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## **REGULATE TELEMARKETING, HOME SALES**

**House Bills 5446 and 5449**  
**Sponsor: Rep. Jim Howell**

**House Bill 5447**  
**Sponsor: Rep. Randy Richardville**

**House Bill 5448**  
**Sponsor: Rep. Gene DeRossett**

**House Bill 5450**  
**Sponsor: Rep. Janet Kukuk**

**House Bill 5451**  
**Sponsor: Rep. Mike Kowall**

**House Bill 5452**  
**Sponsor: Rep. Wayne Kuipers**

**House Bill 5453**  
**Sponsor: Rep. Jennifer Faunce**

**House Bill 5454**  
**Sponsor: Rep. Paul Wojno**

**House Bill 5455**  
**Sponsor: Rep. John Pappageorge**

**House Bill 5456**  
**Sponsor: Rep. Eileen DeHart**

**House Bill 5457**  
**Sponsor: Rep. Paul DeWeese**

**House Bill 5458**  
**Sponsor: Rep. Mark Jansen**

**House Bill 5459**  
**Sponsor: Rep. Cameron Brown**

**Committee: Energy and Technology**  
**Complete to 9-25-00**

**House Bills 5446 - 5459 (9-25-00)**

### **A SUMMARY OF HOUSE BILLS 5446-5459 AS INTRODUCED 2-24-00**

The package of bills would amend the home solicitation sales act and the penal code to license and regulate telemarketing businesses.

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.

House Bill 5446 would amend the home solicitation sales act (MCL 445.111 et al.) to require telephone solicitors to be licensed by the Public Service Commission (PSC), and would prohibit home solicitation sales made by telephone solicitation except as provided under the act. (Many practices would be regulated under new sections of the act proposed to be added by the other bills in the package, as described below.) Further, the bill would delete language in current law that specifically exempts sales of insurance, real estate, and regulated financial transactions such as loans from regulation under the home solicitation sales act. (However, new definitions of “goods” and “services” would likely exclude the items. See Definitions, below.)

Licenses. Under the bill, a person would have to apply for a license as a telephone solicitor and pay a \$500 license fee. An application would have to be in writing, be verified by oath or affirmation, and contain all information required by the PSC. The commission could require proof of financial integrity, and could require the applicant to post a bond or similar instrument, if necessary to ensure financial integrity. Further, the commission could require an applicant to provide proof that he or she is otherwise properly registered to do business in the state, and to agree to be subject to and to pay all applicable taxes. The PSC could adopt any other requirements it found to be in the public interest. If an applicant complied with all of these requirements, the commission would issued a license to allow the person to engage in the business of telephone solicitation. A license would expire on January 1 of each calendar year and could be renewed upon payment of a \$200 renewal fee. Fees collected under the act would be deposited into a restricted account of the general fund, and used exclusively for the funding of the PSC.

Definitions. The bill would also revise the definition section of the home solicitation sales act, and add definitions pertaining to telephone solicitation sales. It would delete and reinsert several definitions without substantive change. And, it would make the following substantive changes:

- Current law does not define “goods and services”, but specifically *excludes* loans, deposit accounts, and extensions of credit regulated under other statutes. The bill would delete these provisions and instead add specific inclusive definitions. “Goods” would be defined as all tangible personal property purchased primarily for personal, family, or household use and not for commercial, agricultural, or business use. The term would include home improvement property, and merchandise certificates or coupons. It would not include motor vehicles, money, a thing in action (the right to recover money or property by a judicial proceeding), intangible personal property, or other equivalent. “Services” would mean work, labor, advice, counseling, or instruction if purchased primarily for personal, family, or household use and not for commercial or business use. Services would not include items for which the cost is fixed by law or subject to the approval or disapproval of the state or the federal government, or educational counseling or instruction provided by an accredited college, university, school, kindergarten, or nursery school.

- The bill would provide definitions of “telephone solicitor” and “telephone solicitation”. A telephone solicitor would be defined to mean a person doing business by making telephone solicitations from within or outside of the 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. Telephone solicitation *would not include*:

- Any voice communication to a residential telephone subscriber with the subscriber's prior express invitation or permission.

- Any voice communication to a residential telephone subscriber made on behalf of a nonprofit organization, if made by a bona fide member of the organization.

- Any voice communication to an existing customer of the solicitor.

- Occasional and isolated voice communications to a residential telephone subscriber, if made by a direct employee of the business making the call, if *not* made as part of a telecommunications marketing plan, if the business has a reasonable belief that the specific person receiving the call is considering purchasing a good or service, if the business does not sell or engage in telephone solicitations, and if the business does not make more than three such calls per week.

House Bills 5447 and 5448-5459 would each add a new section to the home solicitation sales act (MCL 445.111 et al.) to regulate telephone solicitation practices. House Bill 5448 would amend the Michigan Penal Code (MCL 750.540e). All of these bills are tie-barred to House Bill 5446.

House Bill 5447 would prohibit a telephone solicitor from placing a call to a residential telephone subscriber at times of the day other than 8 a.m. to 5 p.m. and 7 p.m. to 9 p.m. local time at the called party's location, without the prior express invitation or permission of the person being called. Further, as under current law, the bill would prohibit a telephone solicitation from being made, in whole or in part, by a recorded message. Telephone solicitors would be required to comply with all state and federal statutes and regulations regarding telephone solicitation practices.

House Bill 5448 would amend the penal code's provisions that make it a misdemeanor to maliciously use any service provided by a communications common carrier with the intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person, or to disturb the peace and quiet of any other person by taking certain specified actions. One of the prohibited actions is making an unsolicited commercial telephone call, by a person or a recording device, that is received between the hours of 9 p.m. and 9 a.m., and is made on behalf of a person, corporation or other entity soliciting business or contributions. The bill would rewrite this provision to make it apply only to calls made by a person (not a recording device) soliciting contributions on behalf of a person or nonprofit corporation or other entity. Further, the bill would add to the list of prohibited actions making a telephone solicitation call in violation of House Bill 5447. The existing penalty for a misdemeanor listed in this section of the penal code is imprisonment for up to six months, a fine of up to \$500, or both.

House Bill 5449 would require that all telephone solicitations to residential telephone subscribers do both of the following:

- Within the first 25 seconds of the call and at the conclusion of the call, state the name and telephone number of the person or organization initiating the call. The telephone number given would have to be a toll free number and be answered when telephone solicitations are being made.

- The person answering the telephone number provided would have to be able to provide information concerning the solicitation call.

House Bill 5450 would prohibit telephone solicitors from using equipment or network elements that block or interfere with the caller ID function on the telephone of a residential telephone subscriber. Local and long distance telephone service providers would be prohibited from providing any network element or service to telephone solicitors that would provide this capability. Providers would have to modify their tariffs to reflect the requirements of the bill within 60 days of the bill's effective date.

House Bill 5451 would make it an unfair or deceptive act or practice, and a violation of the home solicitation sales act, to:

- Misrepresent or fail to disclose, in a clear, conspicuous and intelligible manner and before payment is received from a customer, all of the following information:

- the total purchase costs to the consumer of the goods or services to be received;
- restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of any offer;
- any material term or condition of the seller's refund, cancellation, or exchange policy, including, if applicable, that no such policies exist;
- all material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the "no purchase" method of entering the contest;
- any material aspect of an investment opportunity being offered, including but not limited to risk, liquidity, earnings potential, market value, and profitability;
- the quantity and any material aspect of the quality or basic characteristics of any goods or services offered;
- the right to cancel any sale as provided under this act.

- Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered.

- Make a false or misleading statement with the purpose of inducing a consumer to pay for any goods or services.

- Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization as required by the act.

- Offer to consumers in the state any prize promotion in which a purchase or payment is necessary to obtain the prize.
- Fail to comply with the record-keeping requirements that would be added by House Bill 5456.

House Bill 5452 would require a telephone solicitor to immediately discontinue the solicitation if the person being called gives a negative response at any time during the call, and would require the solicitor to hang up the telephone within 10 seconds after the person being called terminates the call.

House Bill 5453 would require the Public Service Commission to establish a “do not call” register of telephone subscribers who object to receiving telephone solicitations. The commission could operate the register, or contract with another entity for its operation. Residential (and not business) telephone subscribers could enroll on the register in a manner provided by the commission, with enrollment to become effective within 30 days. A subscriber would remain on the register until he or she requests to be removed. The commission would have to update the register at the beginning of each month, and could purge the register periodically in order to ensure accuracy. Information contained in the database (the register) would not be open to public inspection or disclosure under the Freedom of Information Act, and the commission would have to take all necessary steps to protect the confidentiality of the information. Further, the commission would forward the list of Michigan subscribers on the register to the Federal Communications Commission (or other applicable federal agency) for inclusion into any federal “do not call” national database, if and when such a federal list is established.

House Bill 5454 would require each telephone solicitor operating in the state to purchase from the PSC the “do not call” register established under House Bill 5453. A telephone solicitor would have to pay an annual fee of \$500 for access to the register. The fee would be payable by May 1 of each year, and cover the period of the following July 1 through June 30. Telephone solicitors would have a duty to ensure that they had the latest version of the register before soliciting telephone subscribers in the state. The bill also provides that, in addition to paper copies, the “do not call” register would have to be provided, with unlimited access, via the Internet or other electronic means to telephone solicitors.

House Bill 5455 would require local telephone service providers to notify their residential subscribers twice a year on how to enroll on the “do not call” register established under House Bill 5453. The notification would be included with the monthly telephone bill. In addition, local telephone service providers would be required to place information in their white pages telephone directory informing residential customers how to be included in the register.

House Bill 5456 would require telephone solicitors to keep accurate records of all telemarketing activities initiated in the state or directed to consumers located in the state. Upon demand, the records would have to be made available to the Public Service Commission, the attorney general, and any other governmental entity with authority to enforce the home solicitation sales act.

Records would have to be retained for two years after the date of any outbound telephone calls initiated from, directed into, or within the state.

Records would have to include the following:

- The location of the telephone solicitor and the street addresses of any locations from which calls originated.
- Copies of any injunction, temporary restraining order, judgment, consent judgment, or assurance of voluntary compliance in any civil or administrative action, including any pending action, involving a violation or alleged violation by the telephone solicitor or the seller of any state or federal telemarketing law.
- The name, any fictitious name used, last known home address, telephone number, and job title of all telephone solicitors who place calls on behalf of a seller or who participate in or are responsible for the management of the telephone solicitation business. The bill would require that, if the business permits employees to use fictitious names, each fictitious name be traceable to only one specific employee. Where telephone solicitors are employed by or act on behalf of a seller, the reporting requirements of the act could be met by the seller on behalf of itself and its telephone solicitors, but only to the extent that the records complied with the act's requirements.
- Copies of all scripts, outlines, or presentation materials required to be used by telephone solicitors, and information to be provided by a telephone solicitor to a consumer in connection with any telemarketing.
- All written consents to use a name or names of any person in any endorsement.
- Materials that substantiate any claims about the performance, efficacy, nature, or characteristics of health, nutrition, or diet related goods or services that are the subject of telemarketing.
- A copy of the refund, cancellation, exchange, or repurchase policies for any goods or services offered by a seller or telephone solicitor, unless the seller or solicitor provides an unconditional satisfaction guaranteed policy and provides a full refund for returned goods or canceled services.
- Copies of all express verifiable authorizations and signed order confirmations.
- Copies of any training instructions, handbooks, or other guidelines distributed by telephone solicitors to their staff or by sellers to their telephone solicitors and employees.
- Copies of written contracts and agreements between the telephone solicitor and the seller.

House Bill 5458 would require the Public Service Commission to establish a complaint procedure to allow persons, or the commission on its own motion, to file claims of violations of the telemarketing provisions that would be added to the home solicitation sales act under House Bills

5446-5457. House Bill 5457 would require parties to complaints to attempt alternative means of resolving the dispute before initiating a commission proceeding. The bill would allow the use of any alternative means that is agreed to by the parties, including settlement conferences, mediation, and other informal dispute resolution methods. If the parties cannot agree on an alternative means within 20 days after a complaint is filed, the commission would have to order mediation. Within 45 days after mediation was ordered, a recommended settlement would have to be made to the parties, and each party would have to file a written acceptance or rejection of the settlement within 7 days. If the recommended settlement were accepted by both parties, that would become the commission's final order in the matter. However, if one party rejects the settlement, the complaint would proceed to a PSC proceeding.

Under House Bill 5458, if a dispute were not settled under the alternative dispute resolution process, the commission would have to investigate and make findings of whether a violation had occurred. If the commission found, after notice and a hearing, that there had been a violation, it could issue a cease and desist order, order the violator to pay a fine of between \$10,000 and \$50,000 per day, and/or order the revocation of the person's telephone solicitor license. These actions would be in addition to any other penalty provided by law.

If the violation warrants immediate action, the commission would be authorized under the bill to issue a preliminary cease and desist order. A request for a preliminary order would have to be either granted or denied within three business days from the date the complaint was filed.

A person who violated an order issued under the bill could be ordered by the commission to pay a fine of up to \$10,000 per day for each day of the violation, and to make whole any person injured by the violation, including the payment of reasonable attorney fees.

House Bill 5459 would prohibit a person from bringing a cause of action for the collection of any home solicitation sale unless that person had complied with the home solicitation sales act. (This would reenact a provision in current law that would be deleted by House Bill 5446.)

Analyst: D. Martens

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#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.