are currently defined in the Code. "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method including but not limited to electronic, magnetic, optical, digital, or analog. "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications including a computer, computer chip or circuit, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem or device that enables use of a modem, cables, converters, decoders, descramblers, satellite equipment, or other devices and equipment. "Telecommunications service" means providing, allowing, facilitating, or generating any form of telecommunications through the use of telecommunications devices or telecommunications access devices over a telecommunications system.

MCL 750.540e

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would revise Section 540e to recognize the advances in telecommunications technology, including answering machines and voice mail, that people might use maliciously and contrary to the provisions of that section of the Penal Code. Because Section 540e actually prohibits malicious behavior only "in the course of a telephone conversation" or otherwise by "telephone", reportedly the Van Buren County prosecuting attorney was unable to prosecute in a case in which an employee of

the State Family Independence Agency received threatening voice mail messages, without actually having a conversation with the caller who left the message. The bill would correct this situation by prohibiting the making of a threat or use of offensive language by message, and go a step further by extending current prohibited behavior pertaining to telephone usage to other telecommunications services and devices. In addition, by increasing the maximum fine from \$500 to \$1,000, the bill could deter individuals from using telecommunications devices for prohibited activity.

Legislative Analyst: George Towne

FISCAL IMPACT

The bill would have no fiscal impact on the State, and an indeterminate fiscal impact on local governments. There are no data available to indicate how many offenders are convicted of maliciously using a communications service. Libraries would receive any additional penal fine revenue raised by increasing the maximum fine from \$500 to \$1,000.

Fiscal Analyst: Bethany Wicksall

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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.