

HOUSE BILL No. 4153

February 7, 2001, Introduced by Reps. Howell, Woronchak, Meyer, Kolb, Pestka, Garcia, Bovin, Kuipers, Faunce, Ehardt, DeRossett, Pappageorge, Sanborn and Kooiman and referred to the Committee on Energy and Technology.

A bill to amend 1971 PA 227, entitled

"An act to prescribe the rights and duties of parties to home solicitation sales,"

by amending the title and sections 1, 1a, and 7 (MCL 445.111, 445.111a, and 445.117), section 1 as amended by 1999 PA 18.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to prescribe the rights and duties of parties to home
3 solicitation sales; TO REGULATE TELEPHONE SOLICITATION; TO PRE-
4 SCRIBE THE POWERS AND DUTIES OF CERTAIN STATE AGENCIES AND OFFI-
5 CIALS; AND TO PROVIDE FOR PENALTIES.

6 Sec. 1. As used in this act:

7 ~~-(a) "Home solicitation sale" means a sale of goods or serv-~~
8 ~~ices of more than \$25.00 in which the seller or a person acting~~
9 ~~for the seller engages in a personal, telephonic, or written~~

~~1 solicitation of the sale, the solicitation is received by the
2 buyer at a residence of the buyer, and the buyer's agreement or
3 offer to purchase is there given to the seller or a person acting
4 for the seller. Home solicitation sale does not include any of
5 the following:~~

~~6 (i) A sale made pursuant to a preexisting revolving charge
7 account.~~

~~8 (ii) A sale made pursuant to prior negotiations between the
9 parties at a business establishment at a fixed location where
10 goods or services are offered or exhibited for sale.~~

~~11 (iii) A sale or solicitation of insurance by an insurance
12 agent licensed by the commissioner of insurance.~~

~~13 (iv) A sale made at a fixed location of a business estab=
14 lishment where goods or services are offered or exhibited for
15 sale.~~

~~16 (v) A sale made pursuant to a printed advertisement in a
17 publication of general circulation.~~

~~18 (vi) A sale of services by a real estate broker or salesper=
19 son licensed by the department of consumer and industry
20 services.~~

~~21 (vii) A sale of agricultural or horticultural equipment and
22 machinery that is demonstrated to the consumer by the vendor at
23 the request of either or both of the parties.~~

~~24 (b) "Fixed location" means a place of business where the
25 seller or an agent, servant, employee, or solicitor of that
26 seller primarily engages in the sale of goods or services of the
27 same kind as would be sold at the residence of a buyer.~~

1 ~~(c) "Business day" means Monday through Friday and does not~~
2 ~~include Saturday, Sunday, or the following business holidays:~~
3 ~~New Year's day, Martin Luther King's birthday, Washington's~~
4 ~~birthday, Memorial day, Independence day, Labor day, Columbus~~
5 ~~day, Veterans' day, Thanksgiving day, and Christmas day.~~

6 ~~(d) "Federally insured depository institution" means a state~~
7 ~~or national bank, state or federal savings bank, state or federal~~
8 ~~savings and loan association, or state or federal credit union~~
9 ~~that holds deposits insured by an agency of the United States.~~

10 ~~(e) "Goods or services" does not include either of the~~
11 ~~following:~~

12 ~~(i) A loan, deposit account, or trust account lawfully~~
13 ~~offered or provided by a federally insured depository institution~~
14 ~~or a subsidiary or affiliate of a federally insured depository~~
15 ~~institution.~~

16 ~~(ii) An extension of credit that is subject to any of the~~
17 ~~following acts:~~

18 ~~(A) The mortgage brokers, lenders, and servicers licensing~~
19 ~~act, 1987 PA 173, MCL 445.1651 to 445.1684.~~

20 ~~(B) The secondary mortgage loan act, 1981 PA 125, MCL 493.51~~
21 ~~to 493.81.~~

22 ~~(C) The regulatory loan act of 1963, 1939 PA 21, MCL 493.1~~
23 ~~to 493.26.~~

24 ~~(D) The consumer financial services act, 1988 PA 161,~~
25 ~~MCL 487.2051 to 487.2072.~~

26 ~~(E) 1984 PA 379, MCL 493.101 to 493.114.~~

1 ~~(F) The motor vehicle sales finance act, 1950 (Ex Sess)~~
2 ~~PA 27, MCL 492.101 to 492.141.~~

3 ~~(f) "Written solicitation" means a postcard or other written~~
4 ~~notice delivered to a buyer's residence that requests that the~~
5 ~~buyer contact the seller or seller's agent by telephone to~~
6 ~~inquire about a good or service, unless the postcard or other~~
7 ~~written notice concerns a previous purchase or order or specifies~~
8 ~~the price of the good or service and accurately describes the~~
9 ~~good or service.~~

10 (A) "ADAD" OR "AUTOMATIC DIALING AND ANNOUNCING DEVICE"
11 MEANS ANY DEVICE OR SYSTEM OF DEVICES THAT IS USED, WHETHER ALONE
12 OR IN CONJUNCTION WITH OTHER EQUIPMENT, FOR THE PURPOSE OF AUTO-
13 MATICALLY SELECTING OR DIALING TELEPHONE NUMBERS.

14 (B) "BUSINESS DAY" MEANS MONDAY THROUGH FRIDAY AND DOES NOT
15 INCLUDE SATURDAY, SUNDAY, NEW YEAR'S DAY, MARTIN LUTHER KING'S
16 BIRTHDAY, PRESIDENT'S DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR
17 DAY, COLUMBUS DAY, VETERANS' DAY, THANKSGIVING DAY, OR CHRISTMAS
18 DAY.

19 (C) "BUSINESS TELEPHONE SUBSCRIBER" MEANS A PERSON OR COM-
20 PANY THAT HAS SUBSCRIBED TO A BUSINESS TELEPHONE SERVICE FROM A
21 LOCAL EXCHANGE CARRIER.

22 (D) "CALLER IDENTIFICATION SERVICE" OR "CALLER ID" MEANS
23 TELEPHONE SERVICE THAT NOTIFIES TELEPHONE SUBSCRIBERS OF THE
24 TELEPHONE NUMBER OF INCOMING TELEPHONE CALLS.

25 (E) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION IN THE
26 DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES.

1 (F) "DATABASES" MEANS THE INFORMATION FROM WHICH THE
2 COMMISSION COMPILES THE REGISTER.

3 (G) "DO-NOT-CALL REGISTER" OR "REGISTER" MEANS A LIST OF
4 TELEPHONE NUMBERS OF RESIDENTIAL TELEPHONE SUBSCRIBERS WHO HAVE
5 PROPERLY ENROLLED WITH THE COMMISSION AND REQUESTED THAT TELE-
6 PHONE SOLICITORS NOT SOLICIT THEIR TELEPHONE NUMBER.

7 (H) "ESTABLISHED BUSINESS RELATIONSHIP" MEANS A BUSINESS
8 RELATIONSHIP THAT MEETS ALL OF THE FOLLOWING:

9 (i) IS BASED ON INQUIRY, APPLICATION, PURCHASE, OR TRANSAC-
10 TION REGARDING PRODUCTS OR SERVICES OFFERED.

11 (ii) IS FORMED BY A VOLUNTARY 2-WAY COMMUNICATION BETWEEN A
12 PERSON MAKING A TELEPHONE SOLICITATION AND A PERSON TO WHOM A
13 TELEPHONE SOLICITATION IS MADE.

14 (iii) HAS NOT BEEN TERMINATED BY EITHER PARTY.

15 (I) "EXISTING CUSTOMER" INCLUDES A RESIDENTIAL TELEPHONE
16 SUBSCRIBER WITH WHOM THE PERSON OR ENTITY MAKING A TELEPHONE
17 SOLICITATION HAS HAD A BUSINESS RELATIONSHIP WITHIN THE PRIOR 12
18 MONTHS.

19 (J) "FACSIMILE MACHINE" MEANS EQUIPMENT USED FOR EITHER OF
20 THE FOLLOWING:

21 (i) SCANNING OR ENCODING TEXT OR IMAGES FOR CONVERSION INTO
22 ELECTRONIC SIGNALS FOR TRANSMISSION.

23 (ii) RECEIVING ELECTRONIC SIGNALS AND REPRODUCING THEM AS A
24 DUPLICATE OF THE ORIGINAL TEXT OR IMAGE.

25 (K) "FIXED LOCATION" MEANS A PLACE OF BUSINESS WHERE THE
26 SELLER OR AN AGENT, SERVANT, EMPLOYEE, OR SOLICITOR OF THAT

1 SELLER PRIMARILY ENGAGES IN THE SALE OF GOODS OR SERVICES OF THE
2 SAME KIND AS WOULD BE SOLD AT THE RESIDENCE OF A BUYER.

3 (l) "GOODS" MEANS ALL TANGIBLE PROPERTY PURCHASED PRIMARILY
4 FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND NOT FOR COMMERCIAL,
5 AGRICULTURAL, OR BUSINESS USE. GOODS INCLUDE PROPERTY THAT IS
6 FURNISHED OR USED FOR THE MODERNIZATION, REHABILITATION, REPAIR,
7 ALTERATION, IMPROVEMENT, OR CONSTRUCTION OF REAL PROPERTY. GOODS
8 INCLUDE MERCHANDISE CERTIFICATES OR COUPONS ISSUED BY A RETAIL
9 SELLER THAT ARE NOT REDEEMABLE IN CASH AND THAT ARE TO BE USED IN
10 THEIR FACE AMOUNT INSTEAD OF CASH, IN EXCHANGE FOR GOODS OR SERV-
11 ICES SOLD BY THE SELLER. GOODS DO NOT INCLUDE A MOTOR VEHICLE,
12 MONEY, A THING IN ACTION, INTANGIBLE PERSONAL PROPERTY, OR THEIR
13 EQUIVALENT.

14 (M) "HOME SOLICITATION SALE" MEANS A SALE OF GOODS OR SERV-
15 ICES OF MORE THAN \$25.00 IN WHICH THE SELLER OR A PERSON ACTING
16 FOR THE SELLER ENGAGES IN A PERSONAL, TELEPHONIC, OR WRITTEN
17 SOLICITATION OF THE SALE, WHERE THE SOLICITATION IS RECEIVED BY
18 THE BUYER AT A RESIDENCE OF THE BUYER AND THE BUYER'S AGREEMENT
19 OR OFFER TO PURCHASE IS GIVEN TO THE SELLER OR A PERSON ACTING
20 FOR THE SELLER AT THE RESIDENCE. HOME SOLICITATION SALE DOES NOT
21 INCLUDE ANY OF THE FOLLOWING:

22 (i) A SALE MADE UNDER A PREEXISTING REVOLVING CHARGE
23 ACCOUNT.

24 (ii) A SALE MADE UNDER PRIOR NEGOTIATIONS BETWEEN THE PAR-
25 TIES AT A FIXED LOCATION WHERE GOODS OR SERVICES ARE OFFERED OR
26 EXHIBITED FOR SALE.

1 (iii) A SALE MADE AT A FIXED LOCATION WHERE GOODS OR
2 SERVICES ARE OFFERED OR EXHIBITED FOR SALE.

3 (iv) A SALE MADE PURSUANT TO A PRINTED ADVERTISEMENT IN A
4 PUBLICATION OF GENERAL CIRCULATION.

5 (v) A SALE OF SERVICES BY A REAL ESTATE BROKER OR SALESPER-
6 SON LICENSED BY THE DEPARTMENT OF CONSUMER AND INDUSTRY
7 SERVICES.

8 (vi) A SALE OF AGRICULTURAL OR HORTICULTURAL EQUIPMENT AND
9 MACHINERY THAT IS DEMONSTRATED TO THE CONSUMER BY THE VENDOR AT
10 THE REQUEST OF EITHER THE CONSUMER OR VENDOR, OR BOTH.

11 (N) "INTEREXCHANGE PROVIDER" MEANS A COMPANY THAT IS AUTHO-
12 RIZED BY THE COMMISSION TO PROVIDE LONG DISTANCE TOLL TELEPHONE
13 SERVICE.

14 (O) "NEGATIVE RESPONSE" MEANS ANY STATEMENT FROM A PARTY
15 INDICATING THAT THE PARTY DOES NOT WISH TO LISTEN TO THE SALES
16 PRESENTATION OR PARTICIPATE IN THE SOLICITATION PRESENTED IN THE
17 TELEPHONE CALL.

18 (P) "NOT-FOR-PROFIT" MEANS AN ORGANIZATION THAT IS EXEMPT
19 FROM PAYING TAXES UNDER SECTION 501(c) OF THE INTERNAL REVENUE
20 CODE OF 1986.

21 (Q) "RESIDENTIAL TELEPHONE SUBSCRIBER" MEANS A PERSON RESID-
22 ING IN THIS STATE WHO HAS RESIDENTIAL TELEPHONE SERVICE.

23 (R) "SERVICES" MEANS WORK, LABOR, ADVICE, COUNSELING, OR
24 INSTRUCTION IF PURCHASED PRIMARILY FOR PERSONAL, FAMILY, OR
25 HOUSEHOLD USE AND NOT FOR COMMERCIAL OR BUSINESS USE. SERVICES
26 DO NOT INCLUDE ANY OF THE FOLLOWING:

1 (i) WORK, LABOR, ADVICE, COUNSELING, OR INSTRUCTION FOR
2 WHICH THE COST IS FIXED BY LAW OR SUBJECT TO THE APPROVAL OR
3 DISAPPROVAL OF THE UNITED STATES OR THIS STATE.

4 (ii) EDUCATIONAL COUNSELING OR INSTRUCTION PROVIDED BY AN
5 ACCREDITED COLLEGE OR UNIVERSITY OR A PRIMARY OR SECONDARY SCHOOL
6 PROVIDING EDUCATION REQUIRED BY THE STATE.

7 (iii) COUNSELING OR INSTRUCTION OF A KINDERGARTEN OR NURSERY
8 SCHOOL.

9 (S) "TELEPHONE SOLICITOR" MEANS ANY PERSON DOING BUSINESS IN
10 THIS STATE WHO MAKES OR CAUSES TO BE MADE A TELEPHONE SOLICITA-
11 TION FROM WITHIN OR OUTSIDE OF THIS STATE, INCLUDING, BUT NOT
12 LIMITED TO, CALLS MADE BY USE OF AUTOMATED DIALING AND ANNOUNCING
13 DEVICES OR BY A LIVE PERSON.

14 (T) "TELEPHONE SOLICITATION" MEANS ANY VOICE COMMUNICATION
15 OVER A TELEPHONE FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR
16 RENTAL OF, OR INVESTMENT IN, GOODS OR SERVICES. TELEPHONE SOLIC-
17 ITATION DOES NOT INCLUDE ANY OF THE FOLLOWING:

18 (i) ANY VOICE COMMUNICATION TO ANY RESIDENTIAL TELEPHONE
19 SUBSCRIBER WITH THAT SUBSCRIBER'S PRIOR EXPRESS INVITATION OR
20 PERMISSION.

21 (ii) ANY VOICE COMMUNICATION TO A RESIDENTIAL TELEPHONE SUB-
22 SCRIBER IF THE COMMUNICATION IS MADE ON BEHALF OF A
23 NOT-FOR-PROFIT ORGANIZATION, PROVIDED THAT A BONA FIDE MEMBER OF
24 THE EXEMPT ORGANIZATION MAKES THE VOICE COMMUNICATION.

25 (iii) ANY VOICE COMMUNICATION TO ANY RESIDENTIAL TELEPHONE
26 SUBSCRIBER WHO IS AN EXISTING CUSTOMER OF THE SOLICITOR.

1 (iv) OCCASIONAL AND ISOLATED VOICE COMMUNICATIONS TO A
2 RESIDENTIAL TELEPHONE SUBSCRIBER PROVIDED ALL OF THE FOLLOWING
3 CONDITIONS ARE MET:

4 (A) A DIRECT EMPLOYEE OF THE BUSINESS MAKES THE VOICE
5 COMMUNICATION.

6 (B) THE VOICE COMMUNICATION IS NOT MADE AS PART OF A TELE-
7 COMMUNICATIONS MARKETING PLAN.

8 (C) THE BUSINESS HAS A REASONABLE BELIEF THAT THE SPECIFIC
9 PERSON WHO IS RECEIVING THE VOICE COMMUNICATION IS CONSIDERING
10 PURCHASING A GOOD OR SERVICE SOLD OR LEASED BY THE BUSINESS AND
11 THE CALL IS SPECIFICALLY DIRECTED TO THE PERSON.

12 (D) THE BUSINESS DOES NOT SELL OR ENGAGE IN TELEPHONE
13 SOLICITATIONS.

14 (E) THE BUSINESS DOES NOT MAKE MORE THAN 3 OF THE VOICE COM-
15 MUNICATIONS IN ANY 1 CALENDAR WEEK.

16 (U) "WRITTEN SOLICITATION" MEANS A POSTCARD OR OTHER WRITTEN
17 NOTICE DELIVERED TO A BUYER'S RESIDENCE THAT REQUESTS THAT THE
18 BUYER CONTACT THE SELLER OR SELLER'S AGENT BY TELEPHONE TO
19 INQUIRE ABOUT A GOOD OR SERVICE, UNLESS THE POSTCARD OR OTHER
20 WRITTEN NOTICE CONCERNS A PREVIOUS PURCHASE OR ORDER OR SPECIFIES
21 THE PRICE OF THE GOOD OR SERVICE AND ACCURATELY DESCRIBES THE
22 GOOD OR SERVICE.

23 Sec. 1a. A home solicitation sale shall not be made by
24 ~~telephonic~~ TELEPHONE solicitation ~~using in whole or in part a~~
25 ~~recorded message~~ EXCEPT AS PROVIDED UNDER THIS ACT.

26 Sec. 7. ~~No person may bring any action in any court of~~
27 ~~this state for the collection of any home solicitation sale~~

1 ~~contract without proving that such person was at all times in~~
2 ~~compliance with this act.~~ (1) A PERSON SHALL NOT ENGAGE IN THE
3 BUSINESS OF TELEPHONE SOLICITATION IN THIS STATE UNLESS THE
4 PERSON HOLDS A LICENSE ISSUED UNDER THIS ACT.

5 (2) AN APPLICANT FOR A LICENSE UNDER THIS ACT SHALL SUBMIT
6 AN APPLICATION TO THE COMMISSION FOR REVIEW AND APPROVAL, ACCOM-
7 PANIED BY A \$500.00 LICENSE FEE.

8 (3) THE APPLICATION FOR A LICENSE UNDER THIS ACT SHALL MEET
9 ALL OF THE FOLLOWING:

10 (A) BE IN WRITING ON A FORM APPROVED BY THE COMMISSION.

11 (B) BE VERIFIED BY OATH OR AFFIRMATION.

12 (C) CONTAIN ALL INFORMATION THAT THE COMMISSION REQUIRES.

13 (4) THE COMMISSION MAY REQUIRE 1 OR MORE OF THE FOLLOWING
14 BEFORE ISSUING A LICENSE:

15 (A) PROOF OF FINANCIAL INTEGRITY.

16 (B) THAT THE APPLICANT POST A BOND OR OTHER SIMILAR INSTRU-
17 MENT, IF, IN THE COMMISSION'S JUDGMENT, THE BOND OR SIMILAR
18 INSTRUMENT IS NECESSARY TO ENSURE THE TELEPHONE SOLICITOR'S
19 FINANCIAL INTEGRITY.

20 (C) THAT THE APPLICANT DO BOTH OF THE FOLLOWING:

21 (i) PROVIDE PROOF THAT THE APPLICANT IS OTHERWISE PROPERLY
22 REGISTERED TO DO BUSINESS IN THIS STATE.

23 (ii) AGREE TO BE SUBJECT TO AND PAY ALL APPLICABLE TAXES OF
24 THE STATE.

25 (D) ADOPT ANY OTHER REQUIREMENTS THE COMMISSION FINDS TO BE
26 IN THE PUBLIC INTEREST.

1 (5) IF AN APPLICANT COMPLIES WITH THE REQUIREMENTS OF
2 SUBSECTIONS (2), (3), AND (4), THE COMMISSION SHALL ISSUE A
3 LICENSE TO ALLOW THE PERSON TO ENGAGE IN THE BUSINESS OF TELE-
4 PHONE SOLICITATION.

5 (6) A LICENSE GRANTED UNDER THIS SECTION EXPIRES ON JANUARY
6 1 OF EACH CALENDAR YEAR. THE LICENSE MAY BE RENEWED UPON THE
7 FILING OF A RENEWAL APPLICATION ON A FORM APPROVED BY THE COMMIS-
8 SION AND THE PAYMENT OF A RENEWAL FEE OF \$200.00.

9 (7) FEES COLLECTED UNDER THIS SECTION OR SECTION 14 SHALL BE
10 DEPOSITED IN THE GENERAL FUND IN A RESTRICTED ACCOUNT AND USED
11 EXCLUSIVELY FOR THE FUNDING OF THE COMMISSION.