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SFA



BILL ANALYSIS

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Senate Bill 121 (Substitute S-3 as reported)
Senate Bill 990 (Substitute S-3 as reported)
Sponsor: Senator Glenn D. Steil (Senate Bill 121)
Senator Mike Goschka (Senate Bill 990)
Committee: Technology and Energy

Date Completed: 6-20-00

RATIONALE

Telemarketing apparently has been an accepted way of conducting business since the early 1930s. It provides a legitimate way to contact numerous potential customers quickly and easily in an effort to sell a variety of products and services, including such items as light bulbs, magazine subscriptions, insurance policies, home improvements, and security systems. Since the mid-1980s, however, telephone marketing also has become a common mode of defrauding the public. It is widely reported that fraudulent telemarketing costs the American public around \$40 billion annually. Every year, thousands of consumers lose from a few dollars to their life savings to telephone con artists, according to the Federal Trade Commission (FTC).

To address consumer concerns about the growing volume of telephone marketing and the increasing use of automated and prerecorded calls, the U.S. Congress in 1991 enacted the Telephone Consumer Protection Act (TCPA), which restricts the use of the telephone network for unsolicited advertising. In 1992, the Federal Communications Commission (FCC) established rules governing unwanted telephone solicitations, and regulating the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines. In addition, the FTC promulgated the Telemarketing Sales Rule to protect consumers from telephone fraud. Among other things, these rules limit calling times to between 8 a.m. and 9 p.m., require telephone solicitors to maintain a "do-not-call" list of consumers who do not want to receive future telephone solicitations, and prohibit telemarketers from calling customers on the list.

While these protections are available under Federal regulations, it has been suggested that Michigan also should take steps to regulate telemarketers and protect individuals from unwanted or deceptive phone solicitations.

CONTENT

The bills would amend Public Act 227 of 1971, which prescribes the rights and duties of parties to home solicitation sales, to require the Public Service Commission (PSC) to compile a do-not-call register of residential telephone subscribers who objected to receiving telephone solicitations; and to prohibit a person from engaging in the business of telephone solicitation in Michigan without a license issued under the Act, the Insurance Code, or the Charitable Organizations and Solicitations Act. Senate Bill 121 (S-3) is tie-barred to Senate Bill 990.

Senate Bill 121 (S-3)

The bill would require the Public Service Commission to establish and provide for the operation of a register of telephone numbers of residential telephone subscribers who objected to receiving telephone solicitations. The register could be operated by the PSC or by another entity under contract with the PSC. A telephone solicitor could not make a telephone solicitation in Michigan without first obtaining the register, and could not call a person who was listed on it.

Residential subscribers could enroll on the register as provided by the PSC. Enrollment would become effective 30 days after the date of enrollment. The registration would pertain only to the telephone number designated by the consumer and would not transfer to another number controlled by the consumer unless he or she registered that number. A subscriber would remain on the do-not-call register until he or she requested that the PSC remove his or her number from it. Business telephone numbers could not be included on the register. The PSC would have to update the register at the beginning of each month, and could purge it periodically in order to ensure accuracy.

Information contained in the database would not be open to public inspection or disclosure under the

Freedom of Information Act. The PSC would have to take all necessary steps to protect the confidentiality of that information. The PSC would have to forward the list of Michigan subscribers on the register to the FCC's, or any other Federal agencies' do-not-call national database, if and when a Federal list was established.

Senate Bill 990 (S-3)

The bill would prohibit a person from engaging in the business of telephone solicitation in Michigan unless the person held a license issued under the bill, under the Insurance Code, or under the Charitable Organizations and Solicitations Act.

To be licensed under the bill, a person would have to submit a license application to the Public Service Commission for review and approval, as well as a license fee determined by the PSC. The PSC would have to impose the same fee on all applicants, and fee revenue could be used only for the administration and enforcement of the Act. A license application would have to be on a form approved by the PSC, be verified by oath or affirmation, and contain all information that the PSC required.

Before issuing a license, the PSC could require proof of financial integrity; require the applicant to post a bond or similar instrument if the PSC believed that it was necessary to ensure the telephone solicitor's financial integrity; require the applicant to provide proof that it was otherwise properly registered to do business in this State, and agree to be subject to and pay all applicable taxes of the State; and adopt any other requirements that the PSC found to be in the public interest. If an applicant complied with these requirements, the PSC would have to issue a license.

A license would expire on January 1 of each year and could be renewed upon the filing of a renewal application. The PSC would have to impose the same renewal fee on all applicants, and renewal fee revenue could be used only for the administration and enforcement of the Act.

Currently, the Act prohibits a home solicitation sale from being made by telephonic solicitation using in whole or in part a recorded message. The bill provides, instead, that a home solicitation sale could not be made by telephone solicitation except as provided under the Act. The Act also prohibits a person from bringing any action in a court of this State for the collection of any home solicitation sale contract without providing that the person was at all times in compliance with the Act. The bill would delete that provision.

The bill would define "telephone solicitor" as any

person who in connection with unsolicited telephone calls made or caused to be made a telephone solicitation from within or outside of this State, including calls made by use of automated dialing and announcing devices or by a live person.

"Telephone solicitation" would mean any voice communication over a telephone for the purpose of encouraging the purchase or rental of, or investment in, goods or services. It would not include any voice communication to a residential telephone subscriber if the subscriber had given his or her prior express invitation or permission, if the communication were made on behalf of a not-for-profit organization, or if the subscriber were an existing customer of the telephone solicitor. ("Existing customer" would include a residential telephone subscriber with whom the person or entity making a telephone solicitation had had an established business relationship within the prior 12 months. An "established business relationship" would be one that was based on the purchase or a transaction regarding products or services offered; was formed by a voluntary two-way communication between a person making a telephone solicitation and a person to whom a telephone solicitation was made; and had not been terminated by either party.)

"Telephone solicitation" also would not include occasional and isolated voice communications to a residential telephone subscriber if a direct employee of the business made the voice communication; the communication were not made as part of a telecommunications marketing plan; the business did not sell or engage in telephone solicitations; and the business did not make more than 30 such voice communications in any one calendar year.

Proposed MCL 445.123 (S.B. 121)
MCL 445.111 et al. (S.B. 990)

BACKGROUND

According to a Consumer Alert on the Public Service Commission's Internet site, it is illegal under Federal regulations for a telemarketer to do any of the following:

- Call an individual who has stated clearly that he or she wants to be added to the telemarketer's do-not-call list.
- Call before 8 a.m. or after 9 p.m.
- Tie up an individual's telephone line with autodialed and prerecorded voice messages.
- Neglect to tell an individual at the beginning of the call the company name and what it is selling; if the call is a prize promotion, the caller must tell the person that no purchase or payment is necessary to win.
- Misrepresent any information or facts about the

telemarketer's goods or services, earnings potential, profitability, risk, etc., or the nature of a prize in a prize-promotion scheme.

- Ask for payment before telling the total cost of goods, whether a sale is final or nonrefundable, the odds of winning a prize, and any restrictions or conditions on getting a prize.
- Withdraw money from a person's checking account without his or her express, verifiable authorization, which must be written or taped and made available to the person's bank upon request.
- Request a fee before providing a service for credit repair or loan promotion, lie to get a person to pay for any goods or services, or transmit unsolicited advertisements to fax machines.

According to an Internet publication of the FCC, an individual may avoid future "live" telephone solicitations to his or her home telephone number by clearly stating, when he or she receives a call, that the individual wants to be added to the caller's do-not-call list and does not want any further solicitations from that person or entity. The person or entity making the call must keep a record of the do-not-call request for 10 years from the time of the request, and may not make further telephone solicitations to the individual's home. Tax-exempt nonprofit organizations, however, are not required to keep do-not-call lists, and the FCC's do-not-call rule does not apply to calls placed to business numbers.

In addition, the Telephone Preference Service of the Direct Marketing Association commercially publishes and sells lists of consumers who do not want to receive telephone solicitation calls.

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

Presumably, most people would agree that telephone solicitations can be inconvenient and annoying, especially when calls are made frequently, they interrupt household and family activities, and callers refuse to take "no" for an answer. When phone solicitors engage in fraudulent telemarketing, however, they go beyond bothersome and become abusive, or even criminal. The consequences can range from the loss of a few dollars to financial devastation, particularly when the victim is a senior citizen who loses his or her life savings. According to the FTC, individuals aged 60 or older may be a special target for people selling bogus products and services by phone, who try to take advantage of older people on the theory that they may be more trusting and polite toward strangers. Age is not a

prerequisite to being defrauded, however, and anyone may be the subject of the following types of common scams: prize offers, in which the consumer must do something like attend a sales presentation or give out a credit card number in order to receive a worthless or overpriced "prize"; travel packages, where "free" or "low cost" vacations can cost several times what the consumer was led to expect, or might never materialize; investment schemes that promise high returns and little or no risk; phony charities labeled with names that sound like better known, reputable organizations; and even so-called recovery rooms, which offer to help victims recover amounts they previously lost to other telemarketers.

Although the Federal TCPA and telemarketing rules offer valuable consumer protections, they have some limitations. Consumers may request the FCC to take enforcement action regarding violations, or may bring their complaints to the attention of a state attorney general or other designated official, who may bring a civil action to enjoin a person engaged in a pattern of telephone calls or other transmissions that violate the TCPA. Most state and Federal agencies, however, can take on only the most pervasive and notorious abusers. In addition, consumers, but not governmental authorities, may enforce the TCPA's monetary penalties. Furthermore, individuals must request to be placed on a do-not-call list each time a different telemarketer calls.

In Michigan, the remedies available to consumers also are limited. An individual who has lost money to a telemarketer may file a complaint with the Attorney General's Consumer Protection Division, which can attempt to contact the company and mediate the dispute. Currently, the Consumer Protection Division has approximately 330 pending complaints involving telephone solicitors. A consumer also may contact the PSC, which will advise him or her to be placed on telemarketers' do-not-call lists, and may refer the person to the Attorney General's office.

These proposals would build on the protections and remedies that are currently available. Under Senate Bill 121 (S-3), the PSC would have to operate (or contract with another entity to operate) a do-not-call register; telephone solicitors would have to obtain the register and could not call anyone who was listed on it. Instead of having to tell each telemarketer not to call them, consumers could simply enroll on the register. Under Senate Bill 990 (S-3), a person could not engage in the business of telephone solicitation without being licensed. This would give the State a method of keeping track of telemarketers and ensuring their financial integrity. Consumers who had a question about the reputability of a telephone

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solicitor then could check with the State to determine whether it was properly licensed. These measures would help protect individuals from the inconvenience caused by invasive telemarketers and the potential loss of money to fraudulent telemarketing schemes.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 121 (S-3)

The bill would require the PSC or another entity assigned by the PSC to establish and maintain a register of phone subscribers objecting to phone solicitation. This bill would create an additional responsibility for the Commission. The fund source to offset these additional costs is not identified.

Senate Bill 990 (S-3)

The bill would require the Public Service Commission to license all businesses participating in telephone solicitation activities. The application fee would be set by the Commission. This requirement would increase the responsibilities of the Commission but, depending on the level of the application and renewal fee, the additional revenue should offset any additional costs attributable to this change.

Fiscal Analyst: M. Tyszkiewicz