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HOME SOLICITATION SALES

House Bill 4984 as passed by the House Second Analysis (5-5-98)

Sponsor: Rep. John Freeman
Committee: Consumer Protection

THE APPARENT PROBLEM:

The home solicitation sales act, enacted in 1971, provides an opportunity for people who make non-emergency purchases of goods or services of more than \$25 to escape or void the sale or contract for sale of those goods or services where the seller engaged in either personal or telephonic solicitation of the sale at a residence of the buyer. The act requires the seller to present the buyer with a written agreement or an offer to purchase and obtain the buyer's signature on the offer or agreement. This agreement or offer must contain, among other things, a designation of the date of the transaction as the date on which the buyer actually signs and a statement informing the buyer that he or she may cancel the transaction at any time prior to midnight of the third business day after the date of the transaction. The act also recommends language for informing the buyer of his or her rights and sets the minimum type size that should be used in providing this information. Penalties are also provided for sellers who do not comply with the act's requirements. It has been suggested that the information required in the written agreement or offer to purchase is insufficient and that the requirements should be expanded. In addition, it is suggested that the means by which a buyer may rescind a transaction under the act should be expanded to include current electronic means of communication, including e-mail and facsimile transmissions.

THE CONTENT OF THE BILL:

House Bill 4984 would amend the home solicitation sales act to require the provision of additional information to consumers. The bill would require an agreement or offer to purchase to be written in a clear and coherent manner using words and phrases of common everyday meaning, appropriately divided and captioned by its various sections. Furthermore, in addition to the information already required by the act, an agreement or offer to purchase provided by a seller would be required to include all of the following information: a) the seller's name, address, and

telephone number, b) an itemized list of all the charges from the transaction, including shipping, handling, or delivery fees, and c) a detailed description of the goods or services provided by the seller in accordance with the transaction.

In addition, the bill would allow a buyer to cancel a home solicitation sale by e-mail or facsimile, as well as by mail, delivery, or telegram, as currently allowed.

MCL 445.113

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The home solicitation sales act provides protection for consumers against the high pressure tactics of salespersons who attempt to sell products or services to people at their homes. The act offers a means for a consumer to reflect and change his or her mind about a purchase and to rescind the transaction within three days. The bill will strengthen the act by requiring that a seller provide more information to a purchaser in such a situation. The added information required by the bill (the name, address and telephone number of the seller, a detailed description of the goods or services, and an itemization of the charges arising from the transaction) is all of a sort that reputable sellers should already provide to their customers.

Furthermore, by allowing the use of e-mail and facsimile transmission, the bill would also modernize the manner in which notification of an intent to cancel a sale may be given by a buyer to a seller. This will simplify the cancellation process for many purchasers.

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Against:

There is nothing to indicate that the proposed changes to the home solicitation sales act are needed; the act appears to have its intended effect and expansion of its requirements at present seems unnecessary. Further, the bill will only serve to make the act more onerous, because the expanded requirements set forth in the bill will increase the amount of paperwork needed for a seller to complete a transaction and thus increase the costs for companies that engage in telemarketing or door-to-door sales. This will no doubt result in increased costs that could be passed on to consumers.

Response:

The bill is hardly burdensome in either the amount or nature of the information that it would require sellers to provide to consumers. The information required is the sort of information that should be, and likely is, already provided by reputable sellers. Requiring a company to identify itself, and where it can be contacted, and to list the goods or services purchased and the all of the charges for the sale is neither onerous nor excessive.

Against:

While the Home Solicitation Sales Act is effective when applied to door-to-door sales, it is less so when applied to telemarketing. Telemarketing and door-to-door sales should not be held to the same standards. In some situations -- for example, the sale of long distance telephone service -- the transfer of services to the buyer can be instantaneous. As a result, a buyer could receive the benefit of the seller's services from the time of the acceptance of the offer over the phone and then reject the deal after the time period provided in the act and not be required to pay for the services provided in the interim. A more fair treatment would be to provide an exemption for telemarketing sales where the seller gives the buyer at least seven days to review the goods or services purchased and the right to cancel or return for a full refund, and the refund is processed by the seller within 30 days of the receipt of the returned goods or notice of cancellation.

POSITIONS:

The Michigan Consumer Federation supports the bill. (4-15-98)

Sprint has no position on the bill. (4-15-98)

MCI does not oppose the bill. (4-16-98)

AT&T is neutral on the bill. (4-16-98)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.