

Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 990 through 1003 (as introduced 2-10-00)
 Sponsor: Senator Mike Goschka (Senate Bills 990-992 & 997)
 Senator Dale L. Shugars (Senate Bill 993)
 Senator Mike Rogers (Senate Bill 994)
 Senator Joel D. Gougeon (Senate Bill 995)
 Senator Bev Hammerstrom (Senate Bill 996)
 Senator Christopher D. Dingell (Senate Bill 998)
 Senator Raymond M. Murphy (Senate Bill 999)
 Senator Don Koivisto (Senate Bill 1000)
 Senator Alma Wheeler Smith (Senate Bill 1001)
 Senator Glenn D. Steil (Senate Bill 1002)
 Senator Joe Young, Jr. (Senate Bill 1003)
 Committee: Technology and Energy

Date Completed: 5-16-00

CONTENT

All of the bills, except Senate Bill 992, would amend Public Act 227 of 1971, which prescribes the rights and duties of parties to home solicitation sales, to do the following:

- **Prohibit a person from engaging in the business of telephone solicitation without being licensed by the Public Service Commission (PSC).**
- **Specify the times during which a telephone solicitor could place calls.**
- **Require telephone solicitors to give their name and a toll-free number when placing a call.**
- **Prohibit telephone solicitors from using equipment that would block their telephone number.**
- **Describe activities of telephone solicitors that would be an unfair or deceptive act or practice.**
- **Require solicitors to discontinue a call upon receiving a negative response.**
- **Require the PSC to compile a register of residential subscribers who objected to receiving telephone solicitations, and require solicitors to pay an annual fee for access to the register.**
- **Require local exchange providers to inform their subscribers of how to enroll in the register.**
- **Require solicitors to keep records of their telemarketing activity.**
- **Require the PSC to establish a complaint procedure, and require the parties to a**

complaint to attempt alternative means of resolution.

- **Prohibit a person from suing to collect a home solicitation sale without complying with the Act.**

Senate Bill 992 would amend the Michigan Penal Code to make it a misdemeanor for a telephone solicitor to make calls except during the prescribed hours.

Senate Bills 991 through 1003 are tie-barred to Senate Bill 990.

Senate Bill 990

Definitions

The bill would define "telephone solicitation" as any voice communication over a telephone for the purpose of encouraging the purchase or rental of, or investment in, goods or services. The term would not include any voice communication to a residential telephone subscriber under any of the following circumstances.

- The communication was made with the subscriber's prior express invitation or permission.
- The communication was made on behalf of a not-for-profit organization, provided that a bona fide member of the exempt organization made the communication.
- The subscriber was an existing customer of the solicitor.

Also, "telephone solicitation" would not include occasional and isolated voice communications to a residential telephone subscriber provided all of the following conditions were met:

- A direct employee of the business made the communication.
- The communication was not made as part of a telecommunications marketing plan.
- The business had a reasonable belief that the specific person receiving the communication was considering purchasing goods or a service sold or leased by the business and the call was specifically directed to that person.
- The business did not sell or engage in telephone solicitations.
- The business did not make more than three such communications in any one calendar year.

"Telephone solicitor" would mean any person doing business in this State who made or caused to be made a telephone solicitation from within or outside the State, including calls made by use of automated dialing and announcing devices or by a live person.

The bill would define "goods" as all tangible property purchased primarily for personal, family, or household use and not for commercial, agricultural, or business use. The term would include property furnished or used for the modernization, rehabilitation, repair, alteration, improvement, or construction of real property. "Goods" also would include merchandise certificates or coupons issued by a retail seller that were not redeemable in cash and that were to be used in their face amount instead of cash, in exchange for goods or services sold by the seller. The term would not include a motor vehicle, money, a thing in action, intangible personal property, or the equivalent of any of those items.

"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. The term would not include any of the following:

- Work, labor, advice, counseling, or instruction for which the cost was fixed by law or subject to the approval or disapproval of the United States or this State.
- Educational counseling or information provided by an accredited college or university or a primary or secondary school providing education required by the State.
- Counseling or instruction of a kindergarten or nursery school.

Currently, the Act specifies that the term "goods or services" does not include a loan, deposit account, or trust account lawfully offered or provided by a

Federally insured depository institution or a subsidiary or affiliate of a Federally insured depository institution; or an extension of credit that is subject to the Mortgage Brokers, Lenders, and Servicers Licensing Act, the Secondary Mortgage Loan Act, the Regulatory Loan Act, the Consumer Financial Services Act, the Motor Vehicle Sales Finance Act, or Public Act 379 of 1984 (which regulates certain credit card transactions). The bill would delete this provision.

Licensure Requirement

The bill would prohibit a person from engaging in the business of telephone solicitation in this State unless the person held a license issued under Public Act 227. The person would have to submit a license application to the PSC for review and approval, as well as a \$500 license fee. The 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 and payment of a renewal fee of \$200. Fees collected under this provision or Section 14 of the Act (proposed by Senate Bill 998) would have to be deposited in the General Fund in a restricted account. (Senate Bill 998 would establish a \$500 fee for access to the do-not-call register.) The fees would have to be used exclusively for funding the PSC.

Senate Bill 991

The bill would prohibit a telephone solicitor from placing a call to a residential telephone subscriber at any time other than between the hours of 8 a.m. and 5 p.m., and between 7 p.m. and 9 p.m. local time at the called party's location, without the subscriber's prior express invitation or permission. (That is, a solicitor could not call between 5 p.m. and 7 p.m., or between 9 p.m. and 8 a.m.)

Currently, the Act prohibits a home solicitation sale from being made by telephonic solicitation using in whole or in part a recorded message. Senate Bill

990 would delete that language, and Senate Bill 991 specifies that a telephone solicitation could not be made in whole or in part by a recorded message.

The bill also would require telephone solicitors to comply with all State and Federal statutes and regulations regarding telephone solicitation practices.

Senate Bill 992

Section 540e of the Michigan Penal Code makes it a misdemeanor to disturb the peace and quiet of any person by certain activities that involve telecommunications. Under the bill, these activities would include making a telephone solicitation call in violation of the hours described in Senate Bill 991.

Currently, the prohibited activities include “making an unsolicited commercial telephone call” that is received between the hours of 9 p.m. and 9 a.m. “An unsolicited commercial telephone call” means a call made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions. Senate Bill 992 would refer, instead, to “making an unsolicited telephone call requesting a contribution” between 9 p.m. and 9 a.m. The bill would define “an unsolicited telephone call” as a call made by a person soliciting contributions, on behalf of a person or a not-for-profit corporation or other entity.

A person violating Section 540e is subject to imprisonment for up to six months and/or a maximum fine of \$500.

Senate Bill 993

The bill would require all telephone solicitations to residential telephone subscribers to state and name and telephone number of the person or organization initiating the call, within the first 25 seconds of the call and at the conclusion of the call. The number given would have to be toll-free and be answered when solicitations were being made. In addition, the person answering the number would have to be able to provide information concerning the solicitation call.

Senate Bill 994

The bill would prohibit telephone solicitors from using telephone equipment or telecommunications network elements that blocked or otherwise interfered with the caller ID function on the telephone of a residential subscriber to whom a telephone solicitation was being made, so that the caller's number was not displayed on the equipment of the called party.

The bill also would prohibit local exchange providers and interexchange toll providers from providing any network element or service to telephone solicitors

that would block or otherwise interfere with on a per line basis, the display of the solicitor's name and number on a residential subscriber's caller ID equipment. Local exchange and interexchange providers would have to modify their tariffs to reflect the Act's requirements within 60 days after the bill's effective date.

Senate Bill 995

Under the bill, it would be an unfair or deceptive act or practice and a violation of the Act for any telephone solicitor to misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment was received from a consumer, all of the following:

- Total purchase costs to the consumer of the goods or services to be received.
- Any restrictions, limitations, or conditions to purchase or use the goods or services that were the subject of the offer.
- Any material term or condition of the seller's refund, cancellation, or exchange policy, including, if applicable, that no such policy existed.
- All material costs or conditions related to receiving a prize, including the odds of winning it, and if the odds were not calculable in advance, the factors used in calculating them, the nature and value of a prize, that no purchase was necessary to win the prize, and the “no purchase” method of entering the contest.
- Any material aspect of an investment opportunity being offered, including 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 the Act.

It also would be an unfair or deceptive act or practice and a violation of the Act, for a telephone solicitor to do any of the following:

- Misrepresent any material aspect of the quality or basic characteristics of the any goods or services offered.
- Make a false or misleading statement with the purpose of inducing a customer 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 solicitor or seller received from the consumer an express verifiable authorization as required by the Act.
- Offer to consumers in this State any prize promotion in which a purchase or payment was necessary to obtain the prize.
- Fail to comply with the record-keeping

requirements proposed by Senate Bill 1000.

Senate Bill 996

The bill would require a telephone solicitor immediately to discontinue a solicitation if the person being solicited gave a negative response at any time during the call. A solicitor also would have to hang up the telephone within 10 seconds of the termination of the call by the person being called.

Senate Bill 997

The PSC would be required to establish and provide for the operation of a register on which to compile a list 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. The following would be guidelines for the operation of the register:

- Residential subscribers could enroll on the register as provided by the PSC. Enrollment onto the register would become effective 30 days after the date of a subscriber's enrollment.
- A residential subscriber would remain on the do-not-call register until the subscriber requested that the PSC remove his or her name from the register.
- Business telephone subscribers could not be included on the register.
- The PSC would update the register at the beginning of each month.
- The PSC could purge the register periodically in order to ensure accuracy.

The information contained in the database would not be open to public inspection or disclosure under the Freedom of Information Act. The PSC would take all necessary steps to protect the confidentiality of the information.

The PSC would have to forward the list to the Federal Communications Commission's or any other Federal agencies' do-not-call national database, if and when a Federal list was established.

Senate Bill 998

The bill would require each telephone solicitor engaging in telephone solicitation in this State to purchase from the PSC the register established under Senate Bill 997. Each solicitor would have to pay to the PSC, by May 1 of each year, an annual fee of \$500 for access to the do-not-call register. The fee would have to cover the time period from the following July 1 through June 30.

It would be the duty of telephone solicitors to ensure that they had the latest version of the register before

soliciting residential subscribers in Michigan.

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.

Senate Bill 999

The bill would require local exchange providers to notify their residential customers twice a year on how to enroll on the register. This notification would have to accompany the subscribers' monthly telephone bill and be developed in cooperation with the PSC.

In addition, local exchange providers, working in cooperation with the PSC, would be required to place information in their white page telephone directory informing their residential subscribers how to be included in the register.

Senate Bill 1000

The bill would require every telephone solicitor to keep accurate records of all telemarketing activities initiated in this State or directed to consumers located in Michigan. Upon demand, the records would have to be made available to the PSC, the Attorney General, and any other governmental entity with authority to enforce the Act. The records would have to be retained for two years after the date of any outbound telephone call initiated from, directed into, or within this State. The records would have to include at least all of the following:

- The solicitor's location and the street addresses of any location from which the outbound 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 solicitor or the seller of any state or Federal telemarketing law.
- Copies of all scripts, outlines, or presentation materials the seller required a solicitor to use when soliciting, and all information to be provided by a 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 substantiating any claims about the performance, efficacy, nature, or characteristics of health-, nutrition-, or diet-related goods or services that were the subject of telemarketing.
- A copy of the refund, cancellation, exchange, or repurchase policies for any goods or services offered by a seller or solicitor, unless the seller or solicitor offered and provided an unconditional satisfaction guaranteed policy and provided 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 solicitors to their staff or by sellers to their solicitors, employees, or agents.
- Copies of written contracts and agreements between the solicitor and the seller.

The records also would have to include the name, any fictitious name used, last known home address, telephone number, and job title of all telephone solicitors who placed or were placing calls on behalf of a seller or who participated in or were responsible for the management of the solicitor's business. If the seller or solicitor permitted employees or agents to use fictitious names, each fictitious name would have to be traceable to only one specific solicitor, employee, or agent.

If one or more solicitors were employed by or otherwise acting on behalf of a seller, the Act's reporting requirements could be met by the seller on behalf of itself and its solicitors, but only to the extent that the records complied with the Act.

Senate Bill 1001

The bill provides that for all complaints filed under Section 18 of the Act (proposed by Senate Bill 1002), the parties would have to attempt alternative means of resolving the complaint, before initiating a proceeding with the PSC. Any alternative means that would result in a recommended settlement, that was agreed to by the principal parties of record, could be used. These would include settlement conferences, mediation, and other informal dispute resolution methods.

If the parties could not agree on an alternative means within 20 days after the date the complaint was filed, the PSC would have to order mediation. Within the 45-day period from the date mediation was ordered, a recommended settlement would have to be made to the parties.

Within seven days after the date of the recommended settlement, each party would have to file with the PSC a written acceptance or rejection of the recommended settlement. If the parties accepted the recommendation, it would become the final order in a proceeding under Section 18. If the parties rejected the recommendation, then the application or complaint would advance to a proceeding under that section.

Senate Bill 1002

The PSC would be required to establish a complaint procedure to allow persons, or the Commission on its

own motion, to file claims of violations of the sections proposed by Senate Bills 990, 991, and 993 through 1000, or a rule or order issued relating to those sections. Except as otherwise provided under Senate Bill 1001, upon the filing of a claim, the PSC would have to investigate and make findings of whether a violation had occurred.

In addition to any other penalties provided by law, if the PSC found, after notice and hearing, that there had been a violation, it would do one or more of the following:

- Issue a cease and desist order.
- Order the person to pay a fine of not less than \$10,000 or more than \$50,000 per day of violation.
- Order that the person's telephone solicitation license be revoked.

If the violation warranted immediate action, the PSC could issue a preliminary cease and desist order. A request for such an order would have to be granted or denied within three business days from the date the complaint was filed.

If a person violated an order issued under any of these provisions, the PSC could order the person to pay a fine of up to \$10,000 per day for each day the person was in violation, and to make whole anyone injured by the violation, including the payment of reasonable attorney fees.

Senate Bill 1003

Currently, the Act provides that no person may bring an action in any court of this State for the collection of any home solicitation sale contract without proving that the person was at all times in compliance with the Act. Senate Bill 990 would delete that language. Senate Bill 1003 provides that a person could not bring a cause of action for the collection of any home solicitation sale unless that person had complied with the Act.

MCL 445.111 et al. (S.B. 990)
Proposed MCL 445.118 (S.B. 991)
MCL 750.540e (S.B. 992)
Proposed MCL 445.119 (S.B. 993)
Proposed MCL 445.120 (S.B. 994)
Proposed MCL 445.121 (S.B. 995)
Proposed MCL 445.122 (S.B. 996)
Proposed MCL 445.123 (S.B. 997)
Proposed MCL 445.124 (S.B. 998)
Proposed MCL 445.125 (S.B. 999)
Proposed MCL 445.126 (S.B. 1000)
Proposed MCL 445.127 (S.B. 1001)
Proposed MCL 445.128 (S.B. 1002)
Proposed MCL 445.129 (S.B. 1003)

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 990

The bill would require the Public Service Commission to license all businesses participating in telephone solicitation activities. The application fee would be \$500 and renewals would be \$200. This requirement would increase the responsibilities of the Commission but the application and renewal fee revenue should offset any additional costs attributable to this change.

Senate Bill 991

The bill would have no fiscal impact on State or local government.

Senate Bill 992

Based on the changes in the definition of the crime of making an unsolicited phone requesting a contribution or a telephone solicitation call, Senate Bill 992 would have an indeterminate fiscal impact on local government for the costs of incarceration incurred or the fine revenues received. There are no data to indicate how many people may be convicted of this offense on an annual basis, and the costs of incarceration vary among counties.

Senate Bills 993 & 994

The bills would have no fiscal impact on State or local government.

Senate Bill 995

Enforcement costs and fine revenue would depend on the number of violations under the bill. The bill would have no fiscal impact on the PSC.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

Senate Bill 996

The bill would have no fiscal impact on State or local government.

Senate Bills 997 & 998

Senate Bill 997 would require the PSC or another entity assigned by the PSC to establish and maintain a register of phone subscribers objecting to phone solicitation. Although this would create an additional responsibility for the Commission, Senate Bill 998 would allow the Commission to charge a \$500 annual fee for access to the list. This fee revenue would offset any of the additional costs associated with performing these duties.

Senate Bills 999 & 1000

The bills would have no fiscal impact on State or local government.

Senate Bills 1001 & 1002

Senate Bills 1001 and 1002 would require the PSC to establish a complaint procedure for telephone solicitation, which would include alternative dispute resolution before the PSC would proceed with an investigation of the complaint. Senate Bill 1002 would allow the Commission to issue a fine for violation of these regulations on telephone solicitation, which could offset some of the cost for these additional responsibilities.

Senate Bill 1003

The bill would have no fiscal impact on State or local government.

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