

Act No. 48  
Public Acts of 1990  
Approved by the Governor  
March 30, 1990  
Filed with the Secretary of State  
March 30, 1990

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1990**

Introduced by Reps. London, Ciaramitaro, Sparks, Honigman, Law, Jonker, Dunaskiss, Camp, Hoffman, Dolan, Ostling, Muxlow, Trim, Stupak, Gnodtke, Gilmer, Sikkema, Hoekman, Bankes, Randall, Krause, Stacey and Miller

# ENROLLED HOUSE BILL No. 4432

AN ACT to prohibit the use of a facsimile machine to transmit unsolicited advertising messages; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies and prescribe penalties.

*The People of the State of Michigan enact:*

Sec. 1. As used in this act:

- (a) "Advertisement" means a message or material transmitted over a facsimile machine for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of real property, goods, or services.
- (b) "Department" means the department of the attorney general.
- (c) "Facsimile machine" means a machine which electronically transmits facsimiles of documents through connection with a telephone network.
- (d) "Person" means an individual, partnership, association, corporation, or other legal entity.

Sec. 2. (1) A person shall not send an advertisement to another person by means of a facsimile machine without first obtaining, by means other than by a facsimile machine, the consent of the person who will receive the advertisement.

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

(3) Consent to have a facsimile machine telephone number published in a directory or disseminated in any other manner shall not be construed as consent to receive an advertisement under this act.

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

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

(3) A prosecuting attorney or law enforcement officer having reason to believe an alleged violation of this act has occurred shall immediately forward written notice of the alleged violation, together with any information he or she may have, to the attorney general.

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

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

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

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

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

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

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

Sec. 6. The person receiving an advertisement in violation of this act may file a civil suit in the court of proper jurisdiction to recover actual damages, or \$250.00, whichever is greater, if any of the following had occurred prior to the person receiving the advertisement:

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

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

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

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.