

HOUSE BILL No. 4423

March 1, 2005, Introduced by Reps. Wojno, Polidori, Spade, Rocca, Vagnozzi, Leland, Tobocman, Garfield, Byrnes, Plakas, Shaffer, Bieda and Lemmons, III 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 and
2 a violation of this act for a telephone solicitor to do any of the
3 following:

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

7 (i) Total purchase price to the consumer of the goods or

1 services to be received.

2 (ii) Any restrictions, limitations, or conditions to purchase
3 or to use the goods or services that are the subject of an offer to
4 sell goods or services.

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

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

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

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

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

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

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

26 (d) Request or accept payment from a consumer or make or
27 submit any charge to the consumer's credit or bank account before

1 the telephone solicitor or seller receives from the consumer an
2 express verifiable authorization. As used in this subdivision,
3 "verifiable authorization" means a written authorization or
4 confirmation, an oral authorization recorded by the telephone
5 solicitor, or confirmation through an independent third party.

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

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

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

13 **(H) WHILE MAKING A TELEPHONE SOLICITATION, MISREPRESENT IN A**
14 **MESSAGE LEFT FOR A CONSUMER ON HIS OR HER ANSWERING MACHINE OR**
15 **VOICE MAIL THAT THE CONSUMER HAS A CURRENT BUSINESS MATTER OR**
16 **TRANSACTION OR A CURRENT BUSINESS OR CUSTOMER RELATIONSHIP WITH THE**
17 **TELEPHONE SOLICITOR OR ANOTHER PERSON AND REQUEST THAT THE CONSUMER**
18 **CALL THE TELEPHONE SOLICITOR OR ANOTHER PERSON TO DISCUSS THAT**
19 **MATTER, TRANSACTION, OR RELATIONSHIP.**

20 (2) Except as provided in this subsection, beginning 210 days
21 after the effective date of the amendatory act that added this
22 section, a person who knowingly or intentionally violates this
23 section is guilty of a misdemeanor punishable by imprisonment for
24 not more than 6 months or a fine of not more than \$500.00, or both.
25 This subsection does not prohibit a person from being charged with,
26 convicted of, or punished for any other crime including any other
27 violation of law arising out of the same transaction as the

1 violation of this section. This subsection does not apply if the
2 violation of this section is a failure to comply with the
3 requirements of section 1a(1), (4), or (5) or section 1b.

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