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MICHIGAN LAWS REGARDING TELEPHONIC SOLICITATION

1. Overview

The Michigan laws dealing with telephonic solicitation are the Public Safety Solicitation Act (MCL § 14.301 *et seq*), Home Solicitations Sales Act (MCL § 445.111 *et seq*), and Michigan Consumer Protection Act (MCL § 445.901 *et seq*).

2. Definitions

The term “telephone solicitor” is defined as any person doing business in the state of Michigan, who makes or causes to be made a telephone solicitation from within or outside of the state, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person. MCL § 445.111(n). The term "telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call. MCL § 445.111(m). The term does not include the following: (i) voice communication to a residential telephone subscriber with that subscriber’s express invitation or permission; (ii) voice communication to an existing customer of the person on whose behalf the communication is made; and (iii) voice communication to a residential telephone subscriber in which the caller requests a face-to-face meeting with the subscriber, and does not urge the subscriber to make a decision during that voice communication itself. *Id.* However, the exception regarding communication to an existing

customer does not apply in cases where the existing customer has requested to not receive calls from or on behalf of that caller. *Id.*

A “home solicitation sale” is defined in MCLS § 445.111. Pursuant to that definition, when a telephonic solicitation is made for the sale of goods or services which exceeds \$25.00 by the seller or a person acting for the seller and the buyer agrees or offers to purchase the same, then a telephonic solicitation sale is made. MCLS § 445.111(a).

However MCLS § 445.111(a) exempts a home solicitation sale if:

- (i) Sale made is pursuant to a preexisting revolving charge account.
- (ii) Sale made is pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.
- (iii) It is a sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance.
- (iv) It is a sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale.
- (v) It is a sale made pursuant to a printed advertisement in a publication of general circulation.
- (vi) It is a sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services.
- (vii) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

3. Prohibited Conduct By Telemarketers

In Michigan, the telephonic solicitor's recipients are provided with certain rights and interference with caller ID functions is prohibited. See MCLS § 445.111b. The unfair and deceptive acts or practices of telephone solicitors are set forth in MCLS § 445.111c (1c) (1).

Telemarketers are bound by a "code of conduct" and may not:

- Misrepresent or fail to clearly disclose:
 - the total purchase price of the product being sold;
 - any restrictions or conditions on purchase;
 - any material term or condition regarding refund, cancellation, or exchange policies;
 - any material condition relating to a prize offering;
 - any material aspect of an investment opportunity being offered;
 - the quantity, any material aspect of the quantity, or characteristics of the product being sold;
- Make a false or misleading statement to induce payment for goods or services;
- Request payment or submit a credit card charge before receiving express verifiable authorization showing that the consumer has agreed to purchase;
- Call a consumer who has requested that he or she not receive calls from the seller on whose behalf the call is made;
- Intentionally block or interfere with the caller ID function on a consumer's phone;
- Make a call that consists in whole or in part of a recorded message;
- Make a telephone solicitation to a telephone subscriber whose number is on the do-not-call list.

4. Law Regarding Prerecorded Messages

Telephonic solicitation using a recorded message is prohibited under MCLS § 445.111a. The statute provides that a person shall not make a telephone solicitation that consists in whole or in part of a recorded message. *Id.*

5. Law Regarding Do Not Call Registry

MCL § 445.111a provides for the establishment and publication of the state do-not-call list. The statute also provides for the creation of a do-not-call list fund in the state treasury. *Id.* The Michigan Public Service Commission is empowered to establish and collect fees for inclusion on and access to the list. *Id.* The Commission is also empowered to designate a vendor to maintain the list. *Id.* The statute also provides that if a federal do-not-call list is established, then the Commission shall designate the federal list as the state do-not-call list. *Id.*

MCL § 445.111d provides that in the case of a telephone directory containing residential numbers, the publisher shall include in the telephone directory a notice describing the do-not-call list and how to enroll on it. Also, every telecommunication provider providing residential telephone services must include a notice regarding the state and federal do-not-call lists and how to enroll on them along with the bill for services. *Id.*

6. Organizations And Businesses Exempted From The Do-Not-Call List

Michigan law exempts certain types of organizations and businesses from the do not call list. See MCL § 445.111e and MCL § 445.111(m). They are:

- Charitable organizations
- Public safety organizations
- Companies with which a person has conducted business unless the recipient has specifically requested to be added to that company's do-not-call list.

- Businesses that request face to face meetings but do not urge the recipient to make a decision regarding a purchase at the time of the call.
- Companies that have the recipient' prior consent.
- Companies that do not encourage the purchase, rental or investment in goods or services, such as companies conducting a survey or seeking a donation or contribution.

Further, Michigan law exempts all those organizations covered by the federal laws regarding telephonic solicitation.

7. Information To Be Disclosed By The Solicitor

According to MCLS § 445.111b certain rights are provided to persons who receive solicitation at their residence. At the beginning of the conversation, the solicitor should:

- identify himself or herself by name;
- identify the business on whose behalf he or she is calling;
- identify the purpose of the call;
- identify the telephone number at which the person, company, or organization making the call may be reached;
- be a natural person and not an automated call;
- shall not in any way block or otherwise interfere with the caller ID function;

8. Investigation, Civil Remedies, Criminal Remedies

Disputes regarding telemarketing sales are investigated by the Michigan Department of Attorney General. MCL § 14.316. The Attorney General, a county prosecutor, or individual consumer may bring a lawsuit under the Consumer Protection Act. See MCL §§ 445.910; 445.915.

Under the Michigan Penal Code, MCLS § 750.540e, making an unsolicited commercial telephone call between the hours of 9 p.m. and 9 a.m. constitutes a malicious use of telecommunication services. *Id.* This includes an unsolicited commercial telephone call made by a person as well as a recording device. *Id.* Any violation of this section of the Penal Code is punishable with imprisonment for not more than six months or a fine of not more than one thousand dollars or a combination of both. *Id.* at (2).

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