

# HOUSE BILL No. 4250

February 11, 1999, Introduced by Reps. DeHart, Hale, Scott, Cherry, Kelly, Tesanovich, Wojno, Schermesser, Schauer, Garza, Martinez, Brater, Bogardus, Mans, Prusi, Sanborn, Minore, Jellema and LaForge and referred to the Committee on Family and Civil Law.

A bill to regulate certain sales solicitations; to prescribe the powers and duties of certain governmental 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) "Department" means the department of consumer and indus-
- 3 try services.
- 4       (b) "Person" means an individual, partnership, corporation,
- 5 association, or other legal entity.
- 6       (c) "Telephone sales solicitation" means a telephonic
- 7 attempt to induce an individual to purchase, invest in, or other-
- 8 wise obtain an interest in real property or in a consumer good,
- 9 service, or commodity. Telephone sales solicitation does not
- 10 include any of the following:

1 (i) A telephonic solicitation made to an individual in  
2 accordance with a prior or existing relationship formed by a  
3 voluntary communication between a person and the individual, with  
4 or without an exchange of consideration, on the basis of the  
5 individual's inquiry, application, purchase, or transaction  
6 relating to a product or service offered by the person, if that  
7 relationship has not been previously terminated by either party.

8 (ii) A telephonic solicitation made by an organization  
9 exempt from taxation under section 501(c)(3) of the internal rev-  
10 enue code of 1986.

11 (iii) A telephone call made with the intent to engage the  
12 individual receiving the call in a subsequent in-person meeting  
13 at which a sales solicitation will be made.

14 (iv) A telephone solicitation that is isolated and not part  
15 of a pattern of solicitations regularly made by the solicitor in  
16 the ordinary course of business.

17 (v) A telephonic solicitation made by a person who maintains  
18 a do-not-call list required by the federal communications commis-  
19 sion under subpart L of chapter 64 of title 47 of the code of  
20 federal regulations.

21 (vi) A telephone solicitation by an employer of less than 25  
22 employees, unless that employer is sufficiently related to  
23 another employer to qualify with that other employer as a single  
24 employer under section 414(b) or (c) of the internal revenue code  
25 of 1986.

26 Sec. 2. An individual who does not wish to receive  
27 telephone sales solicitations may file with the department a

1 written statement, in a form and manner prescribed by the  
2 department, that expressly provides that the individual wishes to  
3 have his or her name, address, and telephone number placed on a  
4 list of those to whom a telephone sales solicitation shall not be  
5 made.

6       Sec. 3. (1) The department shall maintain a list of names,  
7 addresses, and telephone numbers of individuals described in sec-  
8 tion 1 and, subject to terms and conditions that the department  
9 may prescribe, make that list available to any person upon the  
10 person's request. The list shall be subdivided by geographic  
11 regions, zip codes, area codes, and the first 3 digits of tele-  
12 phone numbers. The department may charge a person who seeks to  
13 obtain a copy of the list or subdivision of the list a fee that  
14 reflects the department's actual cost of providing the requested  
15 copy of the list or subdivision of the list. The department  
16 shall update the list January 1 of each year.

17       (2) A person who reviews or obtains a copy of the list  
18 described in subsection (1) shall not disclose information con-  
19 tained on the list to another person. This subsection does not  
20 apply to a disclosure to the person's agent or employee, a law  
21 enforcement officer, or the department, or a disclosure made in  
22 accordance with a court order.

23       (3) An individual may have his or her name removed from the  
24 list described in subsection (1) by providing the department with  
25 a written request for the removal.

1 (4) The department may promulgate rules under the  
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
3 24.328, to implement and administer this act.

4 Sec. 4. A person, other than an organization exempt from  
5 taxation under section 501(c)(3) of the internal revenue code,  
6 shall not make a telephone sales solicitation to an individual in  
7 this state if that individual's name and address have been on the  
8 list described in section 2 for more than 30 days.

9 Sec. 5. Subject to section 7, a person who violates this  
10 act is subject to a civil fine of not more than \$250.00 per  
11 violation.

12 Sec. 6. Subject to section 7, a person aggrieved by a vio-  
13 lation of this act may bring a civil action and recover his or  
14 her actual damages or \$500.00, whichever is greater, plus reason-  
15 able attorney fees and costs.

16 Sec. 7. The penalties and remedies described in sections 5  
17 and 6 do not apply to a person who is determined liable for a  
18 penalty or remedy prescribed by federal law for conduct prohib-  
19 ited by this act.

20 Enacting section 1. This act takes effect January 1, 1999.