

HOUSE BILL NO. 6308

June 30, 2022, Introduced by Reps. Garza, Manoogian, Puri, Weiss, Scott, Pohutsky, Glanville, Young, Koleszar, Morse, Brenda Carter, Tyrone Carter, Brabec, Ellison, Sowerby, Anthony, LaGrand and Neeley and referred to the Committee on Commerce and Tourism.

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:

1 TITLE

2 An act to prescribe the rights and duties of parties to home
3 solicitation sales; ~~to regulate certain telephone solicitation;~~ to
4 provide for the powers and duties of certain state officers and
5 entities; and to prescribe penalties and remedies.

6 Sec. 1. As used in this act:

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

15 (i) A sale made pursuant to a preexisting revolving charge
16 account.

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

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

23 (iv) A sale made at a fixed location of a business
24 establishment where goods or services are offered or exhibited for
25 sale.

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

28 (vi) A sale of services by a real estate broker or salesperson
29 ~~licensed by the department of consumer and industry services.~~ **under**

1 **article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to**
 2 **339.2518.**

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

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

10 (c) "Business day" means Monday through Friday and does not
 11 include Saturday, Sunday, or the following business holidays: New
 12 Year's ~~day, Day~~, Martin Luther King's ~~birthday, Washington's~~
 13 ~~birthday, King Jr. Day, Presidents' Day~~, Memorial ~~day, Day~~,
 14 Independence ~~day, Day~~, Labor ~~day, Day~~, Columbus ~~day, Day~~, Veterans'
 15 ~~day, Day~~, Thanksgiving ~~day, Day~~, and Christmas ~~day, Day~~.

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

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

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

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

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

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

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

4 (D) The consumer financial services act, 1988 PA 161, MCL
5 487.2051 to 487.2072.

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

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

9 (iii) A sale of a security or interest in a security that is
10 subject to ~~the uniform securities act, 1964 PA 265, MCL 451.501 to~~
11 ~~451.818, or the uniform securities act (2002), 2008 PA 551, MCL~~
12 ~~451.2101 to 451.2703.~~

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

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

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

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

29 ~~(j) "Existing customer" means an individual who has purchased~~

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

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

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

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

18 ~~(i) A voice communication to a residential telephone subscriber~~
19 ~~with that subscriber's express invitation or permission prior to~~
20 ~~the voice communication.~~

21 ~~(ii) A voice communication to an existing customer of the~~
22 ~~person on whose behalf the voice communication is made, unless the~~
23 ~~existing customer is a consumer who has requested that he or she~~
24 ~~not receive calls from or on behalf of that person under section~~
25 ~~1c(1)(g).~~

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

1 ~~the residential telephone subscriber to make a decision to~~
2 ~~purchase, sell, rent, invest, or make a deposit on that good or~~
3 ~~service during the voice communication.~~

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

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

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

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

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

29 (2) The seller shall attach to the copy or cause to be printed

1 on the reverse side of the written agreement or offer to purchase
2 retained by the buyer a notice of cancellation in duplicate that
3 ~~shall~~**must** appear as follows:

4 "notice of cancellation

5 (enter date of transaction)

6 (date)

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

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

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

19 If you do make the goods available to the seller and the
20 seller does not pick them up within 20 days of the date of your
21 notice of cancellation, you may retain or dispose of the goods
22 without any further obligation. If you fail to make the goods
23 available to the seller or if you agree to return the goods to the
24 seller and fail to do so, then you remain liable for performance of
25 all obligations under the contract.

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

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(date)
I hereby cancel this transaction.

(date)

(buyer's signature) "

(3) The notices required by this section ~~shall~~**must** be in not less than 10-point bold type and ~~shall~~**must** be 2 points larger than the text of the contract. A written agreement or offer to purchase and the notice of cancellation attached to the agreement or offer ~~shall~~**must** be written in the same language as that used in any oral presentation that was given to facilitate sale of the goods or services. The seller shall enter on the blanks in the notice of cancellation the date of transaction ~~, which~~**that** is the date the buyer signs the written agreement, and the date for mailing the notice of cancellation. An error in entering this information ~~shall~~**does** not diminish the buyer's rights under this act.

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

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

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

1 (a) An electric utility or gas utility that is regulated by
2 the commission and complies with any orders or tariffs issued by
3 the commission concerning home solicitations by alternative
4 electric suppliers or alternative gas suppliers in making the
5 solicitation.

6 (b) An alternative gas supplier or alternative electric
7 supplier licensed by the commission that complies with any
8 applicable orders or tariffs issued by the commission concerning
9 home solicitations in making the solicitation.

10 Enacting section 1. Sections 1a to 1e of 1971 PA 227, MCL
11 445.111a to 445.111e, are repealed.

12 Enacting section 2. This amendatory act does not take effect
13 unless Senate Bill No. ____ or House Bill No. 6307 (request no.
14 05408'22) of the 101st Legislature is enacted into law.