HOUSE SUBSTITUTE FOR SENATE BILL NO. 366

A bill to regulate the solicitation of certain deeds; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. This act shall be known and may be cited as the
- 2 "solicitation of deeds act".
- 3 Sec. 2. As used in this act:
- 4 (a) "Deed" means a written instrument entitled to be recorded
- 5 in the office of the register of deeds that purports to convey or
- 6 transfer title to a freehold interest in any lands, tenements, or
- 7 other realty in this state by way of grant or bargain and sale from
- 8 the named grantor to the named grantee. A leasehold interest for 99
- 9 years or more or a proprietary lease of a cooperative unit and any

- 1 assignment of a proprietary lease of a cooperative unit shall be
- 2 treated as a "freehold". Deed does not include instruments
- 3 providing for any of the following:
- 4 (i) Common driveways.
- 5 (ii) Exchanges of easements or rights-of-way.
- 6 (iii) Revocable licenses to use, adjust, or clear defects of
- 7 or clouds on title.
- 8 (iv) Utility service lines such as drainage, sewerage, water,
- 9 electric, telephone, or other such service lines.
- 10 (v) Quitclaim of possible outstanding interests.
- 11 (b) "Department" means the department of attorney general.
- 12 (c) "Person" means an individual, partnership, corporation,
- 13 association, governmental entity, or other legal entity.
- 14 (d) "Public body" means that term as it is defined in section
- 15 2 of the freedom of information act, 1976 PA 442, MCL 15.232.
- 16 (e) "Rule" means a rule promulgated pursuant to the
- 17 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
- **18** 24.328.
- 19 (f) "Solicit" means to advertise or market to a person with
- 20 whom the solicitor has no preexisting business relationship.
- 21 Sec. 3. (1) A person soliciting a fee for providing a copy of
- 22 a deed or a free copy of a deed in connection with the solicitation
- 23 for any other service or product shall state on the top of the
- 24 document used for the solicitation, in at least 24-point type, all
- 25 of the following:
- (a) That the solicitation is not from a public body.
- 27 (b) That no action is legally required by the person being

- 1 solicited.
- 2 (c) The statutory fee for, or the cost of, obtaining a copy of
- 3 the deed from the public body that has custody of the record.
- 4 (d) The information necessary to contact the public body that
- 5 has custody of the deed.
- 6 (e) The name and physical address of the person soliciting the
- 7 fee.
- 8 (2) The document used for a solicitation under this section
- 9 shall not be in a form or use deadline dates or other language that
- 10 makes the document appear to be a document issued by a public body
- 11 or that appears to impose a legal duty on the person being
- 12 solicited. The department may promulgate rules specifying the
- 13 contents and form of the solicitation document.
- 14 (3) A person soliciting a fee for providing a copy of a deed
- 15 shall not charge a fee of more than 4 times the statutory fee
- 16 charged by the public body that has custody of the deed for a copy
- 17 of that deed.
- 18 (4) A person soliciting a fee from property owners for
- 19 providing a copy of a deed shall furnish the office of the register
- 20 of deeds of each county where the solicitations are to be
- 21 distributed with a copy of the document that will be used for those
- 22 solicitations not less than 15 days before distributing the
- 23 solicitations.
- Sec. 4. This act does not apply to any of the following:
- 25 (a) A title insurance company authorized to do business in
- 26 this state or its authorized agent.
- 27 (b) A licensed mortgage loan originator, mortgage broker,

- 1 lender, or servicer, or a depository financial institution
- 2 authorized under state and federal law to originate or service
- 3 mortgage loans.
- 4 (c) A real estate broker or salesperson licensed under article
- 5 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.
- 6 Sec. 5. The department may investigate violations of this act.
- 7 The department may request the attorney general to bring an action
- 8 against any person that violates this act. The court may order a
- 9 person that violates this act to refund all of the money paid to
- 10 the violator with respect to the solicitation. In addition, the
- 11 person may be ordered to pay, for a first violation, a civil fine
- 12 of not more than \$100.00 for each solicitation document distributed
- 13 in violation of this act or, for a subsequent violation, a civil
- 14 fine of not more than \$200.00 for each solicitation document
- 15 distributed in violation of this act. A fine collected under this
- 16 section shall be paid to the clerk of court. A civil fine collected
- 17 under this section shall be distributed to public libraries in the
- 18 same manner as provided for penal fines under 1964 PA 59, MCL
- **19** 397.31 to 397.40.
- 20 Sec. 6. (1) If the attorney general has probable cause to
- 21 believe that a person has engaged, is engaging, or is about to
- 22 engage in a method, act, or practice that is unlawful under this
- 23 act, and gives notice in accordance with this section, the attorney
- 24 general may bring an action in accordance with principles of equity
- 25 to restrain the defendant by temporary or permanent injunction from
- 26 engaging in the method, act, or practice. The action may be brought
- 27 in the circuit court of the county where the defendant is

- 1 established or conducts business or, if the defendant is not
- 2 established in this state, in the circuit court of Ingham County.
- 3 (2) Unless waived by the court on good cause shown not less
- 4 than 10 days before the commencement of an action under this
- 5 section, the attorney general shall notify the person of his or her
- 6 intended action and give the person an opportunity to cease and
- 7 desist from the alleged unlawful method, act, or practice or to
- 8 confer with the attorney general, in person, by counsel, or by
- 9 other representative as to the proposed action before the proposed
- 10 filing date. The notice may be given the person by mail, postage
- 11 prepaid, to his or her usual place of business or, if the person
- 12 does not have a usual place of business, to his or her last known
- 13 address, or, if the person is a corporation, only to a resident
- 14 agent who is designated to receive service of process or to an
- 15 officer of the corporation.
- 16 (3) A person that knowingly violates the terms of an
- 17 injunction, order, decree, or judgment issued pursuant to this
- 18 section shall forfeit and pay to the state a civil fine of not more
- 19 than \$5,000.00 for each violation. For the purposes of this
- 20 section, the court issuing an injunction, order, decree, or
- 21 judgment shall retain jurisdiction, the cause shall be continued,
- 22 and the attorney general may petition for recovery of a civil fine
- 23 as provided by this section.
- Sec. 7. (1) Upon the ex parte application of the attorney
- 25 general to the circuit court in the county where the defendant is
- 26 established or conducts business or, if the defendant is not
- 27 established in this state, in Ingham County, the circuit court, if

- 1 it finds probable cause to believe a person has engaged, is
- 2 engaging, or is about to engage in a method, act, or practice that
- 3 is unlawful under this act, may, after an ex parte hearing, issue a
- 4 subpoena compelling a person to appear before the attorney general
- 5 and answer under oath questions relating to an alleged violation of
- 6 this act. A person served with a subpoena may be accompanied by
- 7 counsel when he or she appears before the attorney general. The
- 8 subpoena may compel a person to produce the books, records, papers,
- 9 documents, or things relating to an alleged violation of this act.
- 10 During the examination of documentary material under the subpoena,
- 11 the court may require a person having knowledge of the documentary
- 12 material or the matters contained therein to attend and give
- 13 testimony under oath or acknowledgment with respect to the
- 14 documentary material.
- 15 (2) The subpoena shall include the notice of the time, place,
- 16 and cause of the taking of testimony, the examination, or the
- 17 attendance and shall allow not less than 10 days before the date of
- 18 the taking of testimony or examination, unless for good cause shown
- 19 the court shortens that period of time.
- 20 (3) Service of the notice shall be in the manner provided and
- 21 subject to the provisions that apply to service of process upon a
- 22 defendant in a civil action commenced in the circuit court.
- 23 (4) The notice shall do all of the following:
- 24 (a) State the time and place for the taking of testimony or
- 25 the examination and the name and address of the person to be
- 26 examined. If the name is not known, the notice shall give a general
- 27 description sufficient to identify the person or the particular

- 1 class or group to which the person belongs.
- 2 (b) State a reference to this section and the general subject
- 3 matter under investigation.
- 4 (c) Describe the documentary material to be produced with
- 5 reasonable specificity so as to indicate fairly the material
- 6 demanded.
- 7 (d) Prescribe a return date within which the documentary
- 8 material shall be produced.
- 9 (e) Identify the members of the attorney general's staff to
- 10 whom the documentary material shall be made available for
- 11 inspection and copying.
- 12 (5) At any time before the date specified in the notice, upon
- 13 motion for good cause shown, the court may extend the reporting
- 14 date or modify or set aside the notice and subpoena.
- 15 (6) The documentary material or other information obtained by
- 16 the attorney general pursuant to an investigation under this
- 17 section shall be confidential records of the office of the attorney
- 18 general and shall not be available for public inspection or copying
- 19 or divulged to any person except as provided in this section. The
- 20 attorney general may disclose documentary material or other
- 21 information as follows:
- 22 (a) To other law enforcement officials.
- 23 (b) In connection with an enforcement action brought pursuant
- 24 to this act.
- 25 (c) Upon order of the court, to a party in a private action
- 26 brought pursuant to this act.
- **27** (7) A person that discloses information designated

- 1 confidential by this section, except as permitted by subsection (6)
- 2 or under court order, is guilty of a misdemeanor and may be fined
- 3 not more than \$2,500.00 or imprisoned for not more than 1 year, or
- 4 both.
- 5 Enacting section 1. This act takes effect 90 days after the
- 6 date it is enacted into law.