

HOUSE BILL No. 4199

February 1, 2007, Introduced by Reps. Vagnozzi, Constan, Alma Smith, Meadows, Miller and Hood and referred to the Committee on Commerce.

A bill to regulate certain mailed commercial solicitations; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "do-
2 not-mail list act".

3 Sec. 3. As used in this act:

4 (a) "Commission" means the public service commission.

5 (b) "Consumer" means an individual who resides in this state.

6 (c) "Do-not-mail list" means a do-not-mail list of consumers
7 and their residential addresses maintained under section 5 by the
8 commission, by a vendor designated by the commission, or by an

1 agency of the federal government.

2 (d) "Existing customer" means an individual who has purchased
3 goods or services from a person, who is the recipient of a mail
4 solicitation from that person, and who either paid for the goods or
5 services within the 12 months preceding the mail solicitation or
6 has not paid for the goods and services at the time of the mail
7 solicitation because of a prior agreement between the person and
8 the individual.

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

12 (f) "Mail solicitation" means any communication sent through
13 the United States postal service or other mail carrier to a
14 consumer's residential address for the purpose of
15 encouraging the recipient of the communication to purchase, rent,
16 or invest in goods or services. Mail solicitation does not include
17 any of the following:

18 (i) A mailed communication sent with a consumer's prior express
19 invitation or permission.

20 (ii) A mailed communication to an existing customer of the
21 person who mailed the communication or on whose behalf the
22 communication was mailed, unless the existing customer is a
23 consumer who has requested that he or she not receive mailed
24 communications from or on behalf of that person under section
25 9(1)(g).

26 (g) "Mail solicitor" means any person doing business in this
27 state who makes or causes to be made a mail solicitation from

1 inside or outside of this state.

2 (h) "Vendor" means a person designated by the commission to
3 maintain a do-not-mail list under section 5. The term may include a
4 governmental entity.

5 Sec. 5. (1) Within 120 days after the effective date of this
6 act, the commission shall do 1 of the following:

7 (a) Establish a state do-not-mail list. All of the following
8 apply if the commission establishes a do-not-mail list under this
9 subdivision:

10 (i) The commission shall publish the do-not-mail list quarterly
11 for use by mail solicitors.

12 (ii) The do-not-mail list fund is created in the state
13 treasury. Money received from fees under subparagraph (iii) shall be
14 credited to the fund. The state treasurer shall direct the
15 investment of the fund. The state treasurer shall credit to the
16 fund interest and earnings from fund investments. Money remaining
17 in the fund at the end of a fiscal year shall be carried over in
18 the fund to the next and succeeding fiscal years. Money in the fund
19 may be appropriated to the commission to cover the costs of
20 administering the do-not-mail list, but may not be appropriated to
21 compensate or reimburse a vendor designated under subdivision (b)
22 to maintain a do-not-mail list under that subdivision.

23 (iii) The commission shall establish and collect 1 or both of
24 the following fees to cover the costs to the commission for
25 administering the do-not-mail list:

26 (A) Fees charged to mail solicitors for access to the do-not-
27 mail list.

1 (B) Fees charged to consumers for inclusion on the do-not-mail
2 list. The commission shall not charge a consumer a fee of more than
3 \$5.00 for a 5-year period.

4 (iv) The commission shall maintain the do-not-mail list for at
5 least 1 year. After 1 year, the commission may at any time elect to
6 designate a vendor to maintain a do-not-mail list under subdivision
7 (b), in which case subdivision (b) shall apply.

8 (b) Designate a vendor to maintain a do-not-mail list. All of
9 the following apply to a vendor designated to maintain a do-not-
10 mail list under this subdivision:

11 (i) The commission shall establish a procedure or follow
12 existing procedure for the submission of bids by vendors to
13 maintain a do-not-mail list under this subdivision.

14 (ii) The commission shall establish a procedure or follow
15 existing procedure for the selection of the vendor to maintain the
16 do-not-mail list. In selecting the vendor, the commission shall
17 consider at least all of the following factors:

18 (A) The cost of obtaining and the accessibility and frequency
19 of publication of the do-not-mail list to mail solicitors.

20 (B) The cost and ease of registration on the do-not-mail list
21 to consumers who are seeking inclusion on the do-not-mail list.

22 (iii) The commission may review its designation and make a
23 different designation under this subdivision if the commission
24 determines that another person would be better than the designated
25 vendor in meeting the selection factors established under
26 subparagraph (ii) or if the designated vendor engages in activities
27 the commission considers contrary to the public interest.

1 (iv) If the commission does not establish a state do-not-mail
2 list under subdivision (a), the commission shall comply with the
3 designation requirements of this subdivision for at least 1 year.
4 After 1 year, the commission may at any time elect to establish and
5 maintain a do-not-mail list under subdivision (a), in which case
6 subdivision (a) shall apply.

7 (v) Unless the vendor is a governmental entity, a vendor
8 designated by the commission under this subdivision is not a
9 governmental agency and is not an agent of the commission in
10 maintaining a do-not-mail list.

11 (vi) The commission and a vendor designated under this
12 subdivision shall execute a written contract. The contract shall
13 include the vendor's agreement to the requirements of this section
14 and any additional requirements established by the commission.

15 (vii) The commission shall not use state funds to compensate or
16 reimburse a vendor designated under this subdivision. The vendor
17 may receive compensation or reimbursement for maintaining a
18 designated do-not-mail list under this subdivision only from 1 or
19 both of the following:

20 (A) Fees charged by the vendor to mail solicitors for access
21 to the do-not-mail list.

22 (B) Fees charged by the vendor to consumers for inclusion on
23 the do-not-mail list. A designated vendor shall not charge a
24 consumer a fee of more than \$5.00 for a 5-year period.

25 (viii) The designee do-not-mail list fund is created in the
26 state treasury. If the vendor is a department or agency of this
27 state, money received from fees under subparagraph (vii) by that

1 vendor shall be credited to the fund. The state treasurer shall
2 direct the investment of the fund. The state treasurer shall credit
3 to the fund interest and earnings from fund investments. Money
4 remaining in the fund at the end of a fiscal year shall be carried
5 over in the fund to the next and succeeding fiscal years. Money in
6 the fund may be appropriated to that vendor to cover the costs of
7 administering the do-not-mail list.

8 (2) In determining whether to either establish a state do-not-
9 mail list under subsection (1)(a) or designate a vendor under
10 subsection (1)(b), and in designating a vendor under subsection
11 (1)(b), the commission shall consider comments submitted to the
12 commission from consumers, mail solicitors, or any other person.

13 (3) Beginning 90 days after the commission establishes a do-
14 not-mail list under subsection (1)(a) or designates a vendor to
15 maintain a do-not-mail list under subsection (1)(b), a mail
16 solicitor shall not make a mail solicitation to a consumer whose
17 name and residential address are on the then-current version of
18 that do-not-mail list.

19 (4) Notwithstanding any other provision of this section, if an
20 agency of the federal government establishes a federal do-not-mail
21 list, within 120 days after the establishment of the federal do-
22 not-mail list, the commission shall designate the federal list as
23 the state do-not-mail list. The federal list shall remain the state
24 do-not-mail list as long as the federal list is maintained. A mail
25 solicitor shall not make a mail solicitation to a consumer whose
26 name and residential address are on the then-current version of the
27 federal list.

1 (5) A mail solicitor shall not use a do-not-mail list for any
2 purpose other than meeting the requirements of subsection (3) or
3 (4) .

4 (6) The commission or a vendor shall not sell or transfer the
5 do-not-mail list to any person for any purpose unrelated to this
6 section.

7 Sec. 7. (1) A person making a mail solicitation to a consumer
8 shall state the full name of the organization or other person on
9 whose behalf the communication was mailed and provide a telephone
10 number of the organization or other person.

11 (2) An individual answering the telephone number required
12 under subsection (1) shall provide a consumer calling the telephone
13 number with information describing the organization or other person
14 on whose behalf the mail solicitation was made to the consumer and
15 describing the mail solicitation.

16 Sec. 9. (1) It is an unfair or deceptive act or practice and a
17 violation of this act for a mail solicitor to do any of the
18 following in a mail solicitation:

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

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

24 (ii) Any restrictions, limitations, or conditions to purchase
25 or to use the goods or services that are the subject of an offer to
26 sell goods or services.

27 (iii) Any material term or condition of the seller's refund,

1 cancellation, or exchange policy, including a consumer's right to
2 cancel a home solicitation sale under 1971 PA 227, MCL 445.111 to
3 445.117, and if applicable, that the seller does not
4 have a refund, cancellation, or exchange policy.

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

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

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

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

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

20 (d) If the mail solicitation includes a telephone number that
21 a consumer may call to order and pay for goods or services, accept
22 payment from a consumer or make or submit any charge to the
23 consumer's credit or bank account by telephone before the mail
24 solicitor or seller receives from the consumer an express
25 verifiable authorization. As used in this subdivision, "verifiable
26 authorization" means a written authorization or confirmation, an
27 oral authorization recorded by the person receiving the telephone

1 call from the consumer, or confirmation through an independent
2 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 any other requirements of this act.

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

10 (2) Except as provided in this subsection, beginning 210 days
11 after the effective date of this act, a person who knowingly or
12 intentionally violates this section is guilty of a misdemeanor
13 punishable by imprisonment for not more than 6 months or a fine of
14 not more than \$500.00, or both. This subsection does not prohibit a
15 person from being charged with, convicted of, or punished for any
16 other crime including any other violation of law arising out of the
17 same transaction as the violation of this section. This subsection
18 does not apply if the violation of this section is a failure to
19 comply with the requirements of section 5(3) or (4) or section 7.

20 (3) A person who suffers loss as a result of violation of this
21 section may bring an action to recover actual damages or \$250.00,
22 whichever is greater, together with reasonable attorney fees. This
23 subsection does not prevent a consumer from asserting his or her
24 rights under this act if the mail solicitation results in a home
25 solicitation sale under 1971 PA 227, MCL 445.111 to 445.117, or
26 asserting any other rights or claims the consumer may have under
27 applicable state or federal law.

1 Sec. 11. This act does not apply to a person subject to any of
2 the following:

3 (a) The charitable organizations and solicitations act, 1975
4 PA 169, MCL 400.271 to 400.294.

5 (b) The public safety solicitation act, 1992 PA 298, MCL
6 14.301 to 14.327.

7 (c) Section 527 of the internal revenue code of 1986, 26 USC
8 527.