

Legislative Analysis



TELEMARKETING PRACTICES

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House Bill 4423 as introduced

Sponsor: Rep. Lisa Wojno

Committee: Energy and Technology

First Analysis (2-15-06)

BRIEF SUMMARY: The bill would make it an unfair or deceptive act or practice for a telephone solicitor to misrepresent—in a message left for a consumer on an answering machine or voice mail—that the consumer had a current business matter or transaction, or a current business or customer relationship, and request that the consumer call the telephone solicitor (or another person) to discuss that matter, transaction, or relationship.

FISCAL IMPACT: There is no fiscal impact on the State of Michigan or its local units of government.

THE APPARENT PROBLEM:

Consumer representatives have complained about a telemarketing practice where a telemarketer leaves a message on a home answering machine or voice mail falsely suggesting that the caller has an existing business relationship with the consumer and requesting a call-back to address a matter related to that relationship. For example, a caller might say that a question has arisen about a person's bank account or credit card account that needs to be addressed in a subsequent telephone call. Sometimes the caller might suggest that he or she is calling "on behalf of someone close to you." When the consumer calls back, it turns out the call was from a telemarketer wishing to sell a product or service. While straightforward sales pitches are acceptable, consumer advocates say this other practice is a deceptive practice that can cause stress and confusion, particularly in older and cognitively impaired individuals.

THE CONTENT OF THE BILL:

The bill would make it an unfair or deceptive act or practice for a telephone solicitor to misrepresent in a message left for a consumer on an answering machine or voice mail that the consumer had a current business matter or transaction, or a current business or customer relationship, and request that the consumer call the telephone solicitor (or another person) to discuss that matter, transaction, or relationship. The bill is an amendment to Public Act 227 of 1971, which regulates home solicitation sales.

[Currently under the act it is an unfair or deceptive act or practice, and a violation of the act, for a telephone solicitor to engage in any of seven practices, including but not limited to misrepresenting or failing to disclose total purchase price and restrictions; misrepresenting the quality of goods; making a false or misleading statement; requesting or accepting payment before the consumer expresses verifiable authorization; offering a

prize promotion in which a purchase or payment is necessary to win the prize; and soliciting by telephone a consumer who has requested not to receive calls. House Bill 4423 would retain all of these provisions.]

MCL 445.111c

ARGUMENTS:

For:

The aim of the bill is to protect consumers from a deceptive practice where a telemarketer pretends to have an existing business relationship with the party being called and urges the person to call back to address an important matter. Some consumers have difficulty, when faced with such calls, distinguishing between a telemarketing call and an urgent personal or business matter. The bill puts this practice on the list of unfair and deceptive practices in the law governing telephone solicitations. Such calls go beyond being an annoyance; in some cases they can produce fear and stress. Critics have cited examples when individuals have thought a personal emergency was involved or thought problems with a bank or credit card account could be the result of identity theft.

Response:

Some people have questioned whether the penalty attached to this prohibited practice is too stiff, since it can involve a six month prison sentence. With overcrowded jails and prisons, this seems unnecessary.

Rebuttal:

The penalty is imprisonment up to six months or a fine of up to \$500, or both. It is up to a judge to make the punishment fit the crime. It should be noted that the penalty provision is pre-existing: it applies to all the listed unfair and deceptive practices. It is not specific to the offense added by this bill.

POSITIONS:

A representative from Elder Law of Michigan testified in support of the bill. (2-15-06)

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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.