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## TELEMARKETING: STATE "DO-NOT-CALL" LIST

**House Bill 4250**  
**Sponsor: Rep. Eileen DeHart**  
**Committee: Family and Civil Law**

**Complete to 3-4-99**

### **A SUMMARY OF HOUSE BILL 4250 AS INTRODUCED 2-11-99**

The bill would create a new act to provide for the creation of a telemarketing "do-not-call" list in the Department of Consumer and Industry Services for individuals who did not wish to receive telephone sales solicitations. In addition to prohibiting unwanted telemarketing calls to individuals on this "do-not-call" list, the bill would impose civil fines of up to \$250 per violation, and allow aggrieved recipients of such calls to sue to recover actual damages or \$500, whichever were greater, plus reasonable attorney fees and costs.

The "do-not-call" list. The Department of Consumer and Industry Services would be required to maintain a list of the names, addresses, and telephone numbers of individuals who did not wish to receive telephone sales solicitations (as defined in the bill -- see below), and to update the list January 1 of each year. The list would have to be subdivided by geographic regions, zip codes, area codes, and the first three digits of telephone numbers.

In order to be placed on the list, an individual would have to file a written statement (in the form and manner set by the department) expressly saying that he or she wanted to be placed on the list. An individual could remove his or her name from the list by a written request to the department.

Access to the "do-not-call" list, disclosure of information. The bill would require the department to make a copy of all or part of its "do-not-call" list available upon request to any "person" (defined in the bill to mean "individual, partnership, corporation, association, or other legal entity"), but the department could charge a fee that reflected its actual cost of providing the requested copy. A person who reviewed or obtained a copy of all or part of the list would be prohibited from disclosing information on the list to another person except in accordance with a court order, or to the person's agent or employee, a law enforcement officer, or the department.

Penalties and remedies. The bill would prohibit a person other than a federally recognized nonprofit organization from making telephone sales solicitations to someone whose name had been on the "do-not-call" list for more than 30 days. Except for persons determined liable for federal penalties or remedies, violations could be punished under the bill by a civil fine of not more than \$250 per violation. Anyone who was aggrieved by a violation of the proposed act also could sue and recover their actual damages or \$500, whichever were greater, plus reasonable attorney fees and costs.

Rules promulgation. The bill would allow the department to promulgate rules to implement and administer the act under the Administrative Procedures Act of 1969.

Definition. A "telephone sales solicitation" would mean any attempt over the telephone ("telephonic attempt") to induce an individual to purchase, invest in, or otherwise obtain an interest in real property or in a consumer good, service, or commodity. It would not include any of the following:

a) A telephone solicitation made under a prior or existing relationship between the person doing the calling and the individual being called ("with or without an exchange of consideration") that had been formed by a voluntary communication initiated by the individual being called (through the individual's having made an inquiry, application, purchase, or transaction relating to a product or service offered by the person doing the telephone solicitation) and that had not been previously terminated by either party.

b) A telephone solicitation made by a federally recognized nonprofit organization.

c) A telephone call made with the intent to engage the individual receiving the call in a subsequent in-person meeting at which a sales solicitation would be made.

d) A telephone solicitation that was "isolated" and not part of a "pattern of solicitations" regularly made by the solicitor in the course of ordinary business.

e) A telephone solicitation made by a person who maintained a federally required do-not-call list.

f) A telephone solicitation by an employer of fewer than 25 employees, unless that employer was sufficiently related to another employer to qualify with that other employer as a single employer under the federal Internal Revenue Code.

Effective date. If enacted, the bill would take effect on January 1, 1999.

Analyst: W. Flory

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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.