

# HOUSE BILL No. 5837

April 29, 2004, Introduced by Reps. Spade, Sheltroun, Plakas, Clack, Bieda, Anderson, Gleason, Whitmer, Hardman, Law, Hopgood, Meisner, Minore, Kolb, Murphy, Lipsey, Jamnick, Elkins, Farrah, Gielegem, Condino, Sak, Accavitti, Wojno, Byrum, O'Neil, Gillard, Adamini, Brown, Vagnozzi, Nitz and Milosch and referred to the Committee on Energy and Technology.

A bill to amend 1971 PA 227, entitled

"An act to prescribe the rights and duties of parties to home solicitation sales; to regulate certain telephone solicitation; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies,"

by amending section 1c (MCL 445.111c), as added by 2002 PA 612.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1c. (1) It is an unfair or deceptive act or practice  
2 and a violation of this act for a telephone solicitor to do any  
3 of the following:

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

7       (i) Total purchase price to the consumer of the goods or  
8 services to be received.

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

1 to sell goods or services.

2 (iii) Any material term or condition of the seller's refund,  
3 cancellation, or exchange policy, including a consumer's right to  
4 cancel a home solicitation sale under section 2 and, if  
5 applicable, that the seller does not have a refund, cancellation,  
6 or exchange policy.

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

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

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

18 (vii) The right to cancel a sale under this act, if any.

19 (b) Misrepresent any material aspect of the quality or basic  
20 characteristics of any goods or services offered.

21 (c) Make a false or misleading statement with the purpose of  
22 inducing a consumer to pay for goods or services.

23 (d) Request or accept payment from a consumer or make or  
24 submit any charge to the consumer's credit or bank account before  
25 the telephone solicitor or seller receives from the consumer an  
26 express verifiable authorization. As used in this subdivision,  
27 "verifiable authorization" means a written authorization or

1 confirmation, an oral authorization recorded by the telephone  
2 solicitor, or confirmation through an independent third party.

3 (e) Offer to a consumer in this state a prize promotion in  
4 which a purchase or payment is necessary to obtain the prize.

5 (f) Fail to comply with the requirements of section 1a or  
6 1b.

7 (g) Make a telephone solicitation to a consumer in this state  
8 who has requested that he or she not receive calls from the  
9 organization or other person on whose behalf the telephone  
10 solicitation is made.

11 (2) Except as provided in ~~this~~ subsection **(3)**, ~~beginning~~  
12 ~~210 days after the effective date of the amendatory act that~~  
13 ~~added this section,~~ a person who knowingly or intentionally  
14 violates this section is guilty of a misdemeanor punishable by  
15 ~~imprisonment for not more than 6 months or a fine of not more~~  
16 ~~than \$500.00, or both. This subsection 1 of the following:~~

17 **(a) For a first offense, imprisonment for not more than 6**  
18 **months or a fine of not more than \$1,000.00, or both.**

19 **(b) For a second or subsequent offense, imprisonment for not**  
20 **more than 6 months or a fine of not more than \$2,500.00, or**  
21 **both.**

22 **(3) Subsection (2)** does not prohibit a person from being  
23 charged with, convicted of, or punished for any other crime  
24 including any other violation of law arising out of the same  
25 transaction as the violation of this section. ~~This subsection~~  
26 **Subsection (2)** does not apply if the violation of this section is  
27 a failure to comply with the requirements of section 1a(1), (4),

1 or (5) or section 1b.

2       **(4)** ~~—(3)—~~ A person who suffers loss as a result of violation  
3 of this section may bring an action to recover actual damages or  
4 \$250.00, whichever is greater, together with reasonable attorney  
5 fees. This subsection does not prevent the consumer from  
6 asserting his or her rights under this act if the telephone  
7 solicitation results in a home solicitation sale, or asserting  
8 any other rights or claims the consumer may have under applicable  
9 state or federal law.