

SENATE BILL NO. 1037

October 16, 2024, Introduced by Senators CAVANAGH, BAYER, MOSS, GEISS, POLEHANKI, MCBROOM, CHANG, VICTORY, KLINEFELT and MCMORROW and referred to the Committee on Finance, Insurance, and Consumer Protection.

A bill to prescribe the rights and duties of parties to telephone solicitation sales; to regulate certain telephone solicitations; to provide for the powers and duties of certain state governmental officers and entities; to prohibit certain conduct; and to prescribe civil sanctions, penalties, and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "telephone solicitation
2 act".

3 Sec. 2. As used in this act:

1 (a) "ADAD" means any device or system of devices that is used,
2 whether alone or in conjunction with other equipment, for the
3 purpose of automatically selecting or dialing telephone numbers.

4 (b) "Caller identification service" means a service or device
5 designed to provide the use of the service or device with the
6 telephone number of, or other information regarding the origination
7 of, a telephone communication. Caller identification service
8 includes automatic number identification.

9 (c) "Charitable organization" means a benevolent, educational,
10 philanthropic, humane, patriotic, or public safety organization of
11 persons that solicits or obtains contributions solicited from the
12 public for charitable or purported charitable purposes. Charitable
13 organization does not include a duly constituted religious
14 organization.

15 (d) "Contribution" means a promise, grant, or payment of money
16 or property of any kind or value, including a promise to pay,
17 except payments by members of an organization for membership fees,
18 dues, fines, or assessments, or for services rendered to individual
19 members, if membership in the organization confers a bona fide
20 right, privilege, professional standing, honor, or other direct
21 benefit, other than the right to vote, elect officers, or hold
22 offices, and except money or property received from a governmental
23 authority or foundation restricted as to use.

24 (e) "Do-not-call list" means the national Do-Not-Call Registry
25 maintained by the Federal Trade Commission.

26 (f) "Emergency telephone number" includes, but is not limited
27 to, a 9-1-1 number and an emergency number of a hospital, medical
28 physician or service office, health care facility, suicide
29 prevention or domestic violence center, poison control center, or

1 fire protection or law enforcement agency.

2 (g) "Existing customer" means an individual who has purchased
3 goods or services from or has made a contribution to a charitable
4 organization to the person on whose behalf the telephone
5 solicitation was initiated within the 12 months before the
6 telephone communication.

7 (h) "Express verifiable authorization" means a written
8 agreement that includes all of the following:

9 (i) A signature of the subscriber being called. As used in this
10 subparagraph, "signature" includes an electronic or digital
11 signature, if the form of signature used is a valid signature form
12 under federal law or another law of this state.

13 (ii) Clear authorization that the telephone solicitor may
14 deliver or cause to be delivered a telephone solicitation to the
15 subscriber using an ADAD, a recorded message, or a prerecorded
16 voicemail.

17 (iii) The telephone number to which the subscriber authorizes a
18 telephone solicitation to be delivered.

19 (iv) A clear and conspicuous disclosure that informs the
20 subscriber of both of the following:

21 (A) By executing the agreement, the subscriber authorizes the
22 telephone solicitor to deliver or cause to be delivered a telephone
23 solicitation to the subscriber using an ADAD, a recorded message,
24 or a prerecorded voicemail.

25 (B) The subscriber is not required to directly or indirectly
26 sign the written agreement, or to agree to enter into the agreement
27 as a condition of purchasing any property, goods, or services.

28 (i) "Lead generation" means the sourcing, sale, subscription,
29 leasing, renting, distribution, purchase, wholesaling, or transfer

1 of a list of telephone numbers utilized or intended to be utilized
2 for telephone solicitations.

3 (j) "Low-income worker" means an employee who receives annual
4 wages from the employer of the employee, excluding overtime wages,
5 at a rate less than 138% of the federal poverty level guidelines
6 for a family of 5 published annually in the Federal Register by the
7 United States Department of Health and Human Services under its
8 authority to revise the poverty line under 42 USC 9902.

9 (k) "Person" means an individual, partnership, corporation,
10 limited liability company, association, organization, governmental
11 entity, or other legal entity.

12 (l) "Residential telephone subscriber" or "subscriber" means an
13 individual residing in this state who has a residential, wireless,
14 or VoIP telephone service.

15 (m) "Telephone communication" means a communication via a
16 telephone, including, but not limited to, any of the following:

17 (i) A voice communication, including, but not limited to, those
18 made by use of an ADAD, a recorded message, in whole or in part, or
19 VoIP.

20 (ii) Transmission of a text message, a graphic message using
21 short message service, an image, a photograph, or a multimedia
22 message service, including those transmitted via mobile
23 application.

24 (n) "Telephone solicitation" means, except as provided in
25 subdivision (o), a telephone communication made for any of the
26 following purposes:

27 (i) To encourage the recipient to purchase, rent, receive, or
28 invest in goods or services or make a contribution to a charitable
29 organization.

1 (ii) To encourage the recipient to provide personal
2 information, including, but not limited to, identity, financial, or
3 preferences information.

4 (iii) To encourage the recipient to accept or participate in any
5 employment, whether temporary or permanent, contracting,
6 investment, or other income opportunity.

7 (iv) To encourage the recipient to accept a prize promotion.

8 (v) To encourage the recipient or a member of the recipient's
9 family to avoid liability, legal or otherwise.

10 (vi) To obtain or attempt to obtain anything of value from the
11 recipient, including, but not limited to, under subparagraphs (i) to
12 (v), with the intent to defraud, violate this act, or commit another
13 unlawful act.

14 (o) Telephone solicitation does not include any of the
15 following:

16 (i) A telephone communication to a residential telephone
17 subscriber with that subscriber's express verifiable authorization.

18 (ii) A telephone communication to an existing customer of the
19 person on whose behalf the telephone communication is made, unless
20 the existing customer is a consumer who has requested to not
21 receive telephone communications from or on behalf of that person
22 under section 17(f).

23 (iii) A telephone communication made consistent with and not in
24 violation of any federal or state law relating to debt collection.

25 (iv) A telephone communication to a business telephone number,
26 unless the business has requested that it not receive telephone
27 communications from or on behalf of that person under section
28 17(f).

29 (p) "Telephone solicitor" means a person that makes, or causes

1 to be made, a telephone solicitation within this state from within
2 or outside of this state.

3 (q) "VoIP" means a type of telephone communication service
4 utilizing voice over internet protocol or otherwise utilizing the
5 internet to generate, send, or receive telephone communications.

6 (r) "Vulnerable individual" means an individual who is 75
7 years of age or older or is a person with a disability as that term
8 is defined in section 103 of the persons with disabilities civil
9 rights act, 1976 PA 220, MCL 37.1103.

10 (s) "Vulnerable telephone number" means any of the following:

11 (i) An emergency telephone number.

12 (ii) A telephone number of a hospital, medical physician or
13 service office, health care facility, or health care provider.

14 (iii) A telephone number of a governmental entity.

15 (iv) A telephone number of a school or educational facility.

16 Sec. 3. A person shall not make a telephone solicitation using
17 a recorded message in whole or in part.

18 Sec. 5. (1) A telephone solicitor shall not make a telephone
19 solicitation to a residential telephone subscriber whose home or
20 wireless telephone number is on the most current version of the do-
21 not-call list. This section does not apply to a telephone
22 solicitation made on behalf of a charitable organization, but only
23 if all of the following apply:

24 (a) The telephone solicitor making the telephone call is
25 either a volunteer working under the direct supervision of an
26 employee of the charitable organization or an employee of the
27 charitable organization.

28 (b) The telephone solicitor making the telephone call
29 immediately discloses both of the following:

1 (i) The solicitor's true first and last name.

2 (ii) The name, address, and telephone number of the charitable
3 organization.

4 (2) A person shall not include the telephone number of a
5 residential telephone subscriber that is on the most current
6 version of the do-not-call list in a lead generation.

7 (3) There is a rebuttable presumption that a telephone
8 solicitation made to any telephone number with an area code of this
9 state is made to a residential telephone subscriber.

10 Sec. 7. (1) At the beginning of a telephone solicitation, the
11 organization or other person on whose behalf the call is initiated
12 shall ensure that the telephone solicitor states the telephone
13 solicitor's true first and last name and the full name, address,
14 and telephone number of the organization or other person on whose
15 behalf the call is initiated.

16 (2) The organization or other person described in subsection
17 (1) shall ensure that an individual is available to answer the
18 telephone number provided under subsection (1) at any time during
19 traditional business hours between 9 a.m. and 5 p.m. local time at
20 the subscriber's residence.

21 (3) The organization or other person described in subsection
22 (1) shall ensure that the individual answering the telephone number
23 under subsection (2) provides a residential telephone subscriber
24 who calls that telephone number with information to describe the
25 purpose and operations of the organization or other person on whose
26 behalf the telephone solicitation was made and with information to
27 describe the purpose of the telephone solicitation described in
28 subsection (1).

29 (4) A telephone solicitor shall not do any of the following:

1 (a) Block, restrict, circumvent, or otherwise interfere with a
2 subscriber's caller identification service so that the telephone
3 number of the telephone solicitor is not displayed properly on the
4 caller identification service of the subscriber.

5 (b) Display, or cause to be displayed, a fictitious or
6 misleading name or telephone number, or to otherwise misrepresent
7 the location of origin of a telephone solicitation or the identity
8 of the telephone solicitor, on a subscriber's caller identification
9 service.

10 (c) Use a third party to display, or cause to be displayed, a
11 fictitious or misleading name or telephone number, or to otherwise
12 misrepresent the location of origin of a telephone solicitation or
13 the identity of the telephone solicitor, on a subscriber's caller
14 identification service.

15 (d) Use a telephone number associated with a direct inward
16 dialing or direct dial-in system or use a telephone number
17 otherwise purchased, leased, licensed, or rented from a person, for
18 any telephone solicitation that misrepresents the location of
19 origin of a telephone solicitation or the identity of the telephone
20 solicitor, or otherwise violates this act.

21 (5) Subsection (4) does not create liability for a carrier or
22 VoIP whose action is undertaken for the purpose of complying with a
23 wireless local number portability requirement promulgated by the
24 Federal Communications Commission.

25 Sec. 9. (1) A person shall not do any of the following in
26 using an ADAD:

27 (a) Use the ADAD for a telephone solicitation that otherwise
28 violates this act.

29 (b) Use the ADAD for a telephone solicitation unless the list

1 of numbers from which the ADAD selects telephone numbers excludes
2 both of the following:

3 (i) Vulnerable telephone numbers.

4 (ii) Telephone numbers of subscribers who are on the most
5 current version of the do-not-call list.

6 (2) Subject to subsection (3), subsection (1) does not apply
7 to a telephone solicitation to which any of the following apply:

8 (a) The telephone solicitation is made to a subscriber with
9 that subscriber's express verifiable authorization.

10 (b) The telephone solicitation is made to an existing customer
11 of the person on whose behalf the telephone communication is made,
12 unless the existing customer is a consumer who has requested to not
13 receive telephone communications from or on behalf of that person
14 under section 17(f).

15 (c) The telephone solicitation is made by a representative of
16 an entity utilizing an emergency telephone number.

17 (d) The telephone solicitation is made by a representative of
18 a school or educational facility if the subscriber is an employee,
19 student, or student's guardian or family member of the school or
20 educational facility.

21 (e) The telephone solicitation is made consistent with and not
22 in violation of any federal or state law relating to debt
23 collection.

24 (3) A person making a telephone solicitation must demonstrate
25 that subsection (2) applies before using an ADAD under subsection
26 (1).

27 Sec. 11. (1) A telephone solicitor may not transfer a
28 telephone solicitation that has reached a subscriber to 1 or more
29 persons if the telephone solicitation otherwise violates this act.

1 (2) A person shall not provide substantial assistance or
2 support to another person or a telephone solicitor if the person
3 knows, should know, or avoids knowing that the other person or
4 telephone solicitor is engaged in any method, act, or practice that
5 violates this act.

6 Sec. 13. (1) A contract made pursuant to a telephone
7 solicitation must satisfy all of the following requirements:

8 (a) The contract must be in writing and signed by the
9 subscriber.

10 (b) The contract must contain the name, address, and business
11 telephone number of the seller, the total price of the contract,
12 and a detailed description of the goods or services being sold.

13 (c) The description of goods or services as stated in the
14 contract must be the same as the description principally used in
15 the telephone solicitation.

16 (d) The contract must contain, in bold, conspicuous type
17 immediately preceding the signature the words "You are not
18 obligated to pay any money unless you sign this contract and return
19 it to the seller.".

20 (e) The contract shall not exclude from its terms any oral or
21 written representations made by the telephone solicitor to the
22 subscriber in connection with the transaction.

23 (2) Except as otherwise provided in subsection (3), a contract
24 made under a telephone solicitation is not valid and enforceable
25 against a consumer unless the contract complies with this section.

26 (3) This section does not apply to either of the following:

27 (a) A sale in which all of the following apply:

28 (i) A prior payment is not made to a seller.

29 (ii) An invoice accompanies the goods or services.

1 (iii) A subscriber is allowed 7 days to cancel the services or
2 return the goods without obligation for payment.

3 (b) A contractual agreement that requires payment and allows
4 the subscriber at least 10 days to cancel the contract and receive
5 a full refund of the payment.

6 Sec. 15. It is an abusive method, act, or practice and a
7 violation of this act for a telephone solicitor to, or for a
8 telephone solicitor to cause another person to, do any of the
9 following:

10 (a) Cause a telephone to ring repeatedly, continuously, or in
11 a manner that a reasonable person would consider annoying,
12 harassing, or abusive.

13 (b) Engage a subscriber in a telephone solicitation
14 repeatedly, continuously, or in a manner that a reasonable person
15 would consider annoying, harassing, or abusive.

16 (c) Without the express verifiable authorization of the
17 subscriber, send a telephone solicitation to a subscriber's
18 telephone at a time other than between 9 a.m. and 8 p.m. local time
19 at the subscriber's residence.

20 Sec. 17. It is an unfair or deceptive method, act, or practice
21 and a violation of this act for a telephone solicitor to, or for a
22 telephone solicitor to cause another person to, do any of the
23 following during the course of a telephone solicitation:

24 (a) Misrepresent or fail to disclose, in a clear, conspicuous,
25 and intelligible manner and before payment is received from the
26 subscriber, all of the following information:

27 (i) The total purchase price to the subscriber of the goods or
28 services sold to the subscriber.

29 (ii) Any restrictions, limitations, or conditions to purchase

1 or to use the goods or services that are the subject of an offer to
2 sell goods or services.

3 (iii) Any material term or condition of the seller's refund,
4 cancellation, or exchange policy, including, but not limited to, a
5 subscriber's right to cancel a purchase made pursuant to a
6 telephone solicitation under section 13, and, if applicable, that
7 the seller does not have a refund, cancellation, or exchange
8 policy.

9 (iv) Any material costs or conditions related to receiving a
10 prize, including, but not limited to, the odds of winning the
11 prize, and if the odds are not calculable in advance, the factors
12 used in calculating the odds, the nature and value of a prize, that
13 no purchase is necessary to win the prize, and the method of
14 entering the contest if no purchase is required.

15 (v) Any material aspect of an investment opportunity the
16 seller is offering, including, but not limited to, risk, liquidity,
17 earnings potential, market value, and profitability.

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

20 (b) Make a false or misleading statement or misrepresentation
21 with the purpose of inducing a subscriber to pay for goods or
22 services, make a contribution, or pay to avoid liability, legal or
23 otherwise, on behalf of the subscriber or a member of the
24 subscriber's family, or wrongfully obtain anything of value.

25 (c) Request or accept payment from a consumer or make or
26 submit a charge to the subscriber's credit or bank account before
27 the telephone solicitor or seller receives from the subscriber an
28 express verifiable authorization.

29 (d) Offer to a subscriber a prize promotion in which a

1 purchase or payment is necessary to obtain the prize.

2 (e) Fail to comply with the requirements of sections 3, 5, 7,
3 9, 11, 13, or 19.

4 (f) Make a telephone solicitation to a subscriber who or
5 business that has requested to not receive telephone communications
6 from the organization or other person on whose behalf the telephone
7 solicitation is made.

8 (g) While making a telephone solicitation, misrepresent in a
9 message left for a subscriber on the subscriber's answering machine
10 or voice mail that the subscriber is an existing customer of, or
11 otherwise has a current business matter or transaction with, the
12 telephone solicitor or the organization or other person on whose
13 behalf the telephone solicitation is being made, and request that
14 the subscriber call the telephone solicitor or another person to
15 discuss that matter, transaction, or relationship.

16 (h) Make a false or misleading statement or misrepresentation
17 with the purpose of inducing a subscriber to provide personal
18 information, including, but not limited to, identity, financial, or
19 preferences information.

20 (i) Make a false or misleading statement or misrepresentation
21 relating to any employment, whether temporary or permanent,
22 contracting, investment, or other income opportunities.

23 Sec. 19. A violation of a federal law, rule, or regulation
24 relating to the subject matter of this act, including, but not
25 limited to, the telemarketing and consumer fraud and abuse
26 prevention act, Public Law 103-297, and the regulations promulgated
27 under that act, and the telephone consumer protection act of 1991,
28 Public Law 102-243, and the regulations promulgated under that act,
29 is a violation of this act.

1 Sec. 21. This act must be liberally construed to effectuate
2 its purpose and the remedies provided under this act are in
3 addition to any other remedy provided by law.

4 Sec. 23. This act does not relieve a person from complying
5 with any other applicable law.

6 Sec. 25. (1) If the attorney general has probable cause to
7 believe that a person has engaged, is engaging, or is about to
8 engage in a method, act, or practice that is unlawful under this
9 act and gives notice in accordance with this section, the attorney
10 general may bring a civil action in accordance with principles of
11 equity to restrain the defendant by temporary or permanent
12 injunction from engaging in the method, act, or practice. The civil
13 action may be brought in the circuit court of the county where the
14 defendant is established or conducts business or, if the defendant
15 is not established in this state, in the circuit court of Ingham
16 County. The court may award costs to the prevailing party. For each
17 violation, the court may assess the defendant a civil fine of not
18 more than \$25,000.00. For purposes of this subsection, each
19 telephone communication may be considered a separate violation and
20 a singular telephone communication may generate multiple separate
21 violations.

22 (2) Unless waived by the court on good cause shown not less
23 than 10 days before the commencement of a civil action under this
24 section, the attorney general shall notify the person of the
25 intended action and give the person an opportunity to cease and
26 desist from the alleged unlawful method, act, or practice or to
27 confer with the attorney general in person, by counsel, or by other
28 representative as to the proposed action before the proposed filing
29 date. The notice may be given to the person by mail, postage

1 prepaid, to the person's usual place of business or, if the person
2 does not have a usual place of business, to the person's last known
3 address, or, if the person is a corporation, only to a resident
4 agent who is designated to receive service of process or to an
5 officer of the corporation.

6 (3) A prosecuting attorney or law enforcement officer
7 receiving notice of an alleged violation of this act, or of a
8 violation of an injunction, order, decree, or judgment issued in a
9 civil action brought under this section, or of a violation of an
10 assurance under this act, shall immediately forward written notice
11 of the violation together with any information the prosecuting
12 attorney or law enforcement officer may have to the office of
13 attorney general.

14 (4) A person that knowingly violates the terms of an
15 injunction, order, decree, or judgment issued under this section is
16 subject to a civil fine of not more than \$25,000.00 for each
17 violation. For purposes of this subsection, both of the following
18 apply:

19 (a) Each telephone communication may be considered a separate
20 violation and a singular telephone communication may generate
21 multiple separate violations.

22 (b) The court issuing an injunction, order, decree, or
23 judgment shall retain jurisdiction, the cause must be continued,
24 and the attorney general may petition for recovery of a civil fine
25 as provided under this subsection.

26 (5) It is a defense to a claim brought under this act that a
27 practice engaged in or a communication made was not a telephone
28 solicitation under section 2(o). The burden of proof is on the
29 person claiming the communication was not a telephone solicitation.

1 Sec. 27. (1) A person that knowingly uses, or has knowingly
2 used, a method, act, or practice that targets vulnerable
3 individuals and is in violation of this act is subject to a civil
4 fine of not more than \$50,000.00 for each violation, or \$75,000.00
5 for each persistent and knowing violation. For purposes of this
6 subsection, each telephone communication may be considered a
7 separate violation and a singular telephone communication may
8 generate multiple separate violations.

9 (2) A person that knowingly uses, or has knowingly used, a
10 method, act, or practice that targets or mimics vulnerable
11 telephone numbers and is in violation of this act is subject to a
12 civil fine of not more than \$75,000.00 for each violation, or
13 \$100,000.00 for each persistent and knowing violation. For purposes
14 of this subsection, each telephone communication may be considered
15 a separate violation and a singular telephone communication may
16 generate multiple separate violations.

17 (3) When determining the amount of the civil fine to be
18 imposed under this section for a person that violates this section,
19 the court may consider:

20 (a) The good or bad faith of the person as it relates to the
21 violation.

22 (b) The injury to the public.

23 (c) The person's ability to pay.

24 (d) The public's interest in eliminating the benefits derived
25 by the person from the violation.

26 (e) The necessity of vindicating the authority of this state.

27 (f) The public's interest in deterring future similar methods,
28 acts, or practices.

29 (4) The civil fines recoverable by this state under this

1 section are in addition to any other available civil fine and
2 relief available under this act and other laws, regulations, or
3 rules.

4 Sec. 29. (1) If the attorney general has authority to bring a
5 civil action or proceeding under section 25, the attorney general
6 may accept an assurance of discontinuance of a method, act, or
7 practice that is alleged to be unlawful from the person that is
8 alleged to have engaged, be engaging, or be about to engage in the
9 method, act, or practice. An assurance under this section is not an
10 admission of guilt and must not be introduced in any other
11 proceeding. The assurance may include a stipulation for any or all
12 of the following:

13 (a) The voluntary payment by the person for the costs of
14 investigation and reasonable attorney fees.

15 (b) An amount to be held in escrow pending the outcome of an
16 action.

17 (c) An amount for restitution to any aggrieved individual.

18 (2) An assurance of discontinuance must be in writing and may
19 be filed in the circuit court of Ingham County. The clerk of the
20 circuit court shall maintain a record of the filings. Unless
21 rescinded by the parties or voided by the circuit court for good
22 cause, the assurance may be enforced in the circuit court by the
23 parties to the assurance. The assurance may be modified by the
24 parties pursuant to an agreement by all parties in writing or by a
25 court for good cause.

26 Sec. 31. (1) If the attorney general has reason to believe
27 that a person has information or is in possession, custody, or
28 control of any document or other tangible object relevant to an
29 investigation for a violation of this act, the attorney general may

1 serve on the person, before bringing a civil action, a written
2 demand to appear and be examined under oath, and to produce the
3 document or object for inspection and copying. All of the following
4 apply to the demand under this subsection:

5 (a) The demand must be served on the person in the manner
6 required for service of process in this state.

7 (b) The demand must describe the nature of the conduct
8 constituting the violation under investigation.

9 (c) The demand must describe the document or object with
10 sufficient definiteness to permit it to be fairly identified.

11 (d) If requested, the demand must contain a copy of the
12 written interrogatories.

13 (e) The demand must prescribe a reasonable time at which the
14 person must appear to testify, within which to answer the written
15 interrogatories, and within which the document or object must be
16 produced, and advise the person that objections to or reasons for
17 not complying with the demand may be filed with the attorney
18 general on or before that time.

19 (f) The demand must specify a place for the taking of
20 testimony or for production and designate the person who is
21 custodian of the document or object.

22 (2) At any time before the return date specified in the demand
23 for information under subsection (1), or within 14 days following
24 notice of the demand, whichever is shorter, any person from whom
25 information has been requested may petition the circuit court of
26 Ingham County, stating good cause, for a protective order to extend
27 the return date for a reasonable time, or to modify or set aside
28 the demand. The attorney general must receive at least 14 days'
29 notice of the petition described in this subsection and must be

1 given an opportunity to respond.

2 (3) If no protective order from the circuit court of Ingham
3 County is secured under subsection (2) and the demand is not
4 complied with by its return date, the attorney general, upon notice
5 to the person requested to provide information, may apply to the
6 court for an order compelling compliance with the request made
7 under subsection (1).

8 (4) Any court of competent jurisdiction in this state, upon a
9 showing by the attorney general that there are reasonable grounds
10 to believe that the provisions of this act are being, have been, or
11 are about to be violated; that the person who is committing, has
12 committed, or is about to commit methods, acts, or practices that
13 violate this act or who possess the relevant documentary material
14 has left this state or is about to leave this state; and that an
15 order to comply with the provisions of subsection (1) is necessary
16 for the enforcement of this act, may order the person described in
17 this subsection to comply with the provisions of subsection (1)
18 whether the attorney general has made a prior demand for
19 information or not. The court may, notwithstanding any provision to
20 the contrary, immediately and without notice, forbid the removal
21 from any place, concealment, withholding, destruction, mutilation,
22 falsification, or alteration by any other means of a documentary
23 material in the possession, custody, or control of a person
24 believed to be connected with methods, acts, or practices that
25 violate this act.

26 (5) A person who has received notice of a demand for
27 information under subsection (1), or of an order under subsection
28 (3) or (4), and with intent to avoid, evade, or prevent compliance,
29 in whole or in part, with a civil investigation or order under this

1 section, removes from any place, conceals, withholds, destroys,
2 mutilates, falsifies, or by any other means alters any documentary
3 material in the possession, custody, or control of a person subject
4 to that notice, is subject to a civil fine of not more than
5 \$10,000.00 per violation, recoverable by this state in addition to
6 any other appropriate sanction.

7 (6) Except as otherwise provided, any procedure, testimony
8 taken, or material produced must be kept confidential by the
9 attorney general before bringing a civil action against a person
10 under this act for the violation under investigation, unless this
11 information has become a matter of public record in an enforcement
12 proceeding or confidentiality is waived by the person being
13 investigated and by the person who has testified, answered
14 interrogatories, or produced material. The attorney general may
15 disclose any testimony taken or material produced under this
16 section to assist a state, local, or federal government official
17 with an investigation of a violation of a similar telephone privacy
18 and consumer protection law.

19 (7) Any compliance with a demand for information under
20 subsection (1) or of an order under subsection (3) or (4) does not
21 create liability for a carrier or VoIP by a subscriber to whom the
22 information relates.

23 Sec. 33. (1) A person on whom a notice is served under section
24 25 must comply with the terms of the notice unless otherwise
25 provided by an order of the circuit court.

26 (2) A person who does any of the following shall be ordered to
27 pay a civil fine of not more than \$10,000.00:

28 (a) Knowingly and without good cause fails to appear as
29 provided in the notice.

1 (b) Knowingly avoids, evades, or prevents compliance, in whole
2 or in part, with an investigation under this act, including, but
3 not limited to, the removal from any place, concealment,
4 destruction, mutilation, alteration, or falsification of
5 documentary material in the possession, custody, or control of a
6 person subject to the notice.

7 (c) Knowingly conceals relevant information in an
8 investigation under this act.

9 (3) The attorney general may file a petition in the circuit
10 court of the county in which the person is established or conducts
11 business or, if the person is not established in this state, in the
12 circuit court of Ingham County for an order to enforce compliance
13 with this section. A person that violates a final order entered
14 under this section is subject to punishment for civil contempt
15 under chapter 17 of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.1701 to 600.1745.

17 (4) Upon the petition of the attorney general, the circuit
18 court may enjoin a person from doing business in this state if the
19 person persistently and knowingly evades or prevents compliance
20 with an injunction issued under this act.

21 Sec. 35. (1) A person that suffers loss as a result of a
22 violation of this act may bring a civil action to recover 1 of the
23 following, whichever is greater:

24 (a) Actual damages plus reasonable attorney fees.

25 (b) \$1,000.00 plus reasonable attorney fees.

26 (2) This section does not prevent a consumer from asserting
27 the consumer's rights under 1971 PA 227, MCL 445.111 to 445.117, if
28 the telephone solicitation results in a home solicitation sale, or
29 asserting any other right or claim the consumer may have under any

1 other applicable state or federal law.

2 (3) This section does not apply to a carrier or VoIP that is
3 in compliance with 16 CFR part 310 and 47 USC 227.

4 Sec. 39. (1) An action under this act is barred if not
5 commenced within 4 years after the claim of relief or cause of
6 action accrues.

7 (2) A telephone solicitor shall keep, for at least 4 years,
8 records relating to telephone solicitations.

9 (3) A low-income worker that is not responsible for
10 managerial, strategic, supervisory, structural, policy, or other
11 organizational decision making is not liable under this act if the
12 low-income worker's violative action is undertaken pursuant to the
13 direction of a supervisor.

14 Enacting section 1. This act does not take effect unless all
15 of the following bills of the 102nd Legislature are enacted into
16 law:

17 (a) Senate Bill No. 1038.

18
19 (b) Senate Bill No. 1040.

20
21 (c) Senate Bill No. 1039.

22
23 (d) Senate Bill No. 1041.