

**SUBSTITUTE FOR
SENATE BILL NO. 351**

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:

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

7 (b) "Caller identification service" means a service or device



1 designed to provide the use of the service or device with the
2 telephone number of, or other information regarding the origination
3 of, a telephone communication. Caller identification service
4 includes automatic number identification.

5 (c) "Charitable organization" means a benevolent, educational,
6 philanthropic, humane, patriotic, or public safety organization of
7 persons that solicits or obtains contributions solicited from the
8 public for charitable or purported charitable purposes.

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

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

20 (f) "Emergency telephone number" includes, but is not limited
21 to, a 9-1-1 number and an emergency number of a hospital, medical
22 physician or service office, health care facility, suicide
23 prevention or domestic violence center, poison control center, or
24 fire protection or law enforcement agency.

25 (g) "Existing customer" means an individual who has purchased
26 goods or services from or has made a contribution to a charitable
27 organization to the person on whose behalf the telephone
28 solicitation was initiated within the 12 months before the
29 telephone communication.



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

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

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

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

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

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

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

(i) "Lead generation" means the sourcing, sale, subscription, leasing, renting, distribution, purchase, wholesaling, or transfer of a list of telephone numbers utilized or intended to be utilized for telephone solicitations.

(j) "Low-income worker" means an employee who receives annual wages from the employer of the employee, excluding overtime wages, at a rate less than 138% of the federal poverty level guidelines for a family of 5 published annually in the Federal Register by the



1 United States Department of Health and Human Services under its
2 authority to revise the poverty line under 42 USC 9902.

3 (k) "Person" means an individual, partnership, corporation,
4 limited liability company, association, organization, governmental
5 entity, or other legal entity.

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

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

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

14 (ii) Transmission of a text message, a graphic message using
15 short message service, an image, a photograph, or a multimedia
16 message service, including those transmitted via mobile
17 application.

18 (n) "Telephone solicitation" means, except as otherwise
19 provided in subdivision (o), a telephone communication made for any
20 of the following purposes:

21 (i) To encourage the recipient to purchase, rent, receive, or
22 invest in goods or services or make a contribution to a charitable
23 organization.

24 (ii) To encourage the recipient to provide personal
25 information, including, but not limited to, identity, financial, or
26 preferences information.

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



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

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

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

8 (o) "Telephone solicitation" does not include any of the
9 following:

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

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

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

19 (iv) A telephone communication to a business telephone number,
20 unless the business has requested that it not receive telephone
21 communications from or on behalf of that person under section
22 17(f).

23 (v) A telephone communication made for religious, political,
24 public policy, or educational purposes that does not involve sales
25 or marketing solicitation efforts.

26 (vi) A telephone communication made for the purposes of bona
27 fide survey and opinion research, including message testing, that
28 does not involve a sales, marketing, or behavior-influencing
29 purpose.



(p) "Telephone solicitor" means a person that makes, or causes to be made, a telephone solicitation within this state from within or outside of this state.

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

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

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

(i) An emergency telephone number.

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

(iii) A telephone number of a governmental entity.

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

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

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

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

(b) The telephone solicitor making the telephone call



1 immediately discloses both of the following:

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

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

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

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

11 Sec. 7. (1) At the beginning of a telephone solicitation, the
12 organization or other person on whose behalf the voice
13 communication or text message is initiated shall ensure that the
14 telephone solicitor states either of the following, as applicable:

15 (a) If the telephone solicitation is a voice communication,
16 the telephone solicitor's true first and last name and the full
17 name, address, and telephone number of the organization or other
18 person on whose behalf the call is initiated.

19 (b) If the telephone solicitation is a text message, the
20 organization or other person on whose behalf the text message is
21 initiated.

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

27 (3) The organization or other person described in subsection
28 (1) shall ensure that the individual answering the telephone number
29 under subsection (2) provides a residential telephone subscriber



1 who calls that telephone number with information to describe the
2 purpose and operations of the organization or other person on whose
3 behalf the telephone solicitation was made and with information to
4 describe the purpose of the telephone solicitation described in
5 subsection (1).

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

7 (a) Block, restrict, circumvent, or otherwise interfere with a
8 subscriber's caller identification service so that the telephone
9 number of the telephone solicitor is not displayed properly on the
10 caller identification service of the subscriber.

11 (b) Display, or cause to be displayed, a fictitious or
12 misleading name or telephone number, or to otherwise misrepresent
13 the location of origin of a telephone solicitation or the identity
14 of the telephone solicitor, on a subscriber's caller identification
15 service.

16 (c) Use a third party to display, or cause to be displayed, a
17 fictitious or misleading name or telephone number, or to otherwise
18 misrepresent the location of origin of a telephone solicitation or
19 the identity of the telephone solicitor, on a subscriber's caller
20 identification service.

21 (d) Use a telephone number associated with a direct inward
22 dialing or direct dial-in system or use a telephone number
23 otherwise purchased, leased, licensed, or rented from a person, for
24 any telephone solicitation that misrepresents the location of
25 origin of a telephone solicitation or the identity of the telephone
26 solicitor, or otherwise violates this act.

27 (5) Subsection (4) does not create liability for a carrier or
28 VoIP whose action is undertaken for the purpose of complying with a
29 wireless local number portability requirement promulgated by the



1 Federal Communications Commission.

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

4 (a) Use the ADAD for a telephone solicitation that otherwise
5 violates this act.

6 (b) Use the ADAD for a telephone solicitation unless the list
7 of numbers from which the ADAD selects telephone numbers excludes
8 both of the following:

9 (i) Vulnerable telephone numbers.

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

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

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

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

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

23 (d) The telephone solicitation is made by a representative of
24 a school or educational facility if the subscriber is an employee,
25 student, or student's guardian or family member of the school or
26 educational facility.

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



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

4 Sec. 11. (1) A telephone solicitor shall not transfer a
5 telephone solicitation that has reached a subscriber to 1 or more
6 persons if the telephone solicitation otherwise violates this act.

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

12 Sec. 13. (1) A contract made in accordance with a telephone
13 solicitation must satisfy all of the following requirements:

14 (a) The contract must be in writing and signed by the
15 subscriber.

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

19 (c) The description of goods or services as stated in the
20 contract must be the same as the description principally used in
21 the telephone solicitation.

22 (d) The contract must contain, in bold, conspicuous type
23 immediately preceding the signature the words "You are not
24 obligated to pay any money unless you sign this contract and return
25 this contract to the seller."

26 (e) The contract must not exclude from the seller's terms any
27 oral or written representations made by the telephone solicitor to
28 the subscriber in connection with the transaction.

29 (2) Except as otherwise provided in subsection (3), a contract



1 made in accordance with a telephone solicitation is not valid and
2 enforceable against a consumer unless the contract complies with
3 this section.

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

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

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

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

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

10 (b) A contractual agreement that requires payment and allows
11 the subscriber not less than 10 days to cancel the contract and
12 receive a full refund of the payment.

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

17 (a) Cause a telephone to ring repeatedly, continuously, or in
18 a manner that a reasonable person would consider annoying,
19 harassing, or abusive.

20 (b) Engage a subscriber in a telephone solicitation
21 repeatedly, continuously, or in a manner that a reasonable person
22 would consider annoying, harassing, or abusive.

23 (c) Without the express verifiable authorization of the
24 subscriber, send a telephone solicitation to a subscriber's
25 telephone at a time other than between 8 a.m. and 9 p.m. local time
26 at the subscriber's residence.

27 Sec. 17. It is an unfair or deceptive method, act, or practice
28 and a violation of this act for a telephone solicitor to, or for a
29 telephone solicitor to cause another person to, do any of the



1 following during the course of a telephone solicitation:

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

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

7 (ii) Any restrictions, limitations, or conditions to purchase
8 or to use the goods or services that are the subject of an offer to
9 sell goods or services.

10 (iii) Any material term or condition of the seller's refund,
11 cancellation, or exchange policy, including, but not limited to, a
12 subscriber's right to cancel a purchase made in accordance with a
13 telephone solicitation under section 13, and, if applicable, that
14 the seller does not have a refund, cancellation, or exchange
15 policy.

16 (iv) Any material costs or conditions related to receiving a
17 prize, including, but not limited to, the odds of winning the
18 prize, and if the odds are not calculable in advance, the factors
19 used in calculating the odds, the nature and value of a prize, that
20 no purchase is necessary to win the prize, and the method of
21 entering the contest if no purchase is required.

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

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

27 (b) Make a false or misleading statement or misrepresentation
28 with the purpose of inducing a subscriber to pay for goods or
29 services, make a contribution, or pay to avoid liability, legal or



1 otherwise, on behalf of the subscriber or a member of the
2 subscriber's family, or wrongfully obtain anything of value.

3 (c) Request or accept payment from a consumer or make or
4 submit a charge to the subscriber's credit or bank account before
5 the telephone solicitor or seller receives from the subscriber an
6 express verifiable authorization.

7 (d) Offer to a subscriber a prize promotion in which a
8 purchase or payment is necessary to obtain the prize.

9 (e) Fail to comply with the requirements of sections 3, 5, 7,
10 9, 11, 13, or 19.

11 (f) Make a telephone solicitation to a subscriber who or
12 business that has requested to not receive telephone communications
13 from the organization or other person on whose behalf the telephone
14 solicitation is made.

15 (g) While making a telephone solicitation, misrepresent in a
16 message left for a subscriber on the subscriber's answering machine
17 or voice mail that the subscriber is an existing customer of, or
18 otherwise has a current business matter or transaction with, the
19 telephone solicitor or the organization or other person on whose
20 behalf the telephone solicitation is being made, and request that
21 the subscriber call the telephone solicitor or another person to
22 discuss that matter, transaction, or relationship.

23 (h) Make a false or misleading statement or misrepresentation
24 with the purpose of inducing a subscriber to provide personal
25 information, including, but not limited to, identity, financial, or
26 preferences information.

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



1 Sec. 19. A violation of a federal law, rule, or regulation
2 relating to the subject matter of this act, including, but not
3 limited to, the telemarketing and consumer fraud and abuse
4 prevention act, 15 USC 6101 to 6102, and the regulations
5 promulgated under that act, and the telephone consumer protection
6 act of 1991, Public Law 102-243, and the regulations promulgated
7 under that act, is a violation of this act.

8 Sec. 21. This act must be liberally construed to effectuate
9 this act's purpose and the remedies provided under this act are in
10 addition to any other remedy provided by law.

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

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

28 (2) Unless waived by the court on good cause shown not less
29 than 10 days before the commencement of a civil action under this



1 section, the attorney general shall notify the person of the
2 intended action and give the person an opportunity to cease and
3 desist from the alleged unlawful method, act, or practice or to
4 confer with the attorney general in person, by counsel, or by other
5 representative as to the proposed action before the proposed filing
6 date. The notice may be given to the person by mail, postage
7 prepaid, to the person's usual place of business or, if the person
8 does not have a usual place of business, to the person's last known
9 address, or, if the person is a corporation, only to a resident
10 agent who is designated to receive service of process or to an
11 officer of the corporation.

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

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

25 (a) Each telephone communication may be considered a separate
26 violation and a singular telephone communication may generate
27 multiple separate violations.

28 (b) The court issuing an injunction, order, decree, or
29 judgment retains jurisdiction, the cause must be continued, and the



1 attorney general may petition for recovery of a civil fine as
2 provided under this subsection.

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

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

15 (2) A person that knowingly uses, or has knowingly used, a
16 method, act, or practice that targets or mimics vulnerable
17 telephone numbers and is in violation of this act is subject to a
18 civil fine of not more than \$75,000.00 for each violation, or
19 \$100,000.00 for each persistent and knowing violation. For purposes
20 of this subsection, each telephone communication may be considered
21 a separate violation and a singular telephone communication may
22 generate multiple separate violations.

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

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

28 (b) The injury to the public.

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



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

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

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

6 (4) The civil fines recoverable by this state under this
7 section are in addition to any other available civil fine and
8 relief available under this act and other laws, regulations, or
9 rules.

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

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

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

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

24 (2) An assurance of discontinuance must be in writing and may
25 be filed in the circuit court of Ingham County. The clerk of the
26 circuit court shall maintain a record of the filings. Unless
27 rescinded by the parties or voided by the circuit court for good
28 cause, the assurance may be enforced in the circuit court by the
29 parties to the assurance. The assurance may be modified by the



1 parties under an agreement by all parties in writing or by a court
2 for good cause.

3 Sec. 31. (1) If the attorney general has reason to believe
4 that a person has information or is in possession, custody, or
5 control of any document or other tangible object relevant to an
6 investigation for a violation of this act, the attorney general may
7 serve on the person, before bringing a civil action, a written
8 demand to appear and be examined under oath, and to produce the
9 document or object for inspection and copying. All of the following
10 apply to the demand under this subsection:

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

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

15 (c) The demand must describe the document or object with
16 sufficient definiteness to permit the document or object to be
17 fairly identified.

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

20 (e) The demand must prescribe a reasonable time at which the
21 person must appear to testify, within which to answer the written
22 interrogatories, and within which the document or object must be
23 produced, and advise the person that objections to or reasons for
24 not complying with the demand may be filed with the attorney
25 general on or before that time.

26 (f) The demand must specify a place for the taking of
27 testimony or for production and designate the individual who is
28 custodian of the document or object.

29 (2) At any time before the return date specified in the demand



1 for information under subsection (1), or not more than 14 days
2 after notice of the demand, whichever is shorter, a person that
3 information has been requested from may petition the circuit court
4 of Ingham County, stating good cause, for a protective order to
5 extend the return date for a reasonable time, or to modify or set
6 aside the demand. The attorney general must receive not less than
7 14 days' notice of the petition described in this subsection and
8 must be given an opportunity to respond.

9 (3) If no protective order from the circuit court of Ingham
10 County is secured under subsection (2) and the demand is not
11 complied with by the return date, the attorney general, on notice
12 to the person requested to provide information, may apply to the
13 court for an order compelling compliance with the request made
14 under subsection (1).

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



1 methods, acts, or practices that violate this act.

2 (5) A person that has received notice of a demand for
3 information under subsection (1), or of an order under subsection
4 (3) or (4), and with intent to avoid, evade, or prevent compliance,
5 in whole or in part, with a civil investigation or order under this
6 section, removes from any place, conceals, withholds, destroys,
7 mutilates, falsifies, or by any other means alters any documentary
8 material in the possession, custody, or control of a person subject
9 to that notice, is subject to a civil fine of not more than
10 \$10,000.00 per violation, recoverable by this state in addition to
11 any other appropriate sanction.

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

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

28 Sec. 33. (1) A person that is served under section 25 must
29 comply with the terms of the notice unless otherwise provided by an



1 order of the circuit court.

2 (2) A person that does any of the following shall pay a civil
3 fine of not more than \$10,000.00:

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

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

12 (c) Knowingly conceals relevant information in an
13 investigation under this act.

14 (3) The attorney general may file a petition in the circuit
15 court of the county in which the person is established or conducts
16 business or, if the person is not established in this state, in the
17 circuit court of Ingham County for an order to enforce compliance
18 with this section. A person that violates a final order entered
19 under this section is subject to punishment for civil contempt
20 under chapter 17 of the revised judicature act of 1961, 1961 PA
21 236, MCL 600.1701 to 600.1745.

22 (4) On the petition of the attorney general, the circuit court
23 may enjoin a person from doing business in this state if the person
24 persistently and knowingly evades or prevents compliance with an
25 injunction issued under this act.

26 Sec. 35. (1) Subject to subsection (3), a person that suffers
27 a loss as a result of a violation of this act may bring a civil
28 action against the person that violated this act to recover 1 of
29 the following, whichever is greater:



1 (a) Actual damages plus reasonable attorney fees.

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

3 (2) This section does not prevent a consumer from asserting
4 the consumer's rights under 1971 PA 227, MCL 445.111 to 445.117, if
5 the telephone solicitation results in a home solicitation sale, or
6 asserting any other right or claim the consumer may have under any
7 other applicable state or federal law.

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

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

13 (2) A telephone solicitor shall keep, for not less than 4
14 years, records relating to telephone solicitations.

15 (3) A low-income worker who is not responsible for managerial,
16 strategic, supervisory, structural, policy, or other
17 organizational decision making is not liable under this act if the
18 low-income worker's violative action is undertaken under the
19 direction of a supervisor.

20 Enacting section 1. This act does not take effect unless all
21 of the following bills of the 103rd Legislature are enacted into
22 law:

23 (a) Senate Bill No. 352.

24 (b) Senate Bill No. 353.

25 (c) Senate Bill No. 354.

26 (d) Senate Bill No. 355.

