

SENATE BILL No. 641

December 3, 1991, Introduced by Senators BOUCHARD, HART, EHLERS, ARTHURHULTZ, DI NELLO, BARCIA, MC MANUS and HONIGMAN and referred to the Committee on Technology and Energy.

A bill to prohibit the transmission of unsolicited advertising messages to cellular telephones; to prescribe the powers and duties of certain state agencies and officials; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Advertisement" means a message transmitted to a cellu-
3 lar telephone for the purpose of inducing, or that is likely to
4 induce, directly or indirectly, the purchase of real property,
5 goods, or services.

6 (b) "Cellular telephone" means a 2-way communicating device
7 used in a cellular mobile radio telecommunications service uti-
8 lizing low poser transmitters providing coverage in a limited
9 area, but linked with other similar transmitters operating at
10 different frequencies.

1 (c) "Department" means the department of the attorney
2 general.

3 (d) "Person" means an individual, partnership, association,
4 corporation, governmental entity, or other legal entity.

5 Sec. 2. (1) A person shall not send an advertisement to
6 another person if the advertisement will be received by a cellu-
7 lar telephone without first obtaining the consent of the person
8 who will receive the advertisement.

9 (2) Consent may be given by telephone or other means to a
10 particular vendor or by general notification to marketing or
11 industry trade associations.

12 (3) Consent to have a cellular telephone number published in
13 a directory or disseminated in any other manner shall not be con-
14 strued as consent to receive an advertisement under this act.

15 Sec. 3. (1) If the attorney general has reason to believe
16 that a person has engaged, is engaging, or is about to engage in
17 an act that violates section 2, he or she shall notify the person
18 of the violation and order the person to cease and desist from
19 the act and provide the person the opportunity to confer with the
20 attorney general in person, by counsel, or by other
21 representative.

22 (2) The notice may be given to the person by mail, postage
23 prepaid, to his or her usual place of business, or if the person
24 does not have a usual place of business, to his or her last known
25 address, or, with respect to a corporation, to the resident agent
26 who is designated to receive service of process or to an officer
27 of the corporation.

1 Sec. 4. (1) The attorney general may accept an assurance of
2 discontinuance of an act that is a violation under section 2 from
3 the person who has engaged, is engaging, or is about to engage in
4 the act.

5 (2) Except for an action commenced pursuant to section 5,
6 the assurance shall not constitute an admission nor be introduced
7 in any other proceeding.

8 (3) An assurance of discontinuance shall be in writing and
9 filed with the department. The department shall maintain a
10 record of all filings.

11 (4) The terms of the assurance of discontinuance may be
12 enforced in an action commenced pursuant to section 5.

13 Sec. 5. (1) If the attorney general has probable cause to
14 believe a person has continued to violate this act after notice
15 has been provided under section 3 or that the person has violated
16 an assurance of discontinuance entered under section 4, the
17 attorney general may bring an action to restrain the person by
18 temporary or permanent injunction from engaging in the act or to
19 enforce the terms of the assurance of discontinuance. The action
20 may be brought in the circuit court for the county in which the
21 person is established or conducts business or in the circuit
22 court for Ingham county.

23 (2) A person who knowingly violates the terms of an injunc-
24 tion, order, decree, or judgment issued pursuant to this section
25 or the terms of an assurance of discontinuance under section 4
26 shall forfeit and pay to the state a civil fine of not more than
27 \$500.00 for each violation.

1 (3) For the purposes of this section, the court issuing an
2 injunction, order, decree, or judgment shall retain jurisdiction,
3 and the attorney general may petition the court for recovery of
4 the civil fine as provided by this section.

5 Sec. 6. The person receiving an advertisement in violation
6 of this act may file a civil suit in the court of proper juris-
7 diction to recover actual damages, or \$250.00, whichever is
8 greater, together with reasonable attorney fees and costs, if any
9 1 of the following had occurred prior to the person receiving the
10 advertisement:

11 (a) The attorney general had issued a notice to cease and
12 desist under section 3 to the person who sent the advertisement.

13 (b) The person who sent the advertisement had entered into
14 an assurance of discontinuance under section 4.

15 (c) The person had notified the sender in writing that the
16 sender did not have the person's consent to send an
17 advertisement.