

HOUSE BILL No. 5757

April 1, 2004, Introduced by Rep. Koetje and referred to the Committee on Commerce.

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 2002 PA 612.

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
3 services of more than \$25.00 in which the seller or a person
4 acting for the seller engages in a personal, telephonic, or
5 written solicitation of the sale, the solicitation is received by
6 the buyer at a residence of the buyer, and the buyer's agreement
7 or offer to purchase is there given to the seller or a person
8 acting for the seller. Home solicitation sale does not include
9 any of the following:

10 (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
4 goods or services are offered or exhibited for sale.

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

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

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

12 (vi) A sale of services by a real estate broker or
13 salesperson licensed by the department of consumer and industry
14 services.

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

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

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

27 (d) "Federally insured depository institution" means a state

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

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

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

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

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

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

17 (C) The regulatory loan act, 1939 PA 21, MCL 493.1 to
18 493.24.

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

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

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

24 (iii) A sale of a security or interest in a security that is
25 subject to the uniform securities act, 1964 PA 265, MCL 451.501
26 to 451.818, **or the uniform securities act (2002), MCL 451.2101 to**
27 **451.2703.**

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

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

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

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

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

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

27 (l) "Residential telephone subscriber" or "subscriber" means

1 a person residing in this state who has residential telephone
2 service.

3 (m) "Telephone solicitation" means any voice communication
4 over a telephone for the purpose of encouraging the recipient of
5 the call to purchase, rent, or invest in goods or services during
6 that telephone call. Telephone solicitation does not include any
7 of the following:

8 (i) A voice communication to a residential telephone
9 subscriber with that subscriber's express invitation or
10 permission prior to the voice communication.

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

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

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

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

4 Enacting section 1. This amendatory act does not take
5 effect unless Senate Bill No. ____ or House Bill No. 5746
6 (request no. 06004'03) of the 92nd Legislature is enacted into
7 law.