

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:

26 (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.

24 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.

24 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.