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HOME SOLICITATION SALES ACT: EXCLUDE CREDIT OFFERS, ETC.

House Bill 4318 with committee amendment First Analysis (3-4-99)

Sponsor: Rep. Alan Sanborn
**Committee: Insurance and Financial
Services**

THE APPARENT PROBLEM:

The Home Solicitation Sales Act covers sales of goods or services of more than \$25 in which the seller or someone acting for the seller engages in a personal, written, or telephone solicitation at the residence of the buyer, and the buyer's agreement or offer to purchase is provided at the residence. Generally speaking, the act permits a buyer to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. (This is typically referred to a "cooling-off" period.) A seller is required to provide notice of the right to cancel, which can also serve as a form for the buyer to use in canceling the sale. The act exempts a number of transactions, including sales by insurance agents and real estate brokers and salespersons. Written solicitations were added by legislation in 1998. Prior to that, it applied only to personal or telephone solicitations. Public Act 126 of 1998 (House Bill 5216) amended the act to add written solicitations that a buyer receives at his or her home, with the exception of printed advertisements in newspapers and magazines.

Public Act 126 specifies that a home solicitation sale includes a sale arising from a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless the postcard or notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service (for example, a catalogue). Representatives of financial institutions and state regulators are concerned that this new extension of the law will apply to materials they send to people's homes providing information on loans, mortgages, lines of credit, charge cards, and other products. They argue that Public Act 126 was not

aimed at them but at mailings of the kind that inform consumers they have won a prize or are entitled to a great bargain if they dial a number listed on the card. Such calls then lead to high pressure sales tactics. Prior to Public Act 126, apparently, such a telephone conversation would not have been covered by the Home Solicitation Sales Act because it was initiated by the customer. This scenario does not apply to mailings about loan-related products, say representatives of financial institutions, and, besides, a number of other acts already adequately regulate the sale of financial products.

In fact, when he signed Public Act 126, Governor Engler spoke to this issue in a letter to the House of Representatives, saying, "I am concerned the bill may have the effect of denying consumers legitimate and important information regarding financial products," and urging the legislature to "initiate legislation to clarify legislative intent and re-address these questions." The governor said, "I do not believe the Act or Enrolled House Bill 5216 were intended to affect the validity of a loan not involving the sale of a good or service or to prevent a loan broker from supplying information to consumers about financial products. Consumers are already protected from dubious lending institutions under the Truth in Lending Act." Legislation to address this issue has been introduced.

THE CONTENT OF THE BILL:

House Bill 4318 would amend the Home Solicitation Sales Act to exclude certain transactions from the term "goods or services." It also would make the current language about postcards and written notices serve as the definition of the term "written solicitation," and would specifically exclude from the act "a sale made

House Bill 4318 (3-4-99)

at a fixed location of a business establishment where goods or services are offered or exhibited for sale."

Under the bill, the term "goods or services" would not include either:

-- a loan, deposit account, or trust account lawfully offered or provided by a federally insured depository institution or a subsidiary or affiliate of such an institution; or

-- an extension of credit subject to the Mortgage Brokers, Lenders, and Services Licensing Act; the Secondary Mortgage Loan Act; the Regulatory Loan Act of 1963; the Consumer Financial Services Act; the Motor Vehicle Sales Finance Act; or Public Act 379 of 1984, which deals with credit card and charge card arrangements.

MCL 445.111

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact. (3-3-99)

ARGUMENTS:

For:

The bill would fix a potential problem inadvertently caused by Public Act 126 of 1998. That act (House Bill 5216) included written solicitations in the Home Solicitation Act to get at certain unscrupulous marketers who use "cold call" postcards and other written solicitations to entice customers to call them. The concern on the part of financial institutions and state regulators is that the new act may apply to written material on loan-related products, adding an unnecessary layer of regulation and complicating loan transactions. The bill would exclude certain regulated credit transactions from the Home Solicitation Act. Insurance agents and real estate salespersons are already exempt, so the exemption for those selling loans and other financial products is not extraordinary.

POSITIONS:

The Financial Institutions Bureau supports the bill. (3-3-99)

The Michigan League of Community Banks supports the bill. (3-3-99)

The Mortgage Bankers Association supports the bill. (2-24-99)

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The Michigan Bankers Association supports the bill. (3-3-99)

The NBD Bank supports the bill. (3-3-99)

The Michigan Credit Union League supports the bill. (3-3-99)

The Michigan Consumer Federation is not opposed to the bill. (3-3-99)

Analyst: C. Couch

■ 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.