

HOUSE BILL No. 4947

September 13, 2017, Introduced by Rep. Miller and referred to the Committee on Commerce and Trade.

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 sections 1, 1a, 1b, 1c, 1d, and 1e (MCL 445.111, 445.111a, 445.111b, 445.111c, 445.111d, and 445.111e), section 1 as amended by 2009 PA 93, section 1a as amended and sections 1b, 1d, and 1e as added by 2002 PA 612, and section 1c as amended by 2006 PA 133.

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~~ **AN INDIVIDUAL**

1 **WHO IS** acting for the seller engages in a personal, telephonic, or
2 written solicitation of the sale, the solicitation is received by
3 the buyer at a residence of the buyer, and the buyer's agreement or
4 offer to purchase is there given to the seller or ~~a person~~ **AN**
5 **INDIVIDUAL WHO IS** acting for the seller. Home solicitation sale
6 does not include any of the following:

7 (i) A sale ~~made pursuant to~~ **IN WHICH PAYMENT IS MADE USING** a
8 preexisting revolving charge account.

9 (ii) A sale ~~made pursuant to~~ **THAT IS THE RESULT OF** prior
10 negotiations between the parties at a business establishment at a
11 fixed location where goods or services are offered or exhibited for
12 sale.

13 (iii) A sale or solicitation of insurance by an insurance
14 agent licensed ~~by the commissioner of insurance.~~ **UNDER THE INSURANCE**
15 **CODE OF 1956, 1956 PA 218, MCL 500.100 TO 500.8302.**

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

19 (v) A sale made ~~pursuant to~~ **ON THE TERMS INCLUDED IN** a printed
20 advertisement in a publication of general circulation.

21 (vi) A sale of services by a real estate broker or salesperson
22 licensed ~~by the department of consumer and industry services.~~ **UNDER**
23 **ARTICLE 25 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2501 TO**
24 **339.2518.**

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

(b) "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.

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

(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.

(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:~~ **FINANCIAL LICENSING ACTS, AS DEFINED IN SECTION 2 OF THE CONSUMER FINANCIAL SERVICES ACT, 1988 PA 161, MCL 487.2052.**

~~—— (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.~~

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

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

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

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

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

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

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

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

23 **(H)** ~~(i) "Do-not-call list" means a do-not-call list of~~
 24 ~~consumers and their residential telephone numbers maintained by the~~
 25 ~~commission, by a vendor designated by the commission, or by an~~
 26 ~~agency of the federal government, under section 1a.~~ **THE NATIONAL DO**
 27 **NOT CALL REGISTRY MAINTAINED BY THE FEDERAL TRADE COMMISSION UNDER**

1 **16 CFR 310.4.**

2 **(I)** ~~(j)~~ "Existing customer" means an individual who has
 3 purchased goods or services from a person, who is the recipient of
 4 a voice communication from that person, and who either paid for the
 5 goods or services within the 12 months preceding the voice
 6 communication or has not paid for the goods and services at the
 7 time of the voice communication because of a prior agreement
 8 between the person and the individual.

9 **(J)** ~~(k)~~ "Person" means an individual, partnership,
 10 corporation, limited liability company, association, governmental
 11 entity, or other legal entity.

12 **(K)** ~~(l)~~ "Residential telephone subscriber" or "subscriber"
 13 ~~means a person residing in this state who has residential telephone~~
 14 ~~service.~~ **"TELEPHONE CONSUMER" MEANS AN INDIVIDUAL WHO IS A RESIDENT**
 15 **OF THIS STATE AND HAS HOME OR MOBILE TELEPHONE SERVICE.**

16 **(l)** ~~(m)~~ "Telephone solicitation" means any voice communication
 17 over a telephone for the purpose of encouraging the recipient of
 18 the call to purchase, rent, or invest in goods or services during
 19 that telephone call. Telephone solicitation does not include any of
 20 the following:

21 (i) A voice communication to a ~~residential telephone~~
 22 ~~subscriber~~ **TELEPHONE CONSUMER** with that ~~subscriber's~~ **TELEPHONE**
 23 **CONSUMER'S** express invitation or permission ~~prior to~~ **GIVEN BEFORE**
 24 the voice communication **IS MADE.**

25 (ii) A voice communication to an existing customer of the
 26 person on whose behalf the voice communication is made, unless the
 27 existing customer is a consumer who has requested that he or she

1 not receive calls from or on behalf of that person under section
2 1c(1)(g).

3 (iii) A voice communication to a ~~residential telephone~~
4 ~~subscriber~~ **TELEPHONE CONSUMER** in which the caller requests a face-
5 to-face meeting with the ~~residential telephone subscriber~~ **TELEPHONE**
6 **CONSUMER** to discuss a purchase, sale, or rental of, or investment
7 in, goods or services but does not urge the ~~residential telephone~~
8 ~~subscriber~~ **TELEPHONE CONSUMER** to make a decision to purchase, sell,
9 rent, invest, or make a deposit on that good or service during the
10 voice communication.

11 (M) ~~(n)~~ "Telephone solicitor" means any person doing business
12 in this state ~~who~~ **THAT** makes or causes to be made a telephone
13 solicitation from within or outside of this state, including, but
14 not limited to, calls made by use of automated dialing and
15 announcing devices or by ~~a live person~~. **AN INDIVIDUAL.**

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

19 Sec. 1a. (1) A **PERSON SHALL NOT MAKE A** home solicitation sale
20 ~~shall not be made by~~ telephonic solicitation using in whole or in
21 part a recorded message. A person shall not make a telephone
22 solicitation that consists in whole or in part of a recorded
23 message.

24 ~~—— (2) Within 120 days after the effective date of the amendatory~~
25 ~~act that added this subsection, the commission shall do 1 of the~~
26 ~~following:~~

27 ~~—— (a) Establish a state do-not-call list. All of the following~~

1 ~~apply if the commission establishes a do not call list under this~~
2 ~~subdivision:~~

3 ~~—— (i) The commission shall publish the do not call list~~
4 ~~quarterly for use by telephone solicitors.~~

5 ~~—— (ii) The do not call list fund is created in the state~~
6 ~~treasury. Money received from fees under subparagraph (iii) shall~~
7 ~~be credited to the fund. The state treasurer shall direct the~~
8 ~~investment of the fund. The state treasurer shall credit to the~~
9 ~~fund interest and earnings from fund investments. Money remaining~~
10 ~~in the fund at the end of a fiscal year shall be carried over in~~
11 ~~the fund to the next and succeeding fiscal years. Money in the fund~~
12 ~~may be appropriated to the commission to cover the costs of~~
13 ~~administering the do not call list, but may not be appropriated to~~
14 ~~compensate or reimburse a vendor designated under subdivision (b)~~
15 ~~to maintain a do not call list under that subdivision.~~

16 ~~—— (iii) The commission shall establish and collect 1 or both of~~
17 ~~the following fees to cover the costs to the commission for~~
18 ~~administering the do not call list:~~

19 ~~—— (A) Fees charged to telephone solicitors for access to the do~~
20 ~~not call list.~~

21 ~~—— (B) Fees charged to residential telephone subscribers for~~
22 ~~inclusion on the do not call list. The commission shall not charge~~
23 ~~a residential telephone subscriber a fee of more than \$5.00 for a~~
24 ~~3-year period.~~

25 ~~—— (iv) The commission shall maintain the do not call list for at~~
26 ~~least 1 year. After 1 year, the commission may at any time elect to~~
27 ~~designate a vendor to maintain a do not call list under subdivision~~

~~(b), in which case subdivision (b) shall apply.~~

~~—— (b) Designate a vendor to maintain a do-not-call list. All of the following apply to a vendor designated to maintain a do-not-call list under this subdivision:~~

~~—— (i) The commission shall establish a procedure or follow existing procedure for the submission of bids by vendors to maintain a do-not-call list under this subdivision.~~

~~—— (ii) The commission shall establish a procedure or follow existing procedure for the selection of the vendor to maintain the do-not-call list. In selecting the vendor, the commission shall consider at least all of the following factors:~~

~~—— (A) The cost of obtaining and the accessibility and frequency of publication of the do-not-call list to telephone solicitors.~~

~~—— (B) The cost and ease of registration on the do-not-call list to consumers who are seeking inclusion on the do-not-call list.~~

~~—— (iii) The commission may review its designation and make a different designation under this subdivision if the commission determines that another person would be better than the designated vendor in meeting the selection factors established under subparagraph (ii) or if the designated vendor engages in activities the commission considers contrary to the public interest.~~

~~—— (iv) If the commission does not establish a state do-not-call list under subdivision (a), the commission shall comply with the designation requirements of this subdivision for at least 1 year. After 1 year, the commission may at any time elect to establish and maintain a do-not-call list under subdivision (a), in which case subdivision (a) shall apply.~~

~~(v) Unless the vendor is a governmental entity, a vendor designated by the commission under this subdivision is not a governmental agency and is not an agent of the commission in maintaining a do-not-call list.~~

~~(vi) The commission and a vendor designated under this subdivision shall execute a written contract. The contract shall include the vendor's agreement to the requirements of this section and any additional requirements established by the commission.~~

~~(vii) The commission shall not use state funds to compensate or reimburse a vendor designated under this subdivision. The vendor may receive compensation or reimbursement for maintaining a designated do-not-call list under this subdivision only from 1 or both of the following:~~

~~(A) Fees charged by the vendor to telephone solicitors for access to the do-not-call list.~~

~~(B) Fees charged by the vendor to residential telephone subscribers for inclusion on the do-not-call list. A designated vendor shall not charge a residential telephone subscriber a fee of more than \$5.00 for a 3-year period.~~

~~(viii) The designee do-not-call list fund is created in the state treasury. If the vendor is a department or agency of this state, money received from fees under subparagraph (vii) by that vendor shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in~~

~~the fund may be appropriated to that vendor to cover the costs of administering the do-not-call list.~~

~~—— (3) In determining whether to establish a state do-not-call list under subsection (2) (a) or designate a vendor under subsection (2) (b), and in designating a vendor under subsection (2) (b), the commission shall consider comments submitted to the commission from consumers, telephone solicitors, or any other person.~~

~~(2) (4) Beginning 90 days after the commission establishes a do-not-call list under subsection (2) (a) or designates a vendor to maintain a do-not-call list under subsection (2) (b), a~~ **A** ~~telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber~~ **TELEPHONE CONSUMER** ~~whose name and residential telephone number is~~ **HOME OR MOBILE TELEPHONE NUMBER OR NUMBERS ARE** ~~on the then-current version of that~~ **THE** ~~do-not-call list.~~

~~—— (5) Notwithstanding any other provision of this section, if an agency of the federal government establishes a federal do-not-call list, within 120 days after the establishment of the federal do-not-call list, the commission shall designate the federal list as the state do-not-call list. The federal list shall remain the state do-not-call list as long as the federal list is maintained. A telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of the federal list.~~

~~(3) (6)~~ **(3)** ~~A telephone solicitor shall not use a do-not-call list for any purpose other than meeting the requirements of subsection (4) or (5).~~ **(2) .**

1 ~~_____ (7) The commission or a vendor shall not sell or transfer the~~
2 ~~do not call list to any person for any purpose unrelated to this~~
3 ~~section.~~

4 Sec. 1b. (1) At the beginning of a telephone solicitation, a
5 ~~person~~ **THE ORGANIZATION OR OTHER PERSON ON WHOSE BEHALF THE CALL**
6 **WAS INITIATED SHALL ENSURE THAT THE INDIVIDUAL WHO IS** making a ~~THE~~
7 telephone solicitation to a ~~residential telephone subscriber~~
8 **TELEPHONE CONSUMER** shall state his or her name and the full name of
9 the organization or other person on whose behalf the call was
10 initiated and provide a telephone number of the organization or
11 other person on request. ~~A natural person must be~~ **THE ORGANIZATION**
12 **OR OTHER PERSON SHALL ENSURE THAT AN INDIVIDUAL IS** available to
13 answer the telephone number at any time when **THE ORGANIZATION OR**
14 **OTHER PERSON IS MAKING** telephone solicitations. ~~are being made.~~

15 (2) ~~The person~~ **AN ORGANIZATION OR OTHER PERSON DESCRIBED IN**
16 **SUBSECTION (1) SHALL ENSURE THAT THE INDIVIDUAL** answering the
17 telephone number required under subsection (1) ~~shall provide~~
18 **PROVIDES** a ~~residential telephone subscriber~~ **TELEPHONE CONSUMER**
19 calling the telephone number with information describing the
20 organization or other person on whose behalf the telephone
21 solicitation was made to the ~~residential telephone subscriber~~
22 **TELEPHONE CONSUMER** and describing the telephone solicitation.

23 (3) A telephone solicitor shall not intentionally block or
24 otherwise interfere with the caller ID function on the telephone of
25 a ~~residential telephone subscriber~~ **TELEPHONE CONSUMER** to whom a
26 telephone solicitation is made so that the telephone number of the
27 caller is not displayed on the telephone of the ~~residential~~

1 ~~telephone subscriber.~~ **TELEPHONE CONSUMER.**

2 Sec. 1c. (1) It is an unfair or deceptive act or practice and
3 a violation of this act for a telephone solicitor to do any of the
4 following:

5 (a) Misrepresent or fail to disclose, in a clear, conspicuous,
6 and intelligible manner and before payment is received from the
7 consumer, all of the following information:

8 (i) Total purchase price to the consumer of the goods or
9 services ~~to be received.~~ **SOLD TO HIM OR HER.**

10 (ii) Any restrictions, limitations, or conditions to purchase
11 or to use the goods or services that are the subject of an offer to
12 sell goods or services.

13 (iii) Any material term or condition of the seller's refund,
14 cancellation, or exchange policy, including a consumer's right to
15 cancel a home solicitation sale under section 2 and, if applicable,
16 that the seller does not have a refund, cancellation, or exchange
17 policy.

18 (iv) Any material costs or conditions related to receiving a
19 prize, including the odds of winning the prize, and if the odds are
20 not calculable in advance, the factors used in calculating the
21 odds, the nature and value of a prize, that no purchase is
22 necessary to win the prize, and the "no purchase required" method
23 of entering the contest.

24 (v) Any material aspect of an investment opportunity the
25 seller is offering, including, but not limited to, risk, liquidity,
26 earnings potential, market value, and profitability.

27 (vi) The quantity and any material aspect of the quality or

1 basic characteristics of any goods or services offered.

2 (vii) The right to cancel a sale under this act, if any.

3 (b) Misrepresent any material aspect of the quality or basic
4 characteristics of any goods or services offered.

5 (c) Make a false or misleading statement with the purpose of
6 inducing a consumer to pay for goods or services.

7 (d) Request or accept payment from a consumer or make or
8 submit any charge to the consumer's credit or bank account before
9 the telephone solicitor or seller receives from the consumer an
10 express verifiable authorization. As used in this subdivision,
11 "verifiable authorization" means a written authorization or
12 confirmation, an oral authorization recorded by the telephone
13 solicitor, or confirmation through an independent third party.

14 (e) Offer to a consumer in this state a prize promotion in
15 which a purchase or payment is necessary to obtain the prize.

16 (f) Fail to comply with the requirements of section 1a or 1b.

17 (g) Make a telephone solicitation to a consumer in this state
18 who has requested that he or she not receive calls from the
19 organization or other person on whose behalf the telephone
20 solicitation is made.

21 (h) While making a telephone solicitation, misrepresent in a
22 message left for a consumer on his or her answering machine or
23 voice mail that the consumer has a current business matter or
24 transaction or a current business or customer relationship with the
25 telephone solicitor or another person and request that the consumer
26 call the telephone solicitor or another person to discuss that
27 matter, transaction, or relationship.

1 (2) Except as provided in this subsection, ~~beginning 210 days~~
2 ~~after the effective date of the amendatory act that added this~~
3 ~~section,~~ a person ~~who~~ **THAT** knowingly or intentionally violates this
4 section is guilty of a misdemeanor punishable by imprisonment for
5 not more than ~~6 months~~ **180 DAYS** or a fine of not more than \$500.00,
6 or both. This subsection does not prohibit a person from being
7 charged with, convicted of, or punished for any other crime
8 including any other violation of law arising out of the same
9 transaction as the violation of this section. This subsection does
10 not apply if the violation of this section is a failure to comply
11 with the requirements of section 1a(1) ~~, (4), or (5)~~ **OR (2)** or
12 section 1b.

13 (3) ~~A person~~ **AN INDIVIDUAL** who suffers loss as a result of
14 violation of this section may bring an action to recover actual
15 damages or \$250.00, whichever is greater, together with reasonable
16 attorney fees. This subsection does not prevent the ~~consumer~~
17 **INDIVIDUAL** from asserting his or her rights under this act if the
18 telephone solicitation results in a home solicitation sale, or
19 asserting any other rights or claims the ~~consumer~~ **INDIVIDUAL** may
20 have under applicable state or federal law.

21 Sec. 1d. (1) ~~Beginning 210 days after the effective date of~~
22 ~~the amendatory act that added this section, if~~ **IF** a telephone
23 directory includes residential telephone numbers, a person that
24 publishes a new telephone directory shall include in the telephone
25 directory a notice describing the do-not-call list and how to
26 enroll on the do-not-call list.

27 (2) ~~Beginning 210 days after the effective date of the~~

1 ~~amendatory act that added this section, OCTOBER 27, 2003,~~ each
2 telecommunication provider that provides ~~residential~~ telephone
3 service **TO TELEPHONE CONSUMERS** shall include a notice describing
4 the do-not-call list and how to enroll on the do-not-call list with
5 1 of that telecommunication provider's bills for telecommunication
6 services to a ~~residential telephone subscriber~~ **THE TELEPHONE**
7 **CONSUMER** each year. ~~If the federal communication commission or any~~
8 ~~other federal agency establishes a federal "do not call" list, the~~
9 ~~notice shall also describe that list and how to enroll on that~~
10 ~~list.~~ As used in this subsection, "telecommunication provider"
11 means that term as defined in section 102 of the Michigan
12 telecommunications act, 1991 PA 179, MCL 484.2102.

13 Sec. 1e. Sections 1a, 1b, 1c, and 1d do not apply to a person
14 **THAT IS** subject to any of the following:

15 (a) The charitable organizations and solicitations act, 1975
16 PA 169, MCL 400.271 to 400.294.

17 (b) The public safety solicitation act, 1992 PA 298, MCL
18 14.301 to 14.327.

19 (c) Section 527 of the internal revenue code of 1986, **26 USC**
20 **527.**

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.