



# SENATE BILL No. 213

February 2, 1995, Introduced by Senators BOUCHARD and SHUGARS and referred to the Committee on Technology and Energy.

A bill to prohibit the transmission of unsolicited advertising messages to cellular telephones; to prescribe the powers and duties of certain state agencies and officials; and to prescribe remedies and penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1      Sec. 1. As used in this act:

2      (a) "Advertisement" means a message transmitted to a cellu-  
3 lar telephone for the purpose of inducing, or that is likely to  
4 induce, directly or indirectly, the purchase of real property,  
5 goods, or services.

6      (b) "Cellular telephone" means a 2-way communicating device  
7 used in a cellular mobile radio telecommunications service uti-  
8 lizing low power transmitters providing coverage in a limited  
9 area, but linked with other similar transmitters operating at  
10 different frequencies.

1 (c) "Department" means the department of the attorney  
2 general.

3 (d) "Person" means an individual, partnership, association,  
4 corporation, governmental entity, or other legal entity.

5 Sec. 2. (1) A person shall not send an advertisement to  
6 another person if the advertisement will be received by a cellu-  
7 lar telephone without first obtaining the consent of the person  
8 who will receive the advertisement.

9 (2) Consent may be given by telephone or other means to a  
10 particular vendor or by general notification to marketing or  
11 industry trade associations.

12 (3) Consent to have a cellular telephone number published in  
13 a directory or disseminated in any other manner shall not be con-  
14 strued as consent to receive an advertisement under this act.

15 Sec. 3. (1) If the attorney general has reason to believe  
16 that a person has engaged, is engaging, or is about to engage in  
17 an act that violates section 2, he or she shall notify the person  
18 of the violation and order the person to cease and desist from  
19 the act and provide the person the opportunity to confer with the  
20 attorney general in person, by counsel, or by other  
21 representative.

22 (2) The notice may be given to the person by mail, postage  
23 prepaid, to his or her usual place of business, or if the person  
24 does not have a usual place of business, to his or her last known  
25 address, or, with respect to a corporation, to the resident agent  
26 who is designated to receive service of process or to an officer  
27 of the corporation.

1       Sec. 4. (1) The attorney general may accept an assurance of  
2 discontinuance of an act that is a violation under section 2 from  
3 the person who has engaged, is engaging, or is about to engage in  
4 the act.

5       (2) Except for an action commenced pursuant to section 5,  
6 the assurance shall not constitute an admission nor be introduced  
7 in any other proceeding.

8       (3) An assurance of discontinuance shall be in writing and  
9 filed with the department. The department shall maintain a  
10 record of all filings.

11       (4) The terms of the assurance of discontinuance may be  
12 enforced in an action commenced pursuant to section 5.

13       Sec. 5. (1) If the attorney general has probable cause to  
14 believe a person has continued to violate this act after notice  
15 has been provided under section 3 or that the person has violated  
16 an assurance of discontinuance entered under section 4, the  
17 attorney general may bring an action to restrain the person by  
18 temporary or permanent injunction from engaging in the act or to  
19 enforce the terms of the assurance of discontinuance. The action  
20 may be brought in the circuit court for the county in which the  
21 person is established or conducts business or in the circuit  
22 court for Ingham county.

23       (2) A person who knowingly violates the terms of an injunc-  
24 tion, order, decree, or judgment issued pursuant to this section  
25 or the terms of an assurance of discontinuance under section 4  
26 shall forfeit and pay to the state a civil fine of not more than  
27 \$500.00 for each violation.

1       (3) For the purposes of this section, the court issuing an  
2 injunction, order, decree, or judgment shall retain jurisdiction,  
3 and the attorney general may petition the court for recovery of  
4 the civil fine as provided by this section.

5       Sec. 6. The person receiving an advertisement in violation  
6 of this act may file a civil suit in the court of proper juris-  
7 diction to recover actual damages, or \$250.00, whichever is  
8 greater, together with reasonable attorney fees and costs, if any  
9 1 of the following had occurred prior to the person receiving the  
10 advertisement:

11       (a) The attorney general had issued a notice to cease and  
12 desist under section 3 to the person who sent the advertisement.

13       (b) The person who sent the advertisement had entered into  
14 an assurance of discontinuance under section 4.

15       (c) The person had notified the sender in writing that the  
16 sender did not have the person's consent to send an  
17 advertisement.