



HOUSE BILL No. 5354

February 15, 2000, Introduced by Rep. Jansen and referred to the Committee on Energy and Technology.

A bill to regulate telephone solicitation; to prescribe the powers and duties of certain state agencies and officials; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "Michigan telephone solicitation act".

3 (2) As used in this act:

4 (a) "ADAD" or "automatic dialing and announcing device"
5 means any device or system of devices that is used, whether alone
6 or in conjunction with other equipment, for the purpose of auto-
7 matically selecting or dialing telephone numbers.

8 (b) "Business telephone subscriber" means a person or com-
9 pany who has subscribed to a business telephone service from a
10 local exchange carrier.

1 (c) "Caller identification service" or "caller ID" means
2 telephone service that notifies telephone subscribers of the
3 telephone number of incoming telephone calls.

4 (d) "Commission" means the public service commission in the
5 department of consumer and industry services.

6 (e) "Databases" means the information from which the commis-
7 sion compiles the register.

8 (f) "Do not call register" or "register" means a list of
9 telephone numbers of residential telephone subscribers who have
10 properly enrolled with the commission that their telephone number
11 not be solicited by telephone solicitors.

12 (g) "Established business relationship" means all of the
13 following:

14 (i) Is based on inquiry, application, purchase, or transac-
15 tion regarding products or services offered.

16 (ii) Is formed by a voluntary 2-way communication between a
17 person making a telephone solicitation and a person to whom a
18 telephone solicitation is made.

19 (iii) Has not been terminated by either party.

20 (h) "Existing customer" includes a residential telephone
21 subscriber with whom the person or entity making a telephone
22 solicitation has had a business relationship within the prior 12
23 months.

24 (i) "Goods" means all tangible property purchased primarily
25 for personal, family, or household use and not for commercial,
26 agricultural, or business use. Goods include property that is
27 furnished or used for the modernization, rehabilitation, repair,

1 alteration, improvement, or construction of real property. Goods
2 include merchandise certificates or coupons issued by a retail
3 seller that are not redeemable in cash and that are to be used in
4 their face amount instead of cash, in exchange for goods or serv-
5 ices sold by the seller. Goods do not include a motor vehicle,
6 money, a thing in action, intangible personal property, or their
7 equivalent.

8 (j) "Interexchange provider" means a company that is autho-
9 rized by the commission to provide long distance toll telephone
10 service.

11 (k) "Negative response" means any statement from a party
12 indicating that the party does not wish to listen to the sales
13 presentation or participate in the solicitation presented in the
14 telephone call.

15 (l) "Not-for-profit" means an organization that is exempt
16 from paying taxes under section 501(c) of the internal revenue
17 code.

18 (m) "Residential telephone subscriber" means a person resid-
19 ing in this state who has residential telephone service.

20 (n) "Services" means work, labor, advice, counseling, or
21 instruction if purchased primarily for personal, family, or
22 household use and not for commercial or business use. Services
23 do not include any of the following:

24 (i) Work, labor, advice, counseling, or instruction for
25 which the cost is fixed by law or subject to the approval or dis-
26 approval of the United States or this state.

1 (ii) Educational counseling or instruction provided by an
2 accredited college or university or a primary or secondary school
3 providing education required by the state.

4 (iii) Counseling or instruction of a kindergarten or nursery
5 school.

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

11 (p) "Telephone solicitation" means any voice communication
12 over a telephone for the purpose of encouraging the purchase or
13 rental of, or investment in, goods or services. Telephone sollicita-
14 tion does not include any of the following:

15 (i) Any voice communication to any residential telephone
16 subscriber with that subscriber's prior express invitation or
17 permission.

18 (ii) Any voice communication to a residential telephone sub-
19 scriber if the communication is made on behalf of a
20 not-for-profit organization, provided that a bona fide member of
21 the exempt organization makes the voice communication.

22 (iii) Any voice communication to any residential telephone
23 subscriber who is an existing customer of the solicitor.

24 (iv) Occasional and isolated voice communications to a resi-
25 dential telephone subscriber provided all of the following condi-
26 tions are met:

1 (A) A direct employee of the business makes the voice
2 communication.

3 (B) The communication is not made as part of a telecommuni-
4 cations marketing plan.

5 (C) The business has a reasonable belief that the specific
6 person who is receiving the voice communication is considering
7 the purchase of a good or service sold or leased by the business
8 and the call is specifically directed to the person.

9 (D) The business does not sell or engage in telephone
10 solicitations.

11 (E) The business does not make more than 3 such voice commu-
12 nications in any 1 calendar week.

13 Sec. 2. A home solicitation sale shall not be made by tele-
14 phone solicitation except as provided under this act.

15 Sec. 3. (1) A person shall not engage in the business of
16 telephone solicitation in this state unless the person holds a
17 license issued under this act.

18 (2) The application for a license under this act shall be
19 submitted to the commission for review and approval and shall be
20 accompanied by a \$500.00 license fee.

21 (3) The application for a license under this act shall
22 include all of the following:

23 (a) Be in writing on a form approved by the commission.

24 (b) Be verified by oath or affirmation.

25 (c) Contain all information that the commission requires.

26 (4) The commission may require 1 or more of the following
27 before issuing a license:

1 (a) Proof of financial integrity.

2 (b) That the applicant post a bond or other similar instru-
3 ment, if, in the commission's judgment, the bond or similar
4 instrument is necessary to ensure the telephone solicitor's
5 financial integrity.

6 (c) That the applicant do both of the following:

7 (i) Provide proof that the applicant is otherwise properly
8 registered to do business in this state.

9 (ii) Agree to be subject to and pay all applicable taxes of
10 the state.

11 (d) Adopt any other requirements the commission finds to be
12 in the public interest.

13 (5) If an applicant complies with the requirements of sub-
14 sections (2), (3), and (4), the commission shall issue a license
15 to allow the person to engage in the business of telephone
16 solicitation.

17 (6) A license granted under this section expires on January
18 1 of each calendar year. The license may be renewed upon the
19 filing of a renewal application on a form approved by the commis-
20 sion and the payment of a renewal fee of \$200.00.

21 (7) Fees collected under this section or section 10 shall be
22 deposited in the general fund in a restricted account. The fees
23 collected under this act and placed in the restricted account
24 shall be used exclusively for the funding of the commission.

25 Sec. 4. (1) A telephone solicitor shall not place a tele-
26 phone call to a residential telephone subscriber at any time
27 other than between the hours of 8 a.m. to 5 p.m. and 7 p.m. to 9

1 p.m. local time at the called party's location, without the
2 residential telephone subscriber's prior express invitation or
3 permission.

4 (2) A telephone solicitation shall not be made in whole or
5 in part by a recorded message.

6 (3) Telephone solicitors shall comply with all state and
7 federal statutes and regulations regarding telephone solicitation
8 practices.

9 Sec. 5. All telephone solicitations to residential tele-
10 phone subscribers shall do both of the following:

11 (a) Within the first 25 seconds of the call and at the con-
12 clusion of the call, state the name and telephone number of the
13 person or organization initiating the call. The telephone number
14 given must be a toll-free number and be answered when telephone
15 solicitations are being made.

16 (b) The person answering the telephone number provided under
17 subdivision (a) shall be able to provide information concerning
18 the solicitation call.

19 Sec. 6. (1) Telephone solicitors shall not use telephone
20 equipment or telecommunications network elements that block or
21 otherwise interfere with the caller ID function on the telephone
22 of a residential telephone subscriber to whom a telephone solici-
23 tation is made so that the telephone number of the caller is not
24 displayed on the telephone equipment of the called party.

25 (2) Local exchange providers and interexchange toll provid-
26 ers are prohibited from providing any network element or service
27 to telephone solicitors that would block or otherwise interfere

1 with on a per line basis, the display of the telephone
2 solicitor's name and telephone number on the residential
3 subscriber's caller ID equipment. Local exchange providers and
4 interexchange providers shall modify their tariffs to reflect the
5 requirements of this act within 60 days of the effective date of
6 this act.

7 Sec. 7. It is an unfair or deceptive act or practice and a
8 violation of this act for any telephone solicitor to do any of
9 the following:

10 (a) Misrepresent or fail to disclose, in a clear, conspicu-
11 ous, and intelligible manner and before payment is received from
12 the consumer, all of the following information:

13 (i) Total purchase costs to the consumer of the goods or
14 services to be received.

15 (ii) Any restrictions, limitations, or conditions to pur-
16 chase or to use the goods or services that are the subject of any
17 offer.

18 (iii) Any material term or condition of the seller's refund,
19 cancellation, or exchange policy, including, if applicable, that
20 no such policies exist.

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

1 (v) Any material aspect of an investment opportunity being
2 offered, including but not limited to risk, liquidity, earnings
3 potential, market value, and profitability.

4 (vi) The quantity and any material aspect of the quality or
5 basic characteristics of any goods or services offered.

6 (vii) The right to cancel any sale as provided under this
7 act.

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

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

12 (d) Request or accept payment from a consumer or make or
13 submit any charge to the consumer's credit or bank account before
14 the telephone solicitor or seller receives from the consumer an
15 express verifiable authorization as required by this act.

16 (e) Offer to consumers in this state any prize promotion in
17 which a purchase or payment is necessary to obtain the prize.

18 (f) Fail to comply with the record-keeping requirements of
19 section 12.

20 Sec. 8. (1) The telephone solicitor shall immediately dis-
21 continue the solicitation if the person being solicited gives a
22 negative response at any time during the telephone call.

23 (2) The telephone solicitor shall hang up the telephone
24 within 10 seconds of the termination of the call by the person
25 being called.

26 Sec. 9. (1) The commission shall establish and provide for
27 the operation of a register on which to compile a list of

1 telephone numbers of residential telephone subscribers who object
2 to receiving telephone solicitations. The register may be oper-
3 ated by the commission or by another entity under contract with
4 the commission. The following are the guidelines for the opera-
5 tion of the register:

6 (a) Residential telephone subscribers may enroll on the reg-
7 ister as provided by the commission. Enrollment onto the regis-
8 ter will become effective 30 days following the date of enroll-
9 ment by the subscriber.

10 (b) A residential telephone subscriber will remain in the do
11 not call register until the subscriber requests that the commis-
12 sion remove his or her name from the register.

13 (c) Business telephone subscribers may not be included on
14 the register.

15 (d) The commission will update the register at the beginning
16 of each month.

17 (e) The commission may purge the register periodically in
18 order to ensure accuracy.

19 (2) The information contained in the database is not open to
20 public inspection or disclosure under the freedom of information
21 act, 1976 PA 442, MCL 15.231 to 15.246. The commission will take
22 all necessary steps to protect the confidentiality of the infor-
23 mation in the database.

24 (3) The commission shall forward the list of Michigan sub-
25 sscribers on the register to the federal communications
26 commission's or any other federal agencies' do not call national
27 database, if and when a federal list is established.

1 Sec. 10. (1) Each telephone solicitor engaging in telephone
2 solicitation in this state shall purchase from the commission the
3 register established under section 9.

4 (2) Each telephone solicitor shall pay to the commission, on
5 or before May 1 of each year, an annual fee of \$500.00 for access
6 to the do not call register. The annual fee shall cover the time
7 period from the following July 1 through June 30.

8 (3) It is the duty of telephone solicitors to ensure they
9 have the latest version of the register before soliciting resi-
10 dential telephone subscribers in this state.

11 (4) In addition to paper copies, the do not call register
12 shall also be provided, with unlimited access, via the internet
13 or other electronic means to telephone solicitors.

14 Sec. 11. (1) Local exchange providers shall notify their
15 residential subscribers twice a year on how to enroll on the
16 register. This notification shall accompany the subscriber's
17 monthly telephone bill and shall be developed in cooperation with
18 the commission.

19 (2) In addition to the notification required by subsection
20 (1), local exchange providers, working in cooperation with the
21 commission, are required to place information in their white page
22 telephone directory informing their residential telephone sub-
23 scribers how to be included in the register.

24 Sec. 12. Every telephone solicitor shall keep accurate
25 records of all telemarketing activities initiated in this state
26 or directed to consumers located in this state. Upon demand, the
27 records shall be made available to the commission, the attorney

1 general, and any other governmental entity with authority to
2 enforce this act. These records shall be retained for a period
3 of 2 years after the date of any outbound telephone call initi-
4 ated from, directed into, or within this state. The records
5 shall include but are not limited to all of the following
6 information:

7 (a) The location of the telephone solicitor and the street
8 addresses of any locations from which the outbound telephone
9 calls originated.

10 (b) Copies of any injunction, temporary restraining order,
11 judgment, consent judgment, or assurance of voluntary compliance
12 in any civil or administrative action, including any pending
13 action, involving a violation or alleged violation by the tele-
14 phone solicitor or the seller of any state or federal telemarke-
15 ting law.

16 (c) The name, any fictitious name used, last known home
17 address, telephone number, and job title of all telephone solici-
18 tors, who place or placed calls on behalf of a seller or who par-
19 ticipate in or are responsible for the management of the business
20 of the telephone solicitor. If the seller or telephone solicitor
21 permits fictitious names to be used by employees or agents, each
22 fictitious name shall be traceable to only 1 specific telephone
23 solicitor, employee, or agent. If 1 or more telephone solicitors
24 is employed by or otherwise acting on behalf of a seller, the
25 reporting requirements of this act may be met by the seller on
26 behalf of itself and its telephone solicitors, but only to the
27 extent the records comply with the requirements of this act.

1 (d) Copies of all scripts, outlines, or presentation
2 materials the seller requires a telephone solicitor to use when
3 soliciting, as well as of all information to be provided by a
4 telephone solicitor to a consumer in connection with any
5 telemarketing.

6 (e) All written consents to utilize a name or names of any
7 person in any endorsement.

8 (f) Materials that substantiate any claims about the per-
9 formance, efficacy, nature, or characteristics of health, nutri-
10 tion, or diet related goods or services that are the subject of
11 telemarketing.

12 (g) A copy of the refund, cancellation, exchange, or repur-
13 chase policies for any goods or services offered by a seller or
14 telephone solicitor, unless the seller or telephone solicitor
15 offers and provides an unconditional satisfaction guaranteed
16 policy and provides a full refund for returned goods or canceled
17 services.

18 (h) Copies of all express verifiable authorizations and
19 signed order confirmations.

20 (i) Copies of any training instructions, handbooks, or other
21 guidelines distributed by telephone solicitors to their staff or
22 by sellers to their telephone solicitors, employees, or agents.

23 (j) Copies of written contracts and agreements between the
24 telephone solicitor and the seller.

25 Sec. 13. (1) For all complaints filed under section 14,
26 before initiating a proceeding with the commission, the parties
27 shall attempt alternative means of resolving the complaint.

1 (2) Any alternative means that will result in a recommended
2 settlement may be used that is agreed to by the principal parties
3 of record, including, but not limited to, settlement conferences,
4 mediation, and other informal dispute resolution methods. If the
5 parties cannot agree on an alternative means within 20 days after
6 the date the complaint is filed, the commission shall order
7 mediation. Within the 45-day period from the date mediation is
8 ordered under this subsection, a recommended settlement shall be
9 made to the parties.

10 (3) Within 7 days after the date of the recommended settle-
11 ment, each party shall file with the commission a written accep-
12 tance or rejection of the recommended settlement. If the parties
13 accept the recommendation, then the recommendation shall become
14 the final order in the proceeding under section 14.

15 (4) If a party rejects the recommended settlement, then the
16 application or complaint shall proceed to a proceeding under
17 section 14.

18 Sec. 14. (1) The commission shall establish a complaint
19 procedure to allow persons, or the commission on its own motion,
20 to file claims of violations of this act or a rule or order
21 issued under this act.

22 (2) Except as otherwise provided under section 13, upon the
23 filing of a claim, the commission shall investigate and make
24 findings of whether a violation has occurred.

25 (3) In addition to any other penalties provided by law, if
26 the commission finds, after notice and hearing, that there has

1 been a violation of this act, it may do 1 or more of the
2 following:

3 (a) Issue a cease and desist order.

4 (b) Order the person to pay a fine of not less than
5 \$10,000.00 or more than \$50,000.00 per day that the person is in
6 violation of this section.

7 (c) Order that the person's telephone solicitation license
8 be revoked.

9 (4) If the violation warrants immediate action, the commis-
10 sion may issue a preliminary cease and desist order. A request
11 for preliminary order under this subsection shall be either
12 granted or denied within 3 business days from the date the com-
13 plaint is filed.

14 (5) If a person violates an order issued under subsection
15 (3) or (4), the commission may order the person to pay a fine of
16 not more than \$10,000.00 per day for each day the person is in
17 violation and to make whole any person injured by the violation,
18 including the payment of reasonable attorney fees.

19 Sec. 15. A person shall not bring a cause of action for the
20 collection of any sale made by telephone solicitation unless that
21 person acted in compliance with this act.