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HOME SOLICITATION SALES ACT

House Bill 5216 as enrolled
Public Act 126 of 1998
Second Analysis (8-5-98)

Sponsor: Rep. Bob Brown
House Committee: Consumer Protection
Senate Committee: Financial Services

THE APPARENT PROBLEM:

Unfortunately, every day seems to bring a new scam whereby honest citizens are fleeced of their money by unscrupulous persons. Currently, a number of these scams involve the use of what are sometimes called "cold call ads" -- these are usually postcards or letters mailed by to the prospective consumer indicating that he or she has won some item or providing limited information about a "great deal" without providing any more information about the seller, the product, or its cost and asks the consumer to call for more information. Under the current law, if the consumer makes the call, the resulting transaction is not subject to the home solicitation sales act's provisions. Thus, if the transaction is a scam or even if the consumer is dissatisfied with the product, he or she has limited recourse against the seller. It has been suggested that to protect consumers, sales made through the use of this type of advertisement should be made subject to the home solicitation sales act.

THE CONTENT OF THE BILL:

The bill would amend the home solicitation sales act to add certain behaviors to the definition of home solicitation sale. Currently, a home solicitation sale includes a sale of goods or services for more than \$25, where the seller solicits the sale of those goods or services, either personally or over the telephone at the buyer's residence. Under the bill, a home solicitation sale would also include written solicitations that a buyer received at his or her home with the exception of printed advertisements in generally circulated publications, such as newspapers or magazines. Postcards and other written notices delivered to a buyer's residence asking the buyer to contact the seller or the seller's agent by telephone to inquire about a

good or service would be included in the definition of home solicitation sale unless the written notice concerned a prior purchase or order or accurately described the good or service and listed its price.

In addition, a reference to the former Department of Licensing and Regulation would be changed to the Department of Consumer and Industry Services.

MCL 445.111

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local government. (8-5-98)

ARGUMENTS:

For:

The home solicitation sales act, enacted in 1971, serves to define the rights and responsibilities of persons both initiating and receiving offers to purchase a good or service made at a consumer's home. However, as time has passed and new technology and sales methods have been developed, some less scrupulous sellers have found ways of avoiding the act's provisions. For example, if a consumer calls a seller in response to a letter or postcard urging the consumer to call for more information (a cold call ad), the transaction is not subject to the act's provisions. By bringing the use of these cold call ads under the home solicitation sales act it is hoped that the bill will serve to prevent some fraud and give both buyers and sellers in these transactions the same rights and responsibilities as they have in other home solicitation

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sales. Furthermore, the bill is limited to these "cold call" ads and will not affect advertisements that include the price and description of the good or service, like mail order catalogs, or advertisements in magazines or newspapers.

Against:

Since presumably a fraudulent sale resulting from a cold call advertisement would be subject to the Consumer Protection Act, is it really necessary to add this type of transaction to the home solicitation sales act? Furthermore, should a person who has the opportunity to make the decision to contact a seller be given the same benefit of the home solicitation sales act's provisions as someone who is confronted at his or her own home by a sales person? Part of the reasoning behind the home solicitation sales act is that people who are sought out by a seller are more vulnerable to pressure and have less time to reflect upon whether or not they truly wish to make the purchase, and if the prospective buyer is confronted at his or her own residence the pressure is even greater. However, it does not seem that the same thing can be said of the situations dealt with by the bill -- a person who receives one of these ads may choose whether or not to call without any pressure from the seller. If the buyer chooses to initiate contact with the seller, then it seems unfair to allow him or her to the claim that he or she was unfairly pressured.

Response:

These protections are needed because the people who fall for these scams are usually the most vulnerable in our society. These cold call ads prey on those who are easily duped by offering them a deal too good to be true or telling them that they will get something for nothing. Admittedly, people who know "if something sounds too good to be true, it probably is" and "you can't get something for nothing" probably would not fall for these scams. Unfortunately, not everyone is that wise, and society should give precedence to protecting the victims of these scams rather than those running them.

Furthermore, proving fraud or misrepresentation under the Consumer Protection Act is far more difficult than canceling a transaction under the home solicitation sales act.

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.