

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4042**

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, 2, 3, 4, 5, 6, and 7
(MCL 445.111, 445.111a, 445.112, 445.113, 445.114, 445.115,
445.116, and 445.117), section 1 as amended by 1999 PA 18 and
sections 2 and 3 as amended by 2000 PA 15, and by adding sections
1b, 1c, 1d, 1e, and 1f.

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 AND TELEPHONE SOLICITATION SALES; AND TO REGU-
4 LATE CERTAIN TELEPHONE SOLICITATION.
5 Sec. 1. As used in this act:

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

2

1 (a) "Home solicitation sale" means a sale of goods or
2 services of more than \$25.00 in which the seller or a person
3 acting for the seller engages in ~~a personal, telephonic,~~
4 FACE-TO-FACE or written solicitation of the sale, the sollicita-
5 tion is received by the buyer at a residence of the buyer, and
6 the buyer's agreement or offer to purchase is there given to the
7 seller or a person acting for the seller. Home solicitation sale
8 does not include any of the following:

9 (i) A sale made pursuant to a preexisting revolving charge
10 account.

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

14 (iii) A sale or solicitation of insurance by an insurance
15 agent licensed by the commissioner of insurance.

16 (iv) A sale made at a fixed location of a business estab-
17 lishment where goods or services are offered or exhibited for
18 sale.

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

21 (vi) A sale of services by a real estate broker or salesper-
22 son licensed by the department of consumer and industry
23 services.

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

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

3

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

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

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

14 (e) "Goods or services" does not include either of the
15 following:

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

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

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

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

26 (C) The regulatory loan act of 1963, 1939 PA 21, MCL 493.1
27 to 493.26.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

4

1 (D) The consumer financial services act, 1988 PA 161, MCL
2 487.2051 to 487.2072.

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

4 (F) The motor vehicle sales finance act, 1950 (Ex Sess) PA
5 27, MCL 492.101 to 492.141.

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

13 (G) "TELEPHONE SOLICITATION SALE" MEANS A SALE OF GOODS OR
14 SERVICES OF MORE THAN \$25.00 IN WHICH THE SELLER OR A PERSON
15 ACTING FOR THE SELLER ENGAGES IN A TELEPHONIC SOLICITATION OF THE
16 SALE, THE SOLICITATION IS RECEIVED BY THE BUYER AT A RESIDENCE OF
17 THE BUYER, AND THE BUYER'S AGREEMENT OR OFFER TO PURCHASE IS
18 THERE GIVEN TO THE SELLER OR A PERSON ACTING FOR THE SELLER. THE
19 TERM DOES NOT INCLUDE A SALE OF A SECURITY OR INTEREST IN A
20 SECURITY THAT IS SUBJECT TO THE UNIFORM SECURITIES ACT, 1964 PA
21 265, MCL 451.501 TO 451.818.

22 (H) "AUTOMATIC DIALING AND ANNOUNCING DEVICE" MEANS ANY
23 DEVICE OR SYSTEM OF DEVICES THAT IS USED, WHETHER ALONE OR IN
24 CONJUNCTION WITH OTHER EQUIPMENT, FOR THE PURPOSE OF AUTOMATI-
25 CALLY SELECTING OR DIALING TELEPHONE NUMBERS.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

5

1 (I) "DO-NOT-CALL LIST" MEANS A DO NOT CALL LIST OF CONSUMERS
2 AN ORGANIZATION OR OTHER PERSON IS REQUIRED TO MAINTAIN UNDER
3 SECTION 1C(1)(H).

4 (J) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
5 LIMITED LIABILITY COMPANY, ASSOCIATION, GOVERNMENTAL ENTITY, OR
6 OTHER LEGAL ENTITY.

7 (K) "RESIDENTIAL TELEPHONE SUBSCRIBER" MEANS AN INDIVIDUAL
8 RESIDING IN THIS STATE WHO HAS RESIDENTIAL TELEPHONE SERVICE.

9 (L) "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 (M) "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 WHETHER OR NOT A
17 PURCHASE OR RENTAL OF OR INVESTMENT IN GOODS OR SERVICES OCCURS
18 AS A RESULT OF THE COMMUNICATION. TELEPHONE SOLICITATION DOES
19 NOT INCLUDE ANY OF THE FOLLOWING:

20 (i) A VOICE COMMUNICATION TO A RESIDENTIAL TELEPHONE SUB-
21 SCRIBER WITH THAT SUBSCRIBER'S PRIOR EXPRESS INVITATION OR
22 PERMISSION.

23 (ii) A VOICE COMMUNICATION TO A RESIDENTIAL TELEPHONE SUB-
24 SCRIBER THAT IS MADE BY A REAL ESTATE BROKER OR SALESPERSON
25 LICENSED BY THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES, IF
26 THAT REAL ESTATE BROKER OR SALESPERSON USES TELEPHONE EQUIPMENT
27 THAT DISPLAYS THE TELEPHONE NUMBER OF THE CALLER ON THE TELEPHONE

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042 as amended December 13, 2001

6

1 OF ANY RESIDENTIAL TELEPHONE SUBSCRIBER WITH A CALLER ID FUNCTION
2 FOR THE TELEPHONE CALL.

3 (iii) A VOICE COMMUNICATION TO A RESIDENTIAL TELEPHONE
4 NUMBER BY A HEALTH CARE PROVIDER WHO PROVIDES OR HAS PROVIDED
5 CARE TO AN INDIVIDUAL AT THAT TELEPHONE NUMBER. AS USED IN THIS
6 SUBDIVISION, "HEALTH CARE PROVIDER" MEANS THAT TERM AS DEFINED IN
7 SECTION 3 OF THE PATIENT'S RIGHT TO INDEPENDENT REVIEW ACT, 2000
8 PA 251, MCL 550.1903.

(iv) A VOICE COMMUNICATION TO A RESIDENTIAL TELEPHONE
SUBSCRIBER BY AN INSURANCE AGENT LICENSED BY THE COMMISSIONER OF THE
OFFICE OF FINANCIAL AND INSURANCE SERVICES IN CONNECTION WITH A SALE
OR OFFER FOR SALE OF INSURANCE.

9 Sec. 1a. ~~A home solicitation sale shall not be made by~~
10 ~~telephonic solicitation using~~ PERSON SHALL NOT MAKE A TELEPHONE
11 SOLICITATION THAT CONSISTS in whole or in part OF a recorded
12 message.

13 SEC. 1B. (1) AT THE BEGINNING OF A TELEPHONE SOLICITATION,
14 A PERSON MAKING A TELEPHONE SOLICITATION TO A RESIDENTIAL TELE-
15 PHONE SUBSCRIBER SHALL STATE HIS OR HER NAME AND THE FULL NAME OF
16 THE ORGANIZATION OR OTHER PERSON ON WHOSE BEHALF THE CALL IS INI-
17 TIATED AND PROVIDE A TELEPHONE NUMBER OF THAT ORGANIZATION OR
18 OTHER PERSON ON REQUEST. A NATURAL PERSON MUST BE AVAILABLE TO
19 ANSWER THE TELEPHONE NUMBER AT ANY TIME WHEN TELEPHONE SOLICITA-
20 TIONS ARE BEING MADE.

21 (2) THE PERSON ANSWERING THE TELEPHONE NUMBER REQUIRED UNDER
22 SUBSECTION (1) SHALL PROVIDE A RESIDENTIAL TELEPHONE SUBSCRIBER
23 CALLING THE TELEPHONE NUMBER WITH INFORMATION DESCRIBING THE
24 ORGANIZATION OR OTHER PERSON ON WHOSE BEHALF THE TELEPHONE SOLIC-
25 ITATION WAS MADE TO THE RESIDENTIAL TELEPHONE SUBSCRIBER AND
26 DESCRIBING THE TELEPHONE SOLICITATION.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

7

1 SEC. 1C. (1) IT IS AN UNFAIR OR DECEPTIVE ACT OR PRACTICE
2 AND A VIOLATION OF THIS ACT FOR A TELEPHONE SOLICITOR TO DO ANY
3 OF THE FOLLOWING:

4 (A) MISREPRESENT OR FAIL TO DISCLOSE, IN A CLEAR, CONSPICU-
5 OUS, AND INTELLIGIBLE MANNER AND BEFORE PAYMENT IS RECEIVED FROM
6 THE CONSUMER, ANY OF THE FOLLOWING INFORMATION:

7 (i) TOTAL PURCHASE PRICE TO THE CONSUMER OF THE GOODS OR
8 SERVICES TO BE RECEIVED.

9 (ii) ANY RESTRICTIONS, LIMITATIONS, OR CONDITIONS TO PUR-
10 CHASE OR TO USE THE GOODS OR SERVICES THAT ARE THE SUBJECT OF AN
11 OFFER TO SELL GOODS OR SERVICES.

12 (iii) ANY MATERIAL TERM OR CONDITION OF THE SELLER'S REFUND,
13 CANCELLATION, OR EXCHANGE POLICY, INCLUDING A CONSUMER'S RIGHT TO
14 CANCEL A HOME SOLICITATION SALE UNDER SECTION 2 AND, IF APPLICA-
15 BLE, THAT THE SELLER DOES NOT HAVE A REFUND, CANCELLATION, OR
16 EXCHANGE POLICY.

17 (iv) ALL MATERIAL COSTS OR CONDITIONS RELATED TO RECEIVING A
18 PRIZE, INCLUDING THE ODDS OF WINNING THE PRIZE, AND IF THE ODDS
19 ARE NOT CALCULABLE IN ADVANCE, THE FACTORS USED IN CALCULATING
20 THE ODDS, THE NATURE AND VALUE OF A PRIZE, THAT NO PURCHASE IS
21 NECESSARY TO WIN THE PRIZE, AND THE "NO PURCHASE REQUIRED" METHOD
22 OF ENTERING THE CONTEST.

23 (v) ANY MATERIAL ASPECT OF AN INVESTMENT OPPORTUNITY THE
24 SELLER IS OFFERING, INCLUDING, BUT NOT LIMITED TO, RISK, LIQUIDI-
25 TY, EARNINGS POTENTIAL, MARKET VALUE, AND PROFITABILITY.

26 (vi) THE QUANTITY AND ANY MATERIAL ASPECT OF THE QUALITY OR
27 BASIC CHARACTERISTICS OF ANY GOODS OR SERVICES OFFERED.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

8

1 (vii) THE RIGHT TO CANCEL A SALE UNDER THIS ACT, IF ANY.

2 (B) MISREPRESENT ANY MATERIAL ASPECT OF THE QUALITY OR BASIC
3 CHARACTERISTICS OF ANY GOODS OR SERVICES OFFERED.

4 (C) MAKE A FALSE OR MISLEADING STATEMENT FOR THE PURPOSE OF
5 INDUCING A CONSUMER TO PAY FOR GOODS OR SERVICES.

6 (D) REQUEST OR ACCEPT PAYMENT FROM A CONSUMER OR MAKE OR
7 SUBMIT ANY CHARGE TO THE CONSUMER'S CREDIT OR BANK ACCOUNT BEFORE
8 THE TELEPHONE SOLICITOR OR SELLER RECEIVES FROM THE CONSUMER AN
9 EXPRESS VERIFIABLE AUTHORIZATION. AS USED IN THIS SUBDIVISION,
10 "VERIFIABLE AUTHORIZATION" MEANS A WRITTEN AUTHORIZATION OR CON-
11 FIRMATION, AN ORAL AUTHORIZATION RECORDED BY THE TELEPHONE SOLIC-
12 ITOR, OR CONFIRMATION THROUGH AN INDEPENDENT THIRD PARTY.

13 (E) OFFER TO A CONSUMER IN THIS STATE A PRIZE PROMOTION IN
14 WHICH A PURCHASE OR PAYMENT IS NECESSARY TO OBTAIN THE PRIZE.

15 (F) FAIL TO COMPLY WITH THE REQUIREMENTS OF SECTION 1A OR
16 1B.

17 (G) MAKE A TELEPHONE SOLICITATION TO A CONSUMER IN THIS
18 STATE WHO HAS REQUESTED THAT HE OR SHE NOT RECEIVE CALLS FROM THE
19 ORGANIZATION OR OTHER PERSON ON WHOSE BEHALF THE TELEPHONE SOLIC-
20 ITATION IS MADE.

21 (H) FOR AN ORGANIZATION OR OTHER PERSON ON WHOSE BEHALF
22 TELEPHONE SOLICITATIONS ARE MADE IN THIS STATE, FAIL TO MAINTAIN
23 A LIST OF NAMES AND TELEPHONE NUMBERS OF CONSUMERS WHO HAVE MADE
24 A REQUEST DESCRIBED IN SUBDIVISION (G).

25 (I) SELL OR TRANSFER A LIST OF CONSUMERS AN ORGANIZATION OR
26 OTHER PERSON IS REQUIRED TO MAINTAIN UNDER SUBDIVISION (H) TO ANY
27 PERSON INCLUDING, BUT NOT LIMITED TO, AN AFFILIATE OF THE

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

9

1 ORGANIZATION OR OTHER PERSON, FOR ANY PURPOSE UNRELATED TO THIS
2 SECTION.

3 (2) BEGINNING 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMEN-
4 DATORY ACT THAT ADDED THIS SECTION, A PERSON WHO KNOWINGLY OR
5 INTENTIONALLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
6 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR A FINE
7 OF NOT MORE THAN \$500.00, OR BOTH. THIS SUBSECTION DOES NOT PRO-
8 HIBIT A PERSON FROM BEING CHARGED WITH, CONVICTED OF, OR PUNISHED
9 FOR ANY OTHER CRIME INCLUDING ANY OTHER VIOLATION OF LAW ARISING
10 OUT OF THE SAME TRANSACTION AS THE VIOLATION OF THIS SECTION.

11 (3) A PERSON WHO SUFFERS LOSS AS A VIOLATION OF THIS SECTION
12 MAY BRING AN ACTION TO RECOVER ACTUAL DAMAGES OR \$250.00, WHICH-
13 EVER IS GREATER, TOGETHER WITH REASONABLE ATTORNEY FEES. THIS
14 SUBSECTION DOES NOT PREVENT THE CONSUMER FROM ASSERTING HIS OR
15 HER RIGHTS UNDER THIS ACT IF THE TELEPHONE SOLICITATION RESULTS
16 IN A HOME SOLICITATION SALE OR A TELEPHONE SOLICITATION SALE, OR
17 ASSERTING ANY OTHER RIGHTS OR CLAIMS THE CONSUMER MAY HAVE UNDER
18 APPLICABLE STATE OR FEDERAL LAW.

19 SEC. 1D. (1) BEGINNING 120 DAYS AFTER THE EFFECTIVE DATE OF
20 THE AMENDATORY ACT THAT ADDED THIS SECTION, IF A TELEPHONE DIREC-
21 TORY INCLUDES RESIDENTIAL TELEPHONE NUMBERS, THE PERSON THAT PUB-
22 LISHES THE TELEPHONE DIRECTORY SHALL INCLUDE IN THE TELEPHONE
23 DIRECTORY A NOTICE DESCRIBING HOW A RESIDENTIAL TELEPHONE SUB-
24 SCRIBER MAY ENROLL ON A DO NOT CALL LIST WITH AN ORGANIZATION OR
25 OTHER PERSON.

26 (2) BEGINNING 30 DAYS AFTER THE EFFECTIVE DATE OF THE
27 AMENDATORY ACT THAT ADDED THIS SECTION, EACH TELECOMMUNICATION

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

10

1 PROVIDER THAT PROVIDES RESIDENTIAL TELEPHONE SERVICE SHALL
2 INCLUDE A NOTICE DESCRIBING THE DO NOT CALL LIST AND HOW TO
3 ENROLL ON THE DO NOT CALL LIST WITH EACH OF THAT TELECOMMUNICA-
4 TION PROVIDER'S BILLS FOR TELECOMMUNICATION SERVICES TO A RESI-
5 DENTIAL TELEPHONE SUBSCRIBER. IF THE FEDERAL COMMUNICATION COM-
6 MISSION OR ANY OTHER FEDERAL AGENCY ESTABLISHES A NATIONAL "DO
7 NOT CALL" REGISTRY, THE NOTICE SHALL ALSO DESCRIBE THAT REGISTRY
8 AND HOW TO ENROLL ON THAT REGISTRY. AS USED IN THIS SUBSECTION,
9 "TELECOMMUNICATION PROVIDER" MEANS THAT TERM AS DEFINED IN
10 SECTION 102 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179,
11 MCL 484.2102.

12 SEC. 1E. SECTIONS 1A, 1B, 1C, AND 1D DO NOT APPLY TO A
13 PERSON SUBJECT TO ANY OF THE FOLLOWING:

14 (A) THE CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT, 1975
15 PA 169, MCL 400.271 TO 400.294.

16 (B) THE PUBLIC SAFETY SOLICITATION ACT, 1992 PA 298,
17 MCL 14.301 TO 14.327.

18 (C) SECTION 527 OF THE INTERNAL REVENUE CODE OF 1986.

19 SEC. 1F. IN AN ACTION FOR A VIOLATION OF SECTION 1A, 1B,
20 1C, OR 1D, A PERSON CLAIMING THAT NO VIOLATION OCCURRED, INCLUD-
21 ING, BUT NOT LIMITED TO, A CLAIM THAT NO VIOLATION OCCURRED
22 BECAUSE HE OR SHE IS A PERSON DESCRIBED IN SECTION 1E, HAS THE
23 BURDEN OF PROVING THAT CLAIM.

24 Sec. 2. (1) Except as provided in subsection (5), in addi-
25 tion to any right otherwise to revoke an offer, a buyer has the
26 right to cancel a home solicitation sale OR TELEPHONE
27 SOLICITATION SALE until midnight of the third business day after

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

11

1 the day on which the buyer signs an agreement or offer to
2 purchase that complies with this act. The seller in a home
3 solicitation sale OR TELEPHONE SOLICITATION SALE shall not
4 acquire payment by having an independent courier service or other
5 third party pick up the buyer's payment at the buyer's residence
6 until after the buyer's right-to-revoke period prescribed by this
7 act has expired.

8 (2) Cancellation occurs when the buyer mails or delivers the
9 notice of cancellation provided for in section 3(2) or any other
10 written notice, or sends a telegram, to the seller at the address
11 stated in the notice of cancellation.

12 (3) A notice of cancellation or other written notice, if
13 mailed to the seller, is given when it is deposited in a mailbox
14 properly addressed and postage prepaid.

15 (4) A written notice or telegram given by the buyer other
16 than the notice of cancellation need not take a particular form
17 and is sufficient if it indicates by any form of written expres-
18 sion the intention of the buyer not to be bound by the home
19 solicitation sale OR TELEPHONE SOLICITATION SALE.

20 (5) A buyer may not cancel a home solicitation sale OR TELE-
21 PHONE SOLICITATION SALE if the buyer requests the seller to pro-
22 vide goods or services without delay because of an emergency, and
23 all of the following conditions are met:

24 (a) The seller in good faith makes a substantial beginning
25 of performance of the contract before the buyer gives notice of
26 cancellation.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

12

1 (b) The buyer furnishes the seller with a separate dated and
2 signed personal statement in the buyer's handwriting describing
3 the situation requiring immediate remedy and expressly acknowl-
4 edging and waiving the right to cancel the sale within 3 business
5 days.

6 (c) In the case of goods, the goods cannot be returned to
7 the seller in substantially as good condition as when received by
8 the buyer.

9 (6) If a home solicitation sale OR TELEPHONE SOLICITATION
10 SALE is also subject to the debtor's right to rescind certain
11 transactions, the buyer may proceed either under those provisions
12 or under this section.

13 Sec. 3. (1) In a home solicitation sale OR TELEPHONE SOLIC-
14 ITATION SALE, unless the buyer requests the seller to provide
15 goods or services without delay in an emergency, the seller shall
16 present to the buyer and obtain the buyer's signature to a writ-
17 ten agreement or offer to purchase that designates as the date of
18 the transaction the date on which the buyer actually signs.

19 The agreement or offer to purchase shall contain a statement
20 substantially as follows in immediate proximity to the space
21 reserved in the agreement or offer to purchase for the signature
22 of the buyer:

23 "You, the buyer, may cancel this transaction at any time
24 prior to midnight of the third business day after the date of
25 this transaction. See the attached notice of cancellation form
26 for an explanation of this right. Additionally, the seller is
27 prohibited from having an independent courier service or other

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

13

1 third party pick up your payment at your residence before the end
2 of the 3-business-day period in which you can cancel the
3 transaction."

4 (2) The seller shall attach to the copy or cause to be
5 printed on the reverse side of the written agreement or offer to
6 purchase retained by the buyer a notice of cancellation in dupli-
7 cate that shall appear as follows:

8

9 "notice of cancellation

10

(enter date of transaction)

11

(date)

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

14 If you cancel, any property traded in, any payments made by
15 you under the contract or sale, and any negotiable instrument
16 executed by you will be returned within 10 business days follow-
17 ing receipt by the seller of your cancellation notice, and any
18 security interest arising out of the transaction will be
19 canceled.

20 If you cancel, you must make available to the seller at your
21 residence, in substantially as good condition as when received,
22 any goods delivered to you under this contract or sale; or you
23 may if you wish, comply with the instructions of the seller
24 regarding the return shipment of the goods at the seller's
25 expense and risk.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

14

1 If you do make the goods available to the seller and the
2 seller does not pick them up within 20 days of the date of your
3 notice of cancellation, you may retain or dispose of the goods
4 without any further obligation. If you fail to make the goods
5 available to the seller or if you agree to return the goods to
6 the seller and fail to do so, then you remain liable for per-
7 formance of all obligations under the contract.

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

12 _____

13 (date)

14 I hereby cancel this transaction.

15 _____

16 (date)

17

18 (buyer's signature) "

19 (3) The notices required by this section shall be in not
20 less than 10-point bold type and shall be 2 points larger than

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

15

1 the text of the contract. A written agreement or offer to
2 purchase and the notice of cancellation attached to the agreement
3 or offer shall be written in the same language as that used in
4 any oral presentation that was given to facilitate sale of the
5 goods or services. The seller shall enter on the blanks in the
6 notice of cancellation the date of transaction, which is the date
7 the buyer signs the written agreement, and the date for mailing
8 the notice of cancellation. An error in entering this informa-
9 tion shall not diminish the buyer's rights under this act.

10 (4) Until the seller has complied with this section, the
11 buyer may cancel the home solicitation sale OR TELEPHONE SOLICI-
12 TATION SALE by notifying the seller in any manner and by any
13 means of his or her intention to cancel.

14 (5) THIS SECTION DOES NOT APPLY TO A TELEPHONE SOLICITATION
15 SALE MADE PURSUANT TO SECTIONS 505 TO 507 OF THE MICHIGAN TELE-
16 COMMUNICATIONS ACT, 1991 PA 179, MCL 484.2505 TO 484.2507.

17 Sec. 4. (1) Except as provided in this section, within 10
18 days after a home solicitation sale OR TELEPHONE SOLICITATION
19 SALE has been canceled or an offer to purchase revoked the seller
20 shall tender to the buyer any payments made by the buyer and any
21 note or other evidence of indebtedness.

22 (2) If the down payment includes goods traded in, the goods
23 shall be tendered in substantially as good condition as when
24 received by the seller. If the seller fails to tender the goods
25 as provided by this section, the buyer may elect to recover an
26 amount equal to the trade-in allowance stated in the agreement.

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

16

1 (3) Until the seller has complied with the obligations
2 imposed by this section the buyer may retain possession of goods
3 delivered to him OR HER by the seller and has a lien on the goods
4 in his OR HER possession or control for any recovery to which he
5 OR SHE is entitled.

6 Sec. 5. (1) Except as provided by section 4(3), if a home
7 solicitation sale OR TELEPHONE SOLICITATION SALE has been
8 canceled or an offer to purchase revoked, a seller may demand the
9 return of goods delivered within 20 days after the cancellation
10 or revocation. The buyer shall take good care of the goods and
11 shall make the goods available for return to the seller at the
12 buyer's residence. If the seller fails to demand return of the
13 goods as prescribed in this subsection, the goods shall become
14 the property of the buyer without obligation.

15 (2) If the seller has performed any services pursuant to a
16 home solicitation sale OR TELEPHONE SOLICITATION SALE before its
17 cancellation, the seller is not entitled to compensation.

18 Sec. 6. Refunds or penalties IN CONNECTION WITH A HOME
19 SOLICITATION SALE OR TELEPHONE SOLICITATION SALE to which the
20 debtor is entitled pursuant to this act may be set off against
21 the debtor's obligation, and may be raised as a defense to an
22 action on the obligation without regard to the time limitations
23 prescribed by this act.

24 Sec. 7. ~~No~~ A person may NOT bring ~~any~~ AN action in any
25 court of this state for the collection of any home solicitation
26 sale OR TELEPHONE SOLICITATION SALE contract without proving that

HB 4042, As Passed Senate, December 13, 2001

House Bill No. 4042

17

1 ~~such person~~ HE OR SHE was at all times in compliance with this
2 act.