

HOUSE BILL NO. 5360

November 14, 2023, Introduced by Reps. Morse and Skaggs and referred to the Committee on Judiciary.

A bill to amend 1971 PA 227, entitled

"An act to prescribe the rights and duties of parties to home solicitation sales; to regulate certain telephone solicitation; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies,"

by amending section 1 (MCL 445.111), as amended by 2009 PA 93.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Home solicitation sale" means a sale of goods or services
3 of more than \$25.00 in which the seller or a person acting for the
4 seller engages in a personal, telephonic, or written solicitation

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

11 (iii) A sale or solicitation of insurance by an insurance agent
12 licensed ~~by the commissioner of insurance.~~ **under the insurance code**
13 **of 1956, 1956 PA 218, MCL 500.100 to 500.8302.**

14 (iv) A sale made at a fixed location of a business
15 establishment where goods or services are offered or exhibited for
16 sale.

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

19 (vi) A sale of services by a real estate broker or salesperson
20 licensed ~~by the department of consumer and industry services.~~ **under**
21 **article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to**
22 **339.2518.**

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

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

1 (c) "Business day" means Monday through Friday. ~~and Business~~
 2 **day** does not include Saturday, Sunday, or **any of** the following
 3 business holidays:

4 (i) New Year's ~~day,~~ **Day.** ~~Martin~~

5 (ii) **Martin** Luther King's ~~birthday,~~ **King, Jr. Day.**

6 (iii) Washington's ~~birthday,~~ **Birthd**ay**.**

7 (iv) Memorial ~~day,~~ **Day.**

8 (v) Independence ~~day,~~ **Day.**

9 (vi) Labor ~~day,~~ **Day.**

10 (vii) Columbus ~~day,~~ **Day.**

11 (viii) ~~Veterans' day,~~ **Veterans Day.**

12 (ix) Thanksgiving ~~day,~~ ~~and~~ **Day.**

13 (x) Christmas ~~day,~~ **Day.**

14 (d) "Federally insured depository institution" means a state
 15 or national bank, state or federal savings bank, state or federal
 16 savings and loan association, or state or federal credit union that
 17 holds deposits insured by an agency of the United States.

18 (e) As used in only the definition of home solicitation sales,
 19 "goods or services" does not include any of the following:

20 (i) A loan, deposit account, or trust account lawfully offered
 21 or provided by a federally insured depository institution or a
 22 subsidiary or affiliate of a federally insured depository
 23 institution.

24 (ii) An extension of credit that is subject to any of the
 25 following acts:

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

28 (B) The secondary mortgage loan act, 1981 PA 125, MCL 493.51

1 to 493.81.

2 (C) The regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.

3 (D) The consumer financial services act, 1988 PA 161, MCL
4 487.2051 to 487.2072.

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

6 (F) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27,
7 MCL 492.101 to ~~492.141~~**492.137a**.

8 (iii) A sale of a security or interest in a security that is
9 subject to ~~the uniform securities act, 1964 PA 265, MCL 451.501 to~~
10 ~~451.818, or the uniform securities act (2002), 2008 PA 551, MCL~~
11 451.2101 to 451.2703.

12 (f) "Written solicitation" means a postcard or other written
13 notice delivered to a buyer's residence that requests that the
14 buyer contact the seller or seller's agent by telephone to inquire
15 about a good or service, unless the postcard or other written
16 notice concerns a previous purchase or order or specifies the price
17 of the good or service and accurately describes the good or
18 service.

19 (g) ~~"ADAD" or "automatic"~~**Automatic** dialing and announcing
20 device" means any device or system of devices that is used, whether
21 alone or in conjunction with other equipment, for the purpose of
22 automatically selecting or dialing telephone numbers.

23 (h) "Commission" means the public service commission.

24 (i) "Do-not-call list" means a do-not-call list of consumers
25 and their residential telephone numbers maintained **under section 1a**
26 by the commission, by a vendor designated by the commission, or by
27 an agency of the federal government. ~~, under section 1a.~~

28 (j) "Existing customer" means an individual who has purchased
29 goods or services from a person, who is the recipient of a voice

1 communication from that person, and who either paid for the goods
 2 or services within the 12 months preceding the voice communication
 3 or has not paid for the goods and services at the time of the voice
 4 communication because of a prior agreement between the person and
 5 the individual.

6 (k) "Person" means an individual, partnership, corporation,
 7 limited liability company, association, governmental entity, or
 8 other legal entity.

9 (l) "Residential telephone subscriber" or "subscriber" means a
 10 ~~person~~**an individual** residing in this state who has residential
 11 telephone service.

12 (m) "Telephone solicitation" means any voice communication
 13 over a telephone for the purpose of encouraging the recipient of
 14 the call to purchase, rent, or invest in goods or services during
 15 that telephone call. Telephone solicitation does not include any of
 16 the following:

17 (i) A voice communication to a residential telephone
 18 subscriber, ~~with~~**if** that subscriber's express invitation or
 19 permission ~~prior to~~**was given before** the voice communication.

20 (ii) A voice communication to an existing customer of the
 21 person on whose behalf the voice communication is made, unless the
 22 existing customer is a consumer who has requested ~~that he or she to~~
 23 not receive calls from or on behalf of that person under section
 24 1c(1)(g).

25 (iii) A voice communication to a residential telephone
 26 subscriber in which the caller requests a face-to-face meeting with
 27 the residential telephone subscriber to discuss a purchase, sale,
 28 or rental of, or investment in, goods or services but does not urge
 29 the residential telephone subscriber to make a decision to

1 purchase, sell, rent, invest, or make a deposit on that good or
2 service during the voice communication.

3 (n) "Telephone solicitor" means any person doing business in
4 this state ~~who~~**that** makes or causes to be made a telephone
5 solicitation from within or outside of this state, including, but
6 not limited to, ~~calls a call~~ made by use of **an** automated dialing
7 and announcing ~~devices~~**device** or by ~~a live person~~**an individual**.

8 (o) "Vendor" means a person designated by the commission to
9 maintain a do-not-call list under section 1a. ~~The term~~**Vendor** may
10 include a governmental entity.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No.____ or House Bill No. 5354 (request no.
13 03158'23) of the 102nd Legislature is enacted into law.