

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HOUSE BILL 2610

AN ACT

AMENDING SECTIONS 44-1273 AND 44-6551, ARIZONA REVISED STATUTES; REPEALING SECTIONS 44-6552, 44-6553, 44-6554, 44-6555, 44-6556, 44-6557, 44-6558, 44-6559 AND 44-6560, ARIZONA REVISED STATUTES; AMENDING SECTION 44-6561, ARIZONA REVISED STATUTES; RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-1273, Arizona Revised Statutes, is amended to  
3 read:

4 44-1273. Limited exemptions

5 A. The following sellers are not required to register and, except for  
6 section 44-1278, subsection B and section 44-1282, are exempt from this  
7 article:

8 1. A person acting within the scope of a license issued under  
9 title 20.

10 2. A ~~person who is registered with the secretary of state pursuant to~~  
11 ~~section 44-6552 or who is exempt from registration pursuant to section~~  
12 ~~44-6553~~ CHARITABLE ORGANIZATION AS DEFINED IN SECTION 44-6551.

13 3. A person making telephone solicitations without the intent to  
14 complete and who does not complete the sales presentation during the  
15 telephone solicitation but completes the sales presentation at a later  
16 face-to-face meeting between the solicitor and the consumer provided that the  
17 later face-to-face meeting is not for the purpose of collecting the payment  
18 or delivering any item purchased.

19 4. A person who after making a telephone contact with a consumer sends  
20 the consumer descriptive literature and does not require payment before the  
21 consumer's review of the descriptive literature and the person is not  
22 conducting a solicitation involving any of the following:

23 (a) The sale of an investment or an opportunity for an investment that  
24 is not registered with any state or federal authority.

25 (b) A prize promotion or premium.

26 (c) A recovery service.

27 5. A person or solicitor for a person who operates a retail business  
28 establishment under the same name as the name used in the solicitation of  
29 sales by telephone, if on a continuing basis all of the following apply:

30 (a) Merchandise is displayed and offered for sale or services are  
31 offered for sale and provided at the person's business establishment.

32 (b) At least fifty per cent of the person's business involves the  
33 buyer obtaining the merchandise at the person's business establishment.

34 (c) The person holds a transaction privilege tax license pursuant to  
35 title 42, chapter 5.

36 6. A person or solicitor for a person soliciting another business if  
37 all of the following occur:

38 (a) At least fifty per cent of the person's dollar volume consists of  
39 repeat sales to existing businesses.

40 (b) The person does not conduct a prize promotion that requires or  
41 implies that to win a consumer must pay money or purchase merchandise.

42 (c) Neither the person nor any of the person's principals has within  
43 twenty years been convicted in any state of a felony or crime of moral  
44 turpitude, breach of trust, fraud, theft, dishonesty or violation of  
45 telephone solicitation laws, been subject to a final judgment in a civil

1 action involving fraud, deceit or misrepresentation or been subject to an  
2 administrative order involving fraud, deceit, misrepresentation or any  
3 violation of telephone solicitations laws of any agency of this state,  
4 another state, the federal government, a territory of the United States or  
5 another country.

6 7. A person or solicitor on behalf of a person who solicits sales by  
7 periodically publishing and delivering a catalog to consumers if all of the  
8 following apply:

9 (a) The catalog contains a written description or illustration of each  
10 item offered for sale and the price of each item offered for sale.

11 (b) The catalog includes the business address or home office address  
12 of the person.

13 (c) The catalog includes at least twenty-four pages of written  
14 material and illustrations.

15 (d) The catalog is distributed in more than one state and has an  
16 annual circulation by mail of at least two hundred fifty thousand.

17 B. The following sellers shall file a limited registration statement  
18 pursuant to section 44-1272.01 and, except for sections 44-1278 and 44-1282,  
19 are exempt from this article:

20 1. A person acting within the scope of a license issued under title 6  
21 or 32 or by the corporation commission pursuant to this title, except persons  
22 licensed under title 6, chapter 13.

23 2. If soliciting within the scope of the license, any licensed  
24 securities, commodities or investments broker or dealer or investment advisor  
25 or any licensed associated person of a securities, commodities or investments  
26 broker or dealer or investment advisor.

27 3. An issuer or a subsidiary of an issuer that has a class of  
28 securities that is subject to section 12 of the securities exchange act of  
29 1934 (15 United States Code sections 78a through 78mm) and that is either  
30 registered or exempt from registration under paragraph (A), (B), (C), (E),  
31 (F), (G) or (H) or subsection (g) (2) of section 12 of the act. A subsidiary  
32 of an issuer that qualifies for exemption under this paragraph is not exempt  
33 unless at least sixty per cent of the voting power of the subsidiary's shares  
34 is owned by the qualifying issuer or issuers.

35 4. A person certificated or regulated by the corporation commission  
36 pursuant to title 40, chapter 2 or a subsidiary of that person or a federal  
37 communications commission licensed cellular telephone company or radio  
38 telecommunication services provider.

39 5. A person making telephone solicitations for a newspaper of general  
40 circulation, a magazine or a licensed or franchised cable television system.

41 6. An issuer or subsidiary of an issuer that is subject to  
42 registration under chapter 12, article 6 or 7 of this title or that is exempt  
43 from registration under section 44-1843, subsection A, paragraph 1, 2, 3, 4,  
44 5, 7 or 9.

1           7. A person making telephone solicitations for the sale or purchase of  
2 books, recordings, videocassettes and similar goods through a membership  
3 group or club regulated by the federal trade commission or through a  
4 contractual plan or arrangement such as a continuity plan, subscription  
5 arrangement, series arrangement or single purchase under which the seller  
6 ships goods to a consumer who has consented in advance to receive those goods  
7 and the recipient is given the opportunity to review goods for at least seven  
8 days and to receive a full refund for return of undamaged goods.

9           8. A person or solicitor for a person when soliciting previous  
10 customers, if all of the following apply:

11           (a) The person is not offering to sell or selling a security that is  
12 not registered with any state or federal authority.

13           (b) The person makes the solicitation under the same name as the name  
14 used to sell merchandise to the customer previously.

15           (c) The person does not operate a recovery service.

16           (d) The person does not conduct a prize promotion that requires a  
17 consumer to, or implies that to win a consumer must, pay money or purchase  
18 merchandise.

19           (e) The person has not, or any of its principals have not, within  
20 twenty years been convicted in any state of a felony or a crime of moral  
21 turpitude, breach of trust, fraud, theft, dishonesty or a violation of  
22 telephone solicitation laws, been subject to a final judgment in a civil  
23 action involving fraud, deceit or misrepresentation or been subject to an  
24 administrative order involving fraud, deceit, misrepresentation or any  
25 violation of telephone solicitation laws of any agency of this state, another  
26 state, the federal government, a territory of the United States or another  
27 country.

28           9. A person making telephone solicitations exclusively for the purpose  
29 of the sale of telephone answering services to be provided by that person or  
30 that person's employer.

31           10. Any bank holding company, bank, financial institution, trust  
32 company, savings and loan association, credit union, mortgage banker or  
33 broker, consumer lender or insurer that is licensed or supervised by an  
34 official or agency of this state, any other state or the United States,  
35 including any parent, subsidiary or affiliate of these institutions.

36           11. A person providing telemarketing sales service continuously for at  
37 least five years under the same ownership and control that derives  
38 seventy-five per cent of its gross telemarketing sales revenues from  
39 contracts with persons exempted by this section. A seller using an exempt  
40 telemarketing sales service is not exempt unless otherwise qualifying for an  
41 exemption under this section.

42           C. On request by the secretary of state, the director of the  
43 department of insurance shall provide a current list in a mutually acceptable  
44 electronic format to the secretary of state of the requested licensees

1 described in subsection A, paragraph 1 of this section that includes all of  
2 the following information:

- 3 1. The true legal name of the seller.
- 4 2. All of the names under which the seller is doing business or  
5 intends to do business.
- 6 3. The complete street address of the physical location of the  
7 principal place of business of the seller and the telephone number for the  
8 location.
- 9 4. The name and address of the seller's agent who is authorized to  
10 receive service of process in this state.

11 D. In any civil proceeding alleging a violation of this article, the  
12 burden of proving an exemption or an exception from a definition is on the  
13 person claiming the exemption or exception. In any criminal proceeding in  
14 which a violation of this article is alleged, the burden of producing  
15 evidence to support a defense based on an exemption or an exception from a  
16 definition is on the person claiming the exemption or exception.

17 E. Any person or solicitor exempted in part from this article by this  
18 section shall not make or submit a charge to a consumer's credit card account  
19 or a consumer's checking, savings, share or similar account unless any of the  
20 following ~~apply~~ APPLIES:

21 1. The person provides that the consumer may receive a full refund for  
22 the return of undamaged and unused goods or a cancellation of services by  
23 providing notice to the person within seven days after the date that the  
24 consumer receives the merchandise and the person processes:

25 (a) A full refund within thirty days after the date that the person  
26 receives the returned merchandise from the consumer.

27 (b) A full refund within thirty days after the purchaser of services  
28 cancels an order for the services or a pro rata refund for any services not  
29 yet performed for the consumer.

30 2. The person provides the consumer with a signed copy of a written  
31 contract that includes the person's name, address and business telephone  
32 number and that fully describes the merchandise offered by the person, the  
33 total price to be charged by the person and any terms or conditions affecting  
34 the sale.

35 3. The person is ~~an organization that is registered with the secretary  
36 of state pursuant to section 44-6552 or that is exempt from registration  
37 pursuant to section 44-6553~~ A CHARITABLE ORGANIZATION AS DEFINED IN SECTION  
38 44-6551

39 Sec. 2. Section 44-6551, Arizona Revised Statutes, is amended to read:  
40 44-6551. Definitions

41 In this article, unless the context otherwise requires:

- 42 1. "Charitable organization" means either of the following:
  - 43 (a) A person determined by the internal revenue service to be a tax  
44 exempt organization pursuant to section 501(c)(3) of the internal revenue  
45 code.

1 (b) A person who is or who is held out to be established for a  
2 benevolent, educational, philanthropic, humane, scientific, patriotic, social  
3 welfare or advocacy, public health, environmental conservation, civic or  
4 other eleemosynary purpose or a person who in any manner employs a charitable  
5 appeal as the basis of a solicitation.

6 ~~2. "Charitable purpose" means either of the following:~~

7 ~~(a) A purpose described in section 501(c)(3) of the internal revenue~~  
8 ~~code.~~

9 ~~(b) A benevolent, educational, philanthropic, humane, scientific,~~  
10 ~~patriotic, social welfare or advocacy, public health, environmental~~  
11 ~~conservation, civic or other eleemosynary objective.~~

12 ~~3.~~ 2. "Contracted fund raiser" means a person who for profit either  
13 solicits directly or employs, procures or engages another person to solicit  
14 for a charitable organization. A contracted fund raiser does not include a  
15 lawyer, investment counselor or banker who advises a person to make a  
16 charitable contribution, a bona fide salaried officer, employee or volunteer  
17 of a charitable organization or a person the contracted fund raiser employs,  
18 procures or engages to solicit.

19 ~~4. "Contribution" means the grant, promise or pledge of any money,~~  
20 ~~credit, property, financial assistance or other thing of any kind or value in~~  
21 ~~response to a solicitation. Contribution does not include bona fide fees,~~  
22 ~~dues or assessments paid for membership in the charitable organization.~~

23 ~~5.~~ 3. "Independent solicitor" means a person who for profit engages  
24 to solicit on behalf of a charitable organization or on behalf of a  
25 contracted fund raiser.

26 ~~6.~~ 4. "Solicit" and "solicitation" means a request of any kind for a  
27 contribution or a request for the purchase of goods, tickets or services for  
28 a charitable purpose.

29 Sec. 3. Repeal

30 Sections 44-6552, 44-6553, 44-6554, 44-6555, 44-6556, 44-6557, 44-6558,  
31 44-6559 and 44-6560, Arizona Revised Statutes, are repealed.

32 Sec. 4. Section 44-6561, Arizona Revised Statutes, is amended to read:

33 44-6561. Unlawful acts or practices; violation; classification;  
34 civil penalty

35 A. The following acts and practices are unlawful as applied to the  
36 planning, conduct or execution of a solicitation and constitute unlawful  
37 practices under section 44-1522 that the attorney general may investigate and  
38 for which the attorney general may take appropriate action as prescribed by  
39 chapter 10, article 7 of this title:

40 1. Knowingly ~~utilizing~~ USING an emblem, device or printed matter  
41 belonging to or associated with a charitable organization without first being  
42 authorized in writing to do so by the charitable organization.

43 2. Knowingly ~~utilizing~~ USING a name, symbol or statement so closely  
44 related or similar to that used by another charitable organization for the  
45 purpose of misleading a solicited person.

1           3. Knowingly making a misrepresentation to a person that the person on  
2 whose behalf a solicitation is being conducted is a charitable organization.

3           4. Knowingly making a representation to a person that another person  
4 sponsors, endorses or approves the solicitation if the other person has not  
5 given consent in writing to the use of that person's name for these purposes.

6           ~~5. Knowingly representing to a person that the registration~~  
7 ~~constitutes an endorsement or approval by this state.~~

8           ~~6.~~ 5. Knowingly failing to post in a clear and conspicuous manner at  
9 a location in which a charitable organization or other business entity  
10 receives donated items for the purpose of reselling the items to financially  
11 benefit a charitable organization one of the following statements:

12           (a) This collection site is owned by [name of charity], a charitable  
13 organization. Donated items received at this location will support the  
14 charitable mission of [name of charity].

15           (b) This collection site is owned by [name of company], a for-profit  
16 company. Donated items received at this location will be sold by [name of  
17 company] with a portion of the proceeds benefiting [name of charity].

18           ~~B. Except as provided in subsection C of this section, a person who~~  
19 ~~fails to register or provide reports as provided by this article or who~~  
20 ~~otherwise fails to comply with any provision of this article is guilty of a~~  
21 ~~class 1 misdemeanor.~~

22           ~~C.~~ B. A contracted fund raiser who knowingly conducts any act or  
23 practice proscribed in subsection A of this section is guilty of a class 6  
24 felony.

25           ~~D.~~ C. An independent solicitor who knowingly conducts any act or  
26 practice proscribed in subsection A of this section ~~or who fails to comply~~  
27 ~~with section 44-6555, subsection D~~ is guilty of a class 1 misdemeanor.

28           ~~E.~~ D. In addition to the criminal offenses provided in subsections  
29 B, ~~AND C and D~~ of this section, if a person conducts an act or practice  
30 proscribed in subsection A of this section, the attorney general may recover  
31 from the person on behalf of the state a civil penalty of not more than one  
32 thousand dollars per violation. The civil penalty prescribed by this  
33 subsection is in lieu of the penalty prescribed by section 44-1531.

34           ~~F.~~ E. For the purposes of subsection A, paragraph ~~6- 5~~ of this  
35 section, an entity owns a collection site if the entity receives at least  
36 fifty-one per cent of the proceeds generated by the retail sale of the  
37 donated items received at the collection site.