

SENATE BILL NO. 1040

October 16, 2024, Introduced by Senators ANTHONY, CAVANAGH, MOSS, GEISS, POLEHANKI, CHANG, BAYER, MCBROOM, VICTORY, KLINEFELT and MCMORROW and referred to the Committee on Finance, Insurance, and Consumer Protection.

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 the title and sections 1 and 3 (MCL 445.111 and 445.113), the title as amended by 2002 PA 612, section 1 as amended by 2009 PA 93, and section 3 as amended by 2006 PA 138; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

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.

Sec. 1. As used in this act:

(a) **"Business day" means Monday through Friday. Business day does not include Saturday, Sunday, or any of the following business holidays: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, or Christmas Day.**

(b) **"Commission" means the Michigan public service commission.**

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

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

(e) **"Home solicitation sale" means a sale of goods or services of more than \$25.00 in which the seller or a person acting for the seller engages in a personal ~~, telephonic,~~ or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include any of the following:**

(i) A sale made pursuant to a preexisting revolving charge

1 account.

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

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

8 (iv) A sale made at a fixed location of a business
9 establishment where goods or services are offered or exhibited for
10 sale.

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

13 (vi) A sale of services by a real estate broker or salesperson
14 ~~licensed by the department of consumer and industry services.~~ **under**
15 **article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to**
16 **339.2518.**

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

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

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

29 ~~(d) "Federally insured depository institution" means a state~~

~~or national bank, state or federal savings bank, state or federal savings and loan association, or state or federal credit union that holds deposits insured by an agency of the United States.~~

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

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

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

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

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

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

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

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

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

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

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

(h) ~~(f)~~—"Written solicitation" means a postcard or other

1 written notice delivered to a buyer's residence that requests that
2 the buyer contact the seller or seller's agent by telephone to
3 inquire about a good or service, unless the postcard or other
4 written notice concerns a previous purchase or order or specifies
5 the price of the good or service and accurately describes the good
6 or service.

7 ~~(g) "ADAD" or "automatic dialing and announcing device" means~~
8 ~~any device or system of devices that is used, whether alone or in~~
9 ~~conjunction with other equipment, for the purpose of automatically~~
10 ~~selecting or dialing telephone numbers.~~

11 ~~(h) "Commission" means the public service commission.~~

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

16 ~~(j) "Existing customer" means an individual who has purchased~~
17 ~~goods or services from a person, who is the recipient of a voice~~
18 ~~communication from that person, and who either paid for the goods~~
19 ~~or services within the 12 months preceding the voice communication~~
20 ~~or has not paid for the goods and services at the time of the voice~~
21 ~~communication because of a prior agreement between the person and~~
22 ~~the individual.~~

23 ~~(k) "Person" means an individual, partnership, corporation,~~
24 ~~limited liability company, association, governmental entity, or~~
25 ~~other legal entity.~~

26 ~~(l) "Residential telephone subscriber" or "subscriber" means a~~
27 ~~person residing in this state who has residential telephone~~
28 ~~service.~~

29 ~~(m) "Telephone solicitation" means any voice communication~~

1 ~~over a telephone for the purpose of encouraging the recipient of~~
2 ~~the call to purchase, rent, or invest in goods or services during~~
3 ~~that telephone call. Telephone solicitation does not include any of~~
4 ~~the following:~~

5 ~~(i) A voice communication to a residential telephone subscriber~~
6 ~~with that subscriber's express invitation or permission prior to~~
7 ~~the voice communication.~~

8 ~~(ii) A voice communication to an existing customer of the~~
9 ~~person on whose behalf the voice communication is made, unless the~~
10 ~~existing customer is a consumer who has requested that he or she~~
11 ~~not receive calls from or on behalf of that person under section~~
12 ~~1e(1)(g).~~

13 ~~(iii) A voice communication to a residential telephone~~
14 ~~subscriber in which the caller requests a face-to-face meeting with~~
15 ~~the residential telephone subscriber to discuss a purchase, sale,~~
16 ~~or rental of, or investment in, goods or services but does not urge~~
17 ~~the residential telephone subscriber to make a decision to~~
18 ~~purchase, sell, rent, invest, or make a deposit on that good or~~
19 ~~service during the voice communication.~~

20 ~~(n) "Telephone solicitor" means any person doing business in~~
21 ~~this state who makes or causes to be made a telephone solicitation~~
22 ~~from within or outside of this state, including, but not limited~~
23 ~~to, calls made by use of automated dialing and announcing devices~~
24 ~~or by a live person.~~

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

28 Sec. 3. (1) In a home solicitation sale, unless the buyer
29 requests the seller to provide goods or services without delay in

1 an emergency, the seller shall present to the buyer and obtain the
 2 buyer's signature to a written agreement or offer to purchase that
 3 designates as the date of the transaction the date on which the
 4 buyer actually signs.

5 The agreement or offer to purchase ~~shall~~**must** contain a
 6 statement substantially as follows in immediate proximity to the
 7 space reserved in the agreement or offer to purchase for the
 8 signature of the buyer:

9 "You, the buyer, may cancel this transaction at any time prior
 10 to midnight of the third business day after the date of this
 11 transaction. See the attached notice of cancellation form for an
 12 explanation of this right. Additionally, the seller is prohibited
 13 from having an independent courier service or other third party
 14 pick up your payment at your residence before the end of the 3-
 15 business-day period in which you can cancel the transaction."

16 (2) The seller shall attach to the copy or cause to be printed
 17 on the reverse side of the written agreement or offer to purchase
 18 retained by the buyer a notice of cancellation in duplicate that
 19 ~~shall~~**must** appear as follows:

20 "notice of cancellation

21 (enter date of transaction)

22 (date)

23 You may cancel this transaction, without any penalty or
 24 obligation, within 3 business days from the above date.

25 If you cancel, any property traded in, any payments made by
 26 you under the contract or sale, and any negotiable instrument
 27 executed by you will be returned within 10 business days following
 28 receipt by the seller of your cancellation notice, and any security
 29 interest arising out of the transaction will be canceled.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to (name of seller), at (address of seller's place of business) not later than midnight on

I hereby cancel this transaction.

(buyer's signature) "

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1 services. The seller shall enter on the blanks in the notice of
 2 cancellation the date of transaction ~~, which that~~ is the date the
 3 buyer signs the written agreement, and the date for mailing the
 4 notice of cancellation. An error in entering this information ~~shall~~
 5 **does** not diminish the buyer's rights under this act.

6 (4) Until the seller has complied with this section, the buyer
 7 may cancel the home solicitation sale by notifying the seller in
 8 any manner and by any means of ~~his or her~~ **the buyer's** intention to
 9 cancel.

10 ~~(5) This section does not apply to a home solicitation sale~~
 11 ~~where the seller engaged in a telephone solicitation of the sale if~~
 12 ~~sections 505 to 507 of the Michigan telecommunications act, 1991 PA~~
 13 ~~179, MCL 484.2505 to 484.2507, apply to the solicitation or sale.~~

14 **(5)** ~~(6)~~ This section does not apply to a home solicitation
 15 sale of natural gas or electricity if the seller is any of the
 16 following:

17 (a) An electric utility or gas utility that is regulated by
 18 the commission and complies with any orders or tariffs issued by
 19 the commission concerning home solicitations by alternative
 20 electric suppliers or alternative gas suppliers in making the
 21 solicitation.

22 (b) An alternative gas supplier or alternative electric
 23 supplier licensed by the commission that complies with any
 24 applicable orders or tariffs issued by the commission concerning
 25 home solicitations in making the solicitation.

26 Enacting section 1. Sections 1a to 1e of 1971 PA 227, MCL
 27 445.111a to 445.111e, are repealed.

28 Enacting section 2. This amendatory act does not take effect
 29 unless Senate Bill No. 1037

1 of the 102nd Legislature is enacted into law.