

HOUSE BILL No. 5439

December 10, 1997, Introduced by Reps. Wojno, Hale, Schermesser, Brater, Mans, Goschka, Voorhees, Basham, DeHart, Gire, Anthony and Schauer and referred to the Committee on Public Utilities.

A bill to require the registration and bonding of certain sales solicitations; to prescribe the powers and duties of certain state agencies and officials; and to prescribe 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) "Financial institution" means a national or state
5 chartered bank, or a federal or state chartered savings and loan
6 association, savings bank, or credit union.

7 (c) "Person" means an individual, partnership, corporation,
8 association, or other legal entity.

9 (d) "Telemarketer" means a person who is responsible for or
10 causes a telephonic solicitation.

1 (e) "Telephonic solicitation" means a telephonic attempt to
2 induce an individual to purchase, invest in, or otherwise obtain
3 an interest in real property or in a consumer good, service, or
4 commodity. Telephonic solicitation does not include any of the
5 following:

6 (i) A telephonic solicitation made to an individual in
7 accordance with a prior or existing relationship formed by a vol-
8 untary communication between a person and the individual, with or
9 without an exchange of consideration, on the basis of the
10 individual's inquiry, application, purchase, or transaction
11 relating to a product or service offered by the person, if that
12 relationship has not been previously terminated by either party.

13 (ii) A telephonic solicitation made by an organization
14 exempt from taxation under section 501(c)(3) of the internal rev-
15 enue code.

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

19 (iv) A telephonic solicitation that is isolated and not part
20 of a pattern of solicitations regularly made by the solicitor in
21 the ordinary course of business.

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

26 (vi) A telephone solicitation by an employer of less than 25
27 employees, unless that employer is sufficiently related to

1 another employer to qualify with that other employer as a single
2 employer under section 414(b) or (c) of the internal revenue
3 code.

4 Sec. 2. (1) A telemarketer shall not make a telephonic
5 solicitation within this state without first registering with the
6 department. The registration shall be in writing on a form pre-
7 scribed by the department and contain all of the following
8 information:

9 (a) The name of the telemarketer.

10 (b) The physical address and telephone number of the
11 telemarketer's principal office.

12 (c) If the telemarketer is not located in this state, the
13 address and telephone number of the registered office and the
14 name and telephone number of the registered agent authorized to
15 receive service of process in this state.

16 (d) Any other information the department considers necessary
17 to enforce this act.

18 (2) The registration form shall include the legal name and
19 address of each individual who will for compensation be making or
20 supervising the making of telephonic solicitation.

21 (3) The registration shall be accompanied by a surety bond.
22 The bond shall be in a form satisfactory to the department. The
23 telemarketer is the obligor on the surety bond of which the
24 surety company is the surety. The company shall be qualified in
25 this state to write bonds required by this act. The surety bond
26 shall run to the department for the benefit of the people of the
27 state of Michigan for the use of, and may be sued on by, the

1 state or any person who may have a cause of action under this act
2 against the obligor of the bond under this act. The surety bond
3 shall require the obligor to faithfully conform to and abide by
4 the provisions of this act.

5 (4) For a telemarketer existing on the effective date of
6 this act the principal sum of the initial surety bond and for a
7 telemarketer not existing on the effective date of this act the
8 principal sum of the surety bond for the first year shall be in
9 the amount of \$25,000.00.

10 Sec. 3. (1) The registration form shall be accompanied by a
11 registration fee of \$200.00. The revenue collected under this
12 subsection shall be deposited in the state treasury and credited
13 to the general fund.

14 (2) The registration shall be effective immediately upon
15 receipt by the department of the completed registration form,
16 surety bond, and registration fee.

17 (3) The registration filed under this section shall expire 1
18 year after the date the registration is filed with the
19 department.

20 Sec. 4. (1) A registration filed under this act may be
21 renewed for an additional 1-year period by filing a renewal reg-
22 istration in the form prescribed by the department, a renewal
23 surety bond, and payment of a renewal fee of \$200.00 before the
24 expiration of the existing registration. The information
25 required in the renewal form shall not exceed the information
26 required in the initial registration form. The principal sum of

1 the surety bond for a renewed registration shall be in an amount
2 as established by the department.

3 (2) A telemarketer shall maintain a list of the address and
4 legal name of each individual who has made a telephonic sollicita-
5 tion within 1 year, is currently soliciting, or will be making
6 telephonic solicitations on behalf of the telemarketer.

7 Sec. 5. A telemarketer shall not debit a person's account
8 with a financial institution unless the telemarketer has the
9 person's written authorization to make the transfer from the
10 person's account to the telemarketer.

11 Sec. 6. Subject to section 8, a person who violates this
12 act is subject to a civil fine of not more than \$250.00 per
13 violation.

14 Sec. 7. Subject to section 8, a person aggrieved by a vio-
15 lation of this act may bring a civil action and recover his or
16 her actual damages or \$500.00, whichever is greater, plus reason-
17 able attorney fees and costs.

18 Sec. 8. The penalties and remedies described in sections 6
19 and 7 do not apply to a person who is determined liable for a
20 penalty or remedy prescribed by federal law for conduct prohib-
21 ited by this act.