

# HOUSE BILL No. 5011

July 10, 2007, Introduced by Rep. Simpson 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 services  
3 of more than \$25.00 in which the seller or a person acting for the  
4 seller engages in a personal, telephonic, or written solicitation  
5 of the sale, the solicitation is received by the buyer at a  
6 residence of the buyer, and the buyer's agreement or offer to  
7 purchase is there given to the seller or a person acting for the

1 seller. Home solicitation sale does not include any of the  
2 following:

3 (i) A sale made pursuant to a preexisting revolving charge  
4 account.

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

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

10 (iv) A sale made at a fixed location of a business  
11 establishment where goods or services are offered or exhibited for  
12 sale.

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

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

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

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

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

1 day, Thanksgiving day, and Christmas day.

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

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

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

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

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

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

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

19 (D) The consumer financial services act, 1988 PA 161, MCL  
20 487.2051 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) PA 27,  
23 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 to  
26 451.818, **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 inquire  
4 about a good or service, unless the postcard or other written  
5 notice concerns a previous purchase or order or specifies the price  
6 of the good or service and accurately describes the good or  
7 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 automatically  
11 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 communication  
21 or has not paid for the goods and services at the time of the voice  
22 communication because of a prior agreement between the person and  
23 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 a

1 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 of  
7 the following:

8 (i) A voice communication to a residential telephone subscriber  
9 with that subscriber's express invitation or permission prior to  
10 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 the  
13 existing customer is a consumer who has requested that he or she  
14 not receive calls from or on behalf of that person under section  
15 1c(1)(g).

16 (iii) A voice communication to a residential telephone  
17 subscriber in which the caller requests a face-to-face meeting with  
18 the residential telephone subscriber to discuss a purchase, sale,  
19 or rental of, or investment in, goods or services but does not urge  
20 the residential telephone subscriber to make a decision to  
21 purchase, sell, rent, invest, or make a deposit on that good or  
22 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 solicitation  
25 from within or outside of this state, including, but not limited  
26 to, calls made by use of automated dialing and announcing devices  
27 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 include  
3 a governmental entity.

4           Enacting section 1. This amendatory act does not take effect  
5 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5008 (request no.  
6 00420'07) of the 94th Legislature is enacted into law.