

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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House Bill 4042 (Substitute H-4 as passed by the House)  
House Bill 4154 (Substitute H-2 as passed by the House)  
House Bill 4250 (Substitute H-2 as passed by the House)  
House Bill 4631 (Substitute H-2 as passed by the House)  
House Bill 4632 (Substitute H-1 as passed by the House)

Sponsor: Representative Jennifer Faunce (H.B. 4042)  
Representative Jim Howell (H.B. 4154)  
Representative Mike Kowall (H.B. 4250)  
Representative Joseph Rivet (H.B. 4631)  
Representative Irma Clark (H.B. 4632)

House Committee: Energy and Technology  
Senate Committee: Technology and Energy

Date Completed: 12-5-01

## **CONTENT**

**The bills would amend two statutes to do the following:**

- **Require the Public Service Commission (PSC) to establish or designate a do-not-call list.**
- **Prohibit a telephone solicitor from making a telephone solicitation to a residential telephone subscriber on the do-not-call list.**
- **Require telephone solicitors to identify themselves at the beginning of a telephone solicitation, and prohibit a telephone solicitor from blocking caller ID.**
- **Make it an unfair or deceptive act or practice for a telephone solicitor to make certain misrepresentations.**
- **Require a residential telephone directory to include information about how a consumer could get on the do-not-call list.**
- **Prescribe penalties for violations of the bills.**

House Bills 4042 (H-4), 4154 (H-2), 4250 (H-2), and 4631 (H-2) would amend Public Act 227 of 1971, which prescribes the rights and duties of parties to home solicitation sales. House Bill 4632 (H-1) would amend the Michigan Consumer Protection Act. House Bills 4154 (H-2), 4250 (H-2), 4631 (H-2), and 4632 (H-1) are tie-barred to House Bill 4042.

Under House Bill 4042 (H-4), a "telephone solicitor" would be any person doing business in Michigan 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. "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. The term would not include any voice communication to any residential telephone subscriber with that subscriber's prior express invitation or permission; or any voice communication to any residential telephone subscriber who was an existing customer of the telephone solicitor. If an existing customer of a person did not want to receive any more telephone calls from that person, he or she could ask to be put on that person's list of consumers who had requested that they not receive additional telephone calls from the person. "Person" would be an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

### **House Bill 4042 (H-4)**

Under the bill, within 90 days after its effective date, the PSC would have to do one of the following:

- Establish a State do-not-call list.

-- Investigate any national do-not-call lists then in existence, and after consideration of each list's accessibility to telephone solicitors, and ease and cost of registration for consumers seeking inclusion, designate a list as the authorized do-not-call list.

The PSC could review and make a different designation at any time if it determined that an alternative do-not-call list provided superior accessibility to telephone solicitors and ease and cost of registration for consumers seeking inclusion, or if the organization maintaining a previously designated do-not-call list engaged in activities the PSC considered contrary to the public interest. The PSC could at any time discontinue a designation, and instead establish and maintain a list.

If it established a State do-not-call list, the PSC would have to publish it quarterly for use by telephone solicitors. The PSC could at any time cease to maintain the list and instead designate a do-not-call list.

In determining whether to establish or designate a do-not-call list, or in designating a do-not-call list, the PSC would have to consider comments from consumers, telephone solicitors, or any other person. If the PSC established and maintained a do-not-call list, it could not sell or transfer the list to any person for any purpose unrelated to these provisions.

Beginning 90 days after the PSC established or designated a do-not-call list, a telephone solicitor would be prohibited from making a telephone solicitation to a residential telephone subscriber whose name was on the then-current version of the do-not-call list. This prohibition would not apply to a telephone solicitor who had 25 or fewer employees at the time of the solicitation and was not engaged in telephone solicitation as its primary business. A telephone solicitor could not use a do-not-call list for any purpose other than meeting the bill's requirements.

Public Act 227 prescribes the rights and responsibilities of buyers and sellers involved in home solicitation sales. The bill would add telephone solicitation sales to provisions of the Act that apply to home solicitation sales. The bill would define "telephone solicitation sale" as a sale of goods or services of more than \$25 in which the seller or a person acting for

the seller engaged in a telephonic solicitation of the sale; the solicitation was received by the buyer at a residence of the buyer; and the buyer's agreement or offer to purchase was there given to the seller or a person acting for the seller.

### **House Bill 4154 (H-2)**

The bill would require that at the beginning of a telephone solicitation, a person making a telephone solicitation to a residential telephone subscriber would have to state his or her name and the full name of the organization or other person on whose behalf the call was initiated, and provide a telephone number of the organization or other person on request. A natural person (an individual) would have to be available to answer the telephone number at any time when telephone solicitations were being made.

The person answering the telephone number, given to a residential telephone subscriber upon request, would have to provide the subscriber with information describing the organization or other person on whose behalf the telephone solicitation was made, and describing the telephone solicitation.

A telephone solicitor could not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential subscriber to whom a telephone solicitation was made, so that the telephone number of the caller was not displayed on the telephone of the residential subscriber.

### **House Bill 4250 (H-2)**

The bill provides that it would be an unfair or deceptive act or practice, and a violation of Public Act 227 of 1971, for a telephone solicitor to misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner, and before payment was received from the consumer, all of the following:

- The total purchase price to the consumer of the goods or services to be received.
- Any restrictions, limitations, or conditions to purchase or to use the goods or services that were the subject of an offer to sell goods or services.
- Any material term or condition of the seller's refund, cancellation, or exchange policy, including a consumer's right to

cancel a home solicitation sale and, if applicable, that the seller did not have a refund, cancellation, or exchange policy.

- All material costs or conditions related to receiving a prize, including the odds of winning the prize and, if the odds were not calculable in advance, the factors used in calculating the odds; the nature and value of a prize; that no purchase was necessary to win the prize; and the "no purchase required" method of entering the contest.
- Any material aspect of an investment opportunity the seller was offering, 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 a sale under Public Act 227, if any.

Further, under the bill, it would be an unfair or deceptive act or practice, and a violation of Public Act 227, for a telephone solicitor to do any of the following:

- 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 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 received from the consumer an express verifiable authorization. ("Verifiable authorization" would mean a written authorization or confirmation, an oral authorization recorded by the telephone solicitor, or confirmation through an independent third party.)
- Offer to a consumer in Michigan a prize promotion in which a purchase or payment was necessary to obtain the prize.
- Make a telephone solicitation to a consumer in Michigan who had requested that he or she not receive calls from the organization or other person on whose behalf the telephone solicitation was made. Each organization or other person on whose behalf telephone solicitations were made in Michigan would have to record each of these requests from consumers, and maintain a list of the names and telephone numbers of these consumers.

- Fail to comply with the requirements proposed by House Bills 4042 (H-4) and 4154 (H-2).

Beginning 90 days after the bill's effective date, a person who knowingly or intentionally violated the bill would be guilty of a misdemeanor punishable by imprisonment for up to six months, a fine of up to \$500, or both. This provision would not prohibit a person from being charged with, convicted of, or punished for any other crime, including any other violation of law arising out of the same transaction as a violation of the bill.

### **House Bill 4631 (H-2)**

Beginning 120 days after the bill's effective date, if a telephone directory included residential telephone numbers, the person that published the directory would have to include in it a notice describing how a residential telephone subscriber could subscribe to be included on the do-not-call list.

The bill's provisions, and those proposed by House Bills 4042 (H-4), 4154 (H-2), and 4250 (H-2) would not apply to a person subject to the Charitable Organizations and Solicitations Act, or the Public Safety Solicitation Act. The burden of proving an exemption from the provisions would be upon the person claiming the exemption. (The Charitable Organizations and Solicitations Act regulates organizations and persons who solicit or collect contributions for charitable purposes, including benevolent, educational, philanthropic, humane, and patriotic organizations. The Public Safety Solicitation Act regulates the solicitation of contributions by persons affiliated with or organized for the benefit of a group or association of current or former law enforcement officers, fire fighters, or corrections officers.)

### **House Bill 4632 (H-1)**

The Michigan Consumer Protection Act lists unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce that are unlawful. The bill would include in that list violating Public Act 227 in connection with a home solicitation sale, telephone solicitation sale, or telephone solicitation. (Under the Michigan Consumer Protection Act, the Attorney General may

bring an action to restrain a person who is or has engaged in unlawful acts or practices. The Act also provides for certain remedies, damages, and penalties.)

The bill provides that each quarter, by electronic mail, the Attorney General would have to provide to various Better Business Bureaus a list of complaints made by consumers to the Attorney General during that calendar quarter of violations of the bill in connection with a telephone solicitation. The list would have to contain the name of each telephone solicitor against whom one or more complaints were made and the number of complaints against that telephone solicitor. The list would have to be e-mailed to the Better Business Bureau of Western Michigan, Inc., Better Business Bureau of Michiana, Inc., Better Business Bureau of Detroit and Eastern Michigan, Inc., and Better Business Bureau Serving NW Ohio and SE Michigan, Inc.

MCL 445.111 et al. (H.B. 4042)  
Proposed MCL 445.111b (H.B. 4154)  
Proposed MCL 445.111c (H.B. 4250)  
Proposed MCL 445.111d (H.B. 4631)  
MCL 445.903 et al. (H.B. 4632)

Legislative Analyst: G. Towne

## **FISCAL IMPACT**

### **House Bill 4042 (H-4)**

The bill would require the Public Service Commission either to establish a "do-not-call" list or to investigate or review national lists and designate one for Michigan. Should the Commission choose to establish a list, there would be a cost for creating and maintaining it. There are no estimates available regarding what these costs would be. If the Commission chose to designate a national list, then the cost would be negligible.

### **House Bills 4154 (H-2), 4250 (H-2), 4631 (H-2), & 4632 (H-1)**

Enforcement costs and fine revenue would depend on the number of violations under the proposed legislation. The Department of Attorney General reports that from December 1, 2000, through September 30, 2001, it received 702 consumer protection complaints involving telephone solicitation. The Department estimates that the bill would

increase its workload by the equivalent of 0.5 FTE positions. Any additional staff would depend on the appropriations process.

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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.