

**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.

**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:

6 (a) "Home solicitation sale" means a sale of goods or  
7 services of more than \$25.00 in which the seller or a person

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

7       (i) A sale made pursuant to a preexisting revolving charge  
8 account.

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

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

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

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

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

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

25       (b) "Fixed location" means a place of business where the  
26 seller or an agent, servant, employee, or solicitor of that

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1 seller primarily engages in the sale of goods or services of the  
2 same kind as would be sold at the residence of a buyer.

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

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

12 (e) ~~"Goods"~~ AS USED IN ONLY THE DEFINITION OF HOME SOLICITI-  
13 TATION SALES, "GOODS or services" does not include either of the  
14 following:

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

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

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

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

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

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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.

19 (H) "ADAD" OR "AUTOMATIC DIALING AND ANNOUNCING DEVICE"  
20 MEANS ANY DEVICE OR SYSTEM OF DEVICES THAT IS USED, WHETHER ALONE  
21 OR IN CONJUNCTION WITH OTHER EQUIPMENT, FOR THE PURPOSE OF AUTO-  
22 MATICALLY SELECTING OR DIALING TELEPHONE NUMBERS.

23 (I) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

24 (J) "DO-NOT-CALL LIST" MEANS A DO-NOT-CALL LIST OF CONSUMERS  
25 MAINTAINED OR DESIGNATED BY THE COMMISSION UNDER SECTION 1A.

26 (K) "EXISTING CUSTOMER" INCLUDES A RESIDENTIAL TELEPHONE  
27 SUBSCRIBER WITH WHOM A PERSON MAKING A VOICE COMMUNICATION OVER A

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1 TELEPHONE HAS HAD A BUSINESS RELATIONSHIP WITHIN THE PRIOR 12  
2 MONTHS.

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

6 (m) "RESIDENTIAL TELEPHONE SUBSCRIBER" MEANS A PERSON RESID-  
7 ING IN THIS STATE WHO HAS RESIDENTIAL TELEPHONE SERVICE.

8 (n) "TELEPHONE SOLICITOR" MEANS ANY PERSON DOING BUSINESS IN  
9 THIS STATE WHO MAKES OR CAUSES TO BE MADE A TELEPHONE SOLICITA-  
10 TION FROM WITHIN OR OUTSIDE OF THIS STATE, INCLUDING, BUT NOT  
11 LIMITED TO, CALLS MADE BY USE OF AUTOMATED DIALING AND ANNOUNCING  
12 DEVICES OR BY A LIVE PERSON.

13 (o) "TELEPHONE SOLICITATION" MEANS ANY VOICE COMMUNICATION  
14 OVER A TELEPHONE FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR  
15 RENTAL OF, OR INVESTMENT IN, GOODS OR SERVICES. TELEPHONE SOLIC-  
16 ITATION DOES NOT INCLUDE ANY OF THE FOLLOWING:

17 (i) ANY VOICE COMMUNICATION TO ANY RESIDENTIAL TELEPHONE  
18 SUBSCRIBER WITH THAT SUBSCRIBER'S PRIOR EXPRESS INVITATION OR  
19 PERMISSION.

20 (ii) ANY VOICE COMMUNICATION TO ANY RESIDENTIAL TELEPHONE  
21 SUBSCRIBER WHO IS AN EXISTING CUSTOMER OF THE TELEPHONE  
22 SOLICITOR. IF AN EXISTING CUSTOMER OF A PERSON DOES NOT WANT TO  
23 RECEIVE ANY MORE TELEPHONE CALLS FROM THAT PERSON, HE OR SHE MAY  
24 ASK TO BE PUT ON THAT PERSON'S LIST OF CONSUMERS WHO HAVE  
25 REQUESTED THAT THEY NOT RECEIVE ADDITIONAL TELEPHONE CALLS FROM  
26 THE PERSON.

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1       Sec. 1a. (1) A ~~home solicitation sale shall not be made by~~  
2 ~~telephonic solicitation using~~ PERSON SHALL NOT MAKE A TELEPHONE  
3 SOLICITATION THAT CONSISTS in whole or in part OF a recorded  
4 message.

5       (2) WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDA-  
6 TORY ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL DO 1 OF  
7 THE FOLLOWING:

8       (A) ESTABLISH A STATE DO-NOT-CALL LIST. IF THE COMMISSION  
9 ESTABLISHES A STATE DO-NOT-CALL LIST, IT SHALL PUBLISH THAT LIST  
10 QUARTERLY FOR USE BY TELEPHONE SOLICITORS. THE COMMISSION MAY AT  
11 ANY TIME CEASE TO MAINTAIN A LIST UNDER THIS SUBDIVISION AND MAKE  
12 A DESIGNATION UNDER SUBDIVISION (B).

13       (B) INVESTIGATE ANY NATIONAL DO-NOT-CALL LISTS THEN IN EXIS-  
14 TENCE AND AFTER CONSIDERATION OF EACH LIST'S ACCESSIBILITY TO  
15 TELEPHONE SOLICITORS AND EASE AND COST OF REGISTRATION FOR CON-  
16 SUMERS SEEKING INCLUSION, DESIGNATE A LIST AS THE AUTHORIZED  
17 DO-NOT-CALL LIST. THE COMMISSION MAY REVIEW AND MAKE A DIFFERENT  
18 DESIGNATION UNDER THIS SUBDIVISION AT ANY TIME IF THE COMMISSION  
19 DETERMINES THAT AN ALTERNATIVE DO-NOT-CALL LIST PROVIDES SUPERIOR  
20 ACCESSIBILITY TO TELEPHONE SOLICITORS AND EASE AND COST OF REGIS-  
21 TRATION FOR CONSUMERS SEEKING INCLUSION OR IF THE ORGANIZATION  
22 MAINTAINING A PREVIOUSLY DESIGNATED DO-NOT-CALL LIST ENGAGES IN  
23 ACTIVITIES THE COMMISSION CONSIDERS CONTRARY TO THE PUBLIC  
24 INTEREST. THE COMMISSION MAY AT ANY TIME DISCONTINUE A DESIGNA-  
25 TION UNDER THIS SUBDIVISION AND ESTABLISH AND MAINTAIN A LIST  
26 UNDER SUBDIVISION (A).

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1 (3) IN DETERMINING WHETHER TO ESTABLISH OR DESIGNATE A  
2 DO-NOT-CALL LIST UNDER SUBSECTION (2), OR IN DESIGNATING A  
3 DO-NOT-CALL LIST UNDER SUBSECTION (2)(B), THE COMMISSION SHALL  
4 CONSIDER COMMENTS FROM CONSUMERS, TELEPHONE SOLICITORS, OR ANY  
5 OTHER PERSON.

6 (4) BEGINNING 90 DAYS AFTER THE COMMISSION ESTABLISHES OR  
7 DESIGNATES A DO-NOT-CALL LIST UNDER SUBSECTION (2), A TELEPHONE  
8 SOLICITOR SHALL NOT MAKE A TELEPHONE SOLICITATION TO A RESIDEN-  
9 TIAL TELEPHONE SUBSCRIBER WHOSE NAME IS ON THE THEN-CURRENT VER-  
10 SION OF THE DO-NOT-CALL LIST. THIS SUBSECTION DOES NOT APPLY TO  
11 A TELEPHONE SOLICITOR WHO MEETS BOTH OF THE FOLLOWING:

12 (A) HAS 25 OR FEWER EMPLOYEES AT THE TIME OF THE  
13 SOLICITATION.

14 (B) IS NOT ENGAGED IN TELEPHONE SOLICITATION AS ITS PRIMARY  
15 BUSINESS.

16 (5) A TELEPHONE SOLICITOR SHALL NOT USE A DO-NOT-CALL LIST  
17 FOR ANY PURPOSE OTHER THAN MEETING THE REQUIREMENTS OF SUBSECTION  
18 (4).

19 (6) IF THE COMMISSION ESTABLISHES AND MAINTAINS THE  
20 DO-NOT-CALL LIST UNDER SUBSECTION (2), THE COMMISSION SHALL NOT  
21 SELL OR TRANSFER THE DO-NOT-CALL LIST TO ANY PERSON FOR ANY PUR-  
22 POSE UNRELATED TO THIS SECTION.

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

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

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

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

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

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

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

26 (b) The buyer furnishes the seller with a separate dated and  
27 signed personal statement in the buyer's handwriting describing



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1 the situation requiring immediate remedy and expressly  
2 acknowledging and waiving the right to cancel the sale within 3  
3 business days.

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

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

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

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

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

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1 of the 3-business-day period in which you can cancel the  
2 transaction."

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

7

8 "notice of cancellation

9

(enter date of transaction)

10

(date)

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

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

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

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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

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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 SOLICITATION SALE  
12 by notifying the seller in any manner and by any  
13 means of his or her intention to cancel.

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

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

24 (3) Until the seller has complied with the obligations  
25 imposed by this section the buyer may retain possession of goods  
26 delivered to him OR HER by the seller and has a lien on the goods

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1 in his OR HER possession or control for any recovery to which he  
2 OR SHE is entitled.

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

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

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

21       Sec. 7. ~~No~~ A person may NOT bring ~~any~~ AN action in any  
22 court of this state for the collection of any home solicitation  
23 sale OR TELEPHONE SOLICITATION SALE contract without proving that  
24 ~~such person~~ HE OR SHE was at all times in compliance with this  
25 act.