

REFERENCE TITLE: telephone call centers; consumer services

State of Arizona
House of Representatives
Forty-eighth Legislature
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2008

HB 2457

Introduced by
Representatives Lujan, Gallardo, Prezelski, Sinema: Campbell CH, Campbell
CL, Farley, Lopes

AN ACT

AMENDING SECTIONS 44-1271 AND 44-1276, ARIZONA REVISED STATUTES; AMENDING
TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION
44-1283; RELATING TO TELEPHONE SOLICITATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 44-1271, Arizona Revised Statutes, is amended to
3 read:

4 ~~44-1271.~~ Definitions

5 In this article, unless the context otherwise requires:

6 1. "Consumer" means a person who is solicited by a seller or
7 solicitor.

8 2. "CONSUMER SALES CALL CENTER" MEANS AN ENTITY WHOSE PRIMARY PURPOSE
9 INCLUDES THE INITIATING OR RECEIVING OF TELEPHONIC COMMUNICATIONS ON BEHALF
10 OF ANY PERSON FOR THE PURPOSE OF INITIATING SALES, INCLUDING TELEPHONE
11 SOLICITATIONS.

12 3. "CONSUMER SERVICE CALL CENTER" MEANS AN ENTITY WHOSE PRIMARY
13 PURPOSE INCLUDES THE INITIATING OR RECEIVING OF TELEPHONIC COMMUNICATIONS ON
14 BEHALF OF ANY PERSON FOR THE PURPOSE OF PROVIDING OR RECEIVING SERVICES OR
15 INFORMATION NECESSARY IN CONNECTION WITH PROVIDING SERVICES OR BENEFITS.

16 4. "CONSUMER SERVICES EMPLOYEE" MEANS A PERSON WHO IS EMPLOYED BY OR
17 WORKING ON BEHALF OF A CONSUMER SALES CALL CENTER OR A CONSUMER SERVICE CALL
18 CENTER.

19 ~~2-~~ 5. "Licensed associated person of a securities, commodities or
20 investments broker" means any associated person registered or licensed by the
21 national association of securities dealers, a self-regulatory organization as
22 defined in the securities exchange act of 1934 (15 United States Code section
23 78c) or an official or agency of this state or of any other state of the
24 United States.

25 ~~3-~~ 6. "Licensed securities commodities or investments broker, dealer
26 or investment advisor" means a person licensed or registered as a securities
27 commodities or investments broker, dealer or investment advisor by the
28 securities and exchange commission, the national association of securities
29 dealers, a self-regulatory organization as defined in the securities exchange
30 act of 1934 (15 United States Code section 78c) or an official or agency of
31 this state or of any other state of the United States.

32 ~~4-~~ 7. "Manager" means a person who supervises the work of a
33 solicitor.

34 ~~5-~~ 8. "Merchandise" means objects, wares, goods, commodities,
35 intangibles, real estate, securities or services.

36 ~~6-~~ 9. "Person" means:

37 (a) A natural person or the person's legal representative.

38 (b) A partnership, a limited liability company, a limited liability
39 partnership or a domestic or foreign corporation.

40 (c) A company, trust, business entity or association.

41 (d) An agent, employee, salesman, partner, officer, director, member,
42 stockholder, associate or trustee.

43 (e) Any other legal entity or any group associated in fact although
44 not a legal entity.

1 ~~7.~~ 10. "Premium" means any gift, bonus, prize, award or other
2 incentive or inducement to purchase merchandise.

3 ~~8.~~ 11. "Principal" means an owner or an officer of a corporation or
4 limited liability company, a general partner of a partnership, a sole
5 proprietor of a sole proprietorship, a partner of a limited liability
6 partnership, a trustee of a trust and any other individual who controls,
7 manages or supervises a telephone sales operation.

8 ~~9.~~ 12. "Prize" means anything offered or purportedly offered and
9 given or purportedly given to a person by chance. Chance exists if a person
10 is guaranteed to receive an item and at the time of the offer or purported
11 offer the seller or solicitor does not identify the specific item that the
12 person will receive.

13 ~~10.~~ 13. "Prize promotion" means a sweepstakes or other game of chance
14 or an oral or written express or implied representation that a person has
15 won, has been selected to receive or may be eligible to receive a prize or
16 purported prize.

17 ~~11.~~ 14. "Recovery service" means any business or other practice in
18 which a person represents or implies that the person will recover or assist
19 in recovering for a fee any amount of money that a consumer has provided to a
20 seller pursuant to a telephone solicitation.

21 ~~12.~~ 15. "Seller" means a person who, directly or through a solicitor,
22 does any of the following:

23 (a) Initiates telephone calls to provide or arrange to provide
24 merchandise to consumers in exchange for payment.

25 (b) Solicits by telephone in response to inquiries from a consumer
26 generated by a notification or communication sent or delivered to the
27 consumer that represents or implies that:

28 (i) The consumer has been specially selected in any manner to receive
29 the notification or communication or the offer contained in the notification
30 or communication.

31 (ii) The consumer will receive a premium if the consumer calls the
32 person.

33 (iii) If the consumer purchases merchandise from the person, the
34 consumer will also receive additional or other merchandise, the same as or
35 different from the type of merchandise purchased, without any additional
36 charge or for a price that the person represents or implies is less than the
37 regular price of the merchandise.

38 (iv) The person is offering for sale the services of a recovery
39 service.

40 (v) The person is offering to make a loan, to arrange or assist in
41 arranging a loan or to assist in providing information that may lead to
42 obtaining a loan unless no payment of any kind is made until the loan
43 proceeds are disbursed to the borrower.

44 (vi) The consumer will receive a credit card if the consumer pays a
45 fee for the card before receiving the card.

1 (c) Solicits by telephone in response to inquiries generated by
2 advertisements on behalf of the person that represent or imply that:

3 (i) The person is offering to sell the services of a recovery service.

4 (ii) The person is offering to make a loan, to arrange or assist in
5 arranging a loan or to assist in providing information that may lead to
6 obtaining a loan unless no payment of any kind is made until the loan
7 proceeds are disbursed to the borrower.

8 (iii) The consumer will receive a credit card if the consumer pays a
9 fee for the card before receiving the card.

10 ~~13-~~ 16. "Solicitor" means a person, other than a seller or employee of
11 a seller, who uses a telephone to seek sales or rentals of merchandise on
12 behalf of a seller or uses a telephone to verify sales or rentals for a
13 seller.

14 ~~14-~~ 17. "Subscriber" means a person who subscribes to residential
15 telephone service from a local exchange company and any person who lives or
16 subscribes with that person.

17 ~~15-~~ 18. "Telephone solicitation" means any voice communication to a
18 telephone number in this state from a live operator, announcing device or
19 otherwise to offer merchandise for sale or rent.

20 Sec. 2. Section 44-1276, Arizona Revised Statutes, is amended to read:

21 ~~44-1276.~~ Required disclosures; payment for goods;
22 identification of seller, solicitor or consumer
23 services employee; cancellation of telephone
24 solicitation sale; notice of right to cancel;
25 information sent to other countries prohibited

26 A. Before beginning the solicitation or sales presentation over the
27 telephone, the seller ~~or~~, solicitor **OR CONSUMER SERVICES EMPLOYEE** shall
28 disclose to the consumer:

29 1. The complete street address of the physical location, **INCLUDING THE**
30 **CITY, STATE AND COUNTRY**, from which the seller ~~or~~, solicitor **OR CONSUMER**
31 **SERVICES EMPLOYEE** is making the telephone solicitation and the complete
32 street address of the seller's principal location.

33 2. The legal name of the seller on whose behalf the solicitor is
34 making the solicitation **OR OF THE EMPLOYER OF THE CONSUMER SERVICES EMPLOYEE**.

35 3. The solicitor's **OR CONSUMER SERVICES EMPLOYEE'S** true legal name.

36 4. That the purpose of the call is to sell merchandise.

37 **B. ANY PERSON WHO RECEIVES A TELEPHONE CALL FROM OR PLACES A TELEPHONE**
38 **CALL TO A CONSUMER SALES CALL CENTER OR A CONSUMER SERVICE CALL CENTER, ON**
39 **REQUEST, HAS THE RIGHT TO SPEAK TO A QUALIFIED EMPLOYEE OF THE COMPANY OR**
40 **GOVERNMENT AGENCY WITH WHICH THE PERSON IS DOING BUSINESS.**

41 ~~B-~~ C. During any solicitation or sales presentation made by a seller
42 or solicitor and in any written correspondence provided to the consumer as
43 part of the solicitation, the seller or solicitor shall clearly and
44 conspicuously disclose to the consumer:

1 1. Any charge, including the amount for the use of any premium being
2 offered.

3 2. Any material restriction, requirement, condition, limitation or
4 exception that is associated with the use of the premium.

5 3. Any charge connected with the sale of merchandise.

6 4. The time period within which any premium will be delivered.

7 5. The consumer's right to cancel the transaction pursuant to
8 subsection ~~C~~ D.

9 ~~C~~ D. In addition to any right to otherwise revoke an offer, the
10 consumer may cancel a telephone solicitation sale up to midnight of the third
11 business day after the receipt of the merchandise or premium, whichever is
12 later.

13 ~~D~~ E. No telephone solicitation sale is effective unless the consumer
14 is both:

15 1. Advised orally and in writing of the legal name, telephone number
16 and complete street address of the physical location of the seller.

17 2. Advised orally of the right of cancellation along with a written
18 notice containing the following information:

19 Notice of Cancellation

20 1. You may cancel this order without any penalty or
21 obligation within three business days from the delivery of the
22 merchandise or premium (gift, bonus, prize or award), whichever
23 is later.

24 2. If you cancel, any payments made by you will be
25 returned within ten days after the receipt by the seller of your
26 notice of cancellation.

27 3. To cancel this transaction, mail or deliver a signed
28 and dated copy of your cancellation notice or send a telegram to
29 _____ at _____.

(Name of seller) (Address of seller's place of business)

30 4. If you cancel, any merchandise or premium delivered to
31 you must be returned at our expense to _____
32 (Name of seller)

33 at _____
34 (Address of seller's place of business)

35 no later than twenty-one business days after the receipt of this
36 merchandise or premium, whichever is later.

37 ~~E~~ F. The notice of cancellation given by the consumer is effective
38 if it indicates the intention on the part of the consumer not to be bound by
39 the telephone solicitation sale.

40 ~~F~~ G. A provision of a contract, offer or agreement that waives a
41 consumer's right of cancellation under this section is void and has no
42 effect.
43

1 H. A CONSUMER SERVICES EMPLOYEE SHALL NOT SEND TO ANY FOREIGN COUNTRY
2 A PERSON'S FINANCIAL, CREDIT OR IDENTIFYING INFORMATION IF THE PERSON
3 RECEIVES A TELEPHONE CALL FROM OR PLACES A TELEPHONE CALL TO A CONSUMER SALES
4 CALL CENTER OR A CONSUMER SERVICE CALL CENTER UNLESS THE PERSON GIVES EXPRESS
5 WRITTEN PERMISSION.

6 ~~G.~~ I. For the purposes of this section, business day does not include
7 Sunday or a federal or state holiday.

8 Sec. 3. Title 44, chapter 9, article 6, Arizona Revised Statutes, is
9 amended by adding section 44-1283, to read:

10 44-1283. Contracts with vendors located in the United States;
11 violation; classification; void contracts

12 A. ENTITIES REGISTERED PURSUANT TO THIS ARTICLE SHALL ONLY CONTRACT
13 FOR TELEPHONE SOLICITATION SERVICES, CONSUMER SALES CALL CENTER SERVICES OR
14 CONSUMER SERVICE CALL CENTER SERVICES WITH VENDORS THAT OPERATE TELEPHONE
15 SOLICITATION SERVICES, CONSUMER SALES CALL CENTER SERVICES OR CONSUMER
16 SERVICE CALL CENTER SERVICES ON BEHALF OF THIS STATE IN THE UNITED STATES.

17 B. THE SECRETARY OF STATE SHALL REQUIRE EACH VENDOR SUBMITTING A BID
18 OR CONTRACT TO PROVIDE SERVICES FOR THIS STATE AS SET FORTH IN SUBSECTION A
19 TO CERTIFY THAT ONLY VENDORS WHO OPERATE IN THE UNITED STATES WILL BE
20 PERFORMING SERVICES UNDER THE CONTRACT. A PERSON WHO KNOWINGLY SUBMITS A
21 FALSE CERTIFICATION IS GUILTY OF A CLASS 6 FELONY.

22 C. A CONTRACT ENTERED INTO OR PERFORMED IN VIOLATION OF THIS SECTION
23 IS VOID. A CONTRACT THAT IS VOID UNDER THIS SECTION MAY CONTINUE IN EFFECT
24 UNTIL AN ALTERNATE CONTRACT CAN BE ARRANGED IF BOTH OF THE FOLLOWING APPLY:

25 1. IMMEDIATE TERMINATION WOULD RESULT IN HARM TO THE PUBLIC HEALTH OR
26 WELFARE. APPROVAL UNDER THIS PARAGRAPH SHALL BE GIVEN FOR THE MINIMUM PERIOD
27 NECESSARY TO PROTECT THE PUBLIC HEALTH OR WELFARE.

28 2. THE SECRETARY OF STATE APPROVES THE CONTINUATION.