

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4318 (as reported without amendment)

Sponsor: Representative Alan Sanborn

House Committee: Insurance and Financial Services

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 4-28-99

RATIONALE

Public Act 227 of 1971 prescribes the rights and duties of parties to home solicitation sales. The Act specifies that a buyer has a right 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. Public Act 126 of 1998 amended the 1971 Act to include sales arising from a postcard or other written notice delivered to a buyer's residence that requests the buyer to contact the seller or seller's agent by phone to inquire about goods or a service, unless a postcard or written notice concerns a previous purchase or order or specifies the price of the goods or service and accurately described the goods or service.

Public Act 126 of 1998 apparently was enacted to protect consumers from sales methods in which a consumer calls a seller in response to a letter or postcard urging the consumer to phone for more information, while providing limited information about the seller, product, or cost. According to the Financial Institutions Bureau, Public Act 126 changed the definition of "home solicitation sale" to cover almost any sale resulting from a written solicitation to a person's residence if the document requests the person to contact the seller by phone. In addition, apparently the consumer does not actually have to phone the seller in order for the statute's protections to apply. Also, it has been suggested that sales arranged on the seller's business premises might be subject to the law's three-day right to rescind. Many people believe that clarification is needed as to what sales of goods and services are protected under the Act.

CONTENT

The bill would amend Public Act 227 of 1971 to revise the Act's treatment of postcards and other mailings; and to provide that goods or services subject to the Act would not include certain financial transactions. Currently, "home solicitation sale" is defined as "a sale of goods or services of more than \$25.00 in which the seller or a person acting for the seller engages in a personal, written, or telephonic solicitation of the sale at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller".

The Act specifies that "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 phone to inquire about goods or a service, unless a postcard or written notice concerns a previous purchase or order, or specifies the price of the goods or service and accurately describes the goods or service. The bill would delete this provision but would define "written solicitation" as such a postcard or other written notice delivered to the buyer's residence.

The bill also specifies that "home solicitation sale" would not include a sale made at a fixed location of a business establishment where good or services were offered or exhibited for sale. In addition, the term would not include a solicitation (or a sale, as currently provided) of insurance by a licensed insurance agent.

The bill provides that "goods or services" would 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 one; or an extension of credit that was subject to the Mortgage Brokers, Lenders, and Servicers Licensing Act, the Secondary Mortgage Loan Act, the Regulatory Loan Act, the Consumer Financial Services Act, Public Act 379 of 1984 (which regulates credit card transactions), or the Motor

Vehicle Sales Finance Act. "Federally insured depository institution" would mean a State or national bank, State or Federal savings bank, State or Federal savings and loan association, or State or Federal credit union that held deposits insured by an agency of the United States.

MCL 445.111

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would clarify the sales of goods and services that are covered under Public Act 227 of 1971 by defining "written solicitation"; and exempting sales made at a certain fixed location of a business establishment, excluding solicitation of insurance by a licensed insurance agent, and exempting financial institutions from the provisions for home solicitation sales under the Act. According to the Financial Institutions Bureau, the bill also could minimize costly litigation to clarify what sales were covered under the Act. For example, under the current interpretation of "written solicitation", a sale of goods or services through a company's monthly newsletter could be protected under the Act. In addition, a sale of less than \$25 could be covered if it resulted from a consumer calling to inquire about goods or service.

Supporting Argument

The bill would address some of Governor Engler's concerns regarding the financial transactions subject to Public Act 126 of 1998. In a letter to the House of Representatives in June 1998, the Governor expressed his support for the overall intent of Public Act 126 of 1998, but stated the following:

"...I am concerned the bill may have the effect of denying consumers legitimate and important information regarding financial products. That is, it is possible to argue the bill covers all loans that were initiated with a simple postcard -- not just loans used to finance a home solicitation. Such an overly broad interpretation could result in unnecessary, increased litigation over the Act's consumer protection provisions. 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... I urge the legislature to initiate legislation to clarify legislative intent and re-address these questions."

Legislative Analyst: N. Nagata

FISCAL IMPACT

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

Fiscal Analyst: M. Tyszkiewicz

H9900\4318a

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.