

REFERENCE TITLE: telephone solicitations; business opportunities

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

HB 2825

Introduced by
Representative Brophy McGee

AN ACT

AMENDING SECTIONS 44-1271, 44-1272, 44-1273 AND 44-1276, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 44-1276.01, 44-1276.02 AND 44-1276.03; AMENDING SECTIONS 44-1279 AND 44-1281, ARIZONA REVISED STATUTES; 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. "BUSINESS OPPORTUNITY"

7 (a) MEANS THE SALE OR LEASE, OR OFFER FOR SALE OR LEASE, OF ANY GOODS
8 OR SERVICES TO A CONSUMER FOR THE PURPOSE OF ENABLING THE CONSUMER TO START
9 OR OPERATE A BUSINESS, WHICH SALE OR LEASE IS NOT LIMITED TO SALES INITIATED
10 OR MADE BY THE TELEPHONE.

11 (b) INCLUDES A SOLICITATION OF CONSUMERS IN WHICH THE SELLER
12 REPRESENTS ONE OR MORE OF THE FOLLOWING:

13 (i) THAT THE CONSUMER MAY OR WILL EARN AN AMOUNT IN EXCESS OF THE
14 INITIAL PAYMENT AS A RESULT OF THE PURCHASE.

15 (ii) THAT A MARKET EXISTS FOR ANY GOODS TO BE MADE OR SOLD OR SERVICES
16 TO BE RENDERED BY THE CONSUMER.

17 (iii) THAT THE SELLER WILL PROVIDE LOCATIONS OR ASSIST THE CONSUMER IN
18 FINDING LOCATIONS FOR THE USE OR OPERATION OF VENDING MACHINES, RACKS,
19 DISPLAY CASES OR OTHER SIMILAR DEVICES OR CURRENCY-OPERATED AMUSEMENT
20 MACHINES OR DEVICES OR ANY OTHER DEVICES.

21 (iv) THAT THE SELLER MAY PURCHASE FROM THE CONSUMER GOODS TO BE MADE
22 OR SERVICES TO BE RENDERED BY THE CONSUMER.

23 (v) THAT THE SELLER GUARANTEES, EITHER CONDITIONALLY OR
24 UNCONDITIONALLY, THAT THE CONSUMER WILL DERIVE INCOME FROM THE BUSINESS
25 OPPORTUNITY OR THAT THE SELLER WILL REFUND ALL OR PART OF THE PRICE PAID FOR
26 THE BUSINESS OPPORTUNITY OR REPURCHASE ANY OF THE GOODS SUPPLIED BY THE
27 SELLER IF THE CONSUMER IS UNSATISFIED WITH THE BUSINESS OPPORTUNITY.

28 (vi) THAT THE SELLER OR AN ENTITY ASSOCIATED WITH THE SELLER WILL
29 PROVIDE A SALES PROGRAM OR MARKETING PROGRAM TO THE CONSUMER UNLESS THE
30 MARKETING PROGRAM IS OFFERED IN CONJUNCTION WITH THE LICENSING OF A
31 REGISTERED TRADEMARK OR SERVICE MARK, IF THE TRADEMARK OR SERVICE MARK HAS
32 BEEN EFFECTIVELY REGISTERED UNDER FEDERAL LAW.

33 (c) DOES NOT INCLUDE:

34 (i) THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF AN ONGOING
35 BUSINESS WHERE THE OWNER OF THAT BUSINESS SELLS AND INTENDS TO SELL ONLY THAT
36 ONE BUSINESS OPPORTUNITY.

37 (ii) THE NOT-FOR-PROFIT SALE OF SALES DEMONSTRATION EQUIPMENT,
38 MATERIALS OR SAMPLES FOR A TOTAL PRICE OF FIVE HUNDRED DOLLARS OR LESS.

39 (iii) THE SALE OF A FRANCHISE AS DEFINED BY THE FEDERAL TRADE
40 COMMISSION REGULATIONS AS SET FORTH IN 16 CODE OF FEDERAL REGULATIONS SECTION
41 436.1.

42 ~~1.~~ 2. "Consumer" means a person who is solicited by a seller or
43 solicitor.

44 3. "GOODS" MEANS ANY MERCHANDISE, EQUIPMENT, PRODUCTS, SUPPLIES OR
45 MATERIALS.

1 ~~2-~~ 4. "Licensed associated person of a securities, commodities or
2 investments broker" means any associated person registered or licensed by the
3 national association of securities dealers, a self-regulatory organization as
4 defined in the securities exchange act of 1934 (15 United States Code section
5 78c) or an official or agency of this state or of any other state of the
6 United States.

7 ~~3-~~ 5. "Licensed securities commodities or investments broker, dealer
8 or investment advisor" means a person licensed or registered as a securities
9 commodities or investments broker, dealer or investment advisor by the
10 securities and exchange commission, the national association of securities
11 dealers, a self-regulatory organization as defined in the securities exchange
12 act of 1934 (15 United States Code section 78c) or an official or agency of
13 this state or of any other state of the United States.

14 ~~4-~~ 6. "Manager" means a person who supervises the work of a
15 solicitor.

16 ~~5-~~ 7. "Merchandise" means objects, wares, goods, commodities,
17 intangibles, real estate, securities or services.

18 ~~6-~~ 8. "Person" means:

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

20 (b) A partnership, a limited liability company, a limited liability
21 partnership or a domestic or foreign corporation.

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

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

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

27 ~~7-~~ 9. "Premium" means any gift, bonus, prize, award or other
28 incentive or inducement to purchase merchandise.

29 ~~8-~~ 10. "Principal" means an owner or an officer of a corporation or
30 limited liability company, a general partner of a partnership, a sole
31 proprietor of a sole proprietorship, a partner of a limited liability
32 partnership, a trustee of a trust and any other individual who controls,
33 manages or supervises a telephone sales operation.

34 ~~9-~~ 11. "Prize" means anything offered or purportedly offered and
35 given or purportedly given to a person by chance. Chance exists if a person
36 is guaranteed to receive an item and at the time of the offer or purported
37 offer the seller or solicitor does not identify the specific item that the
38 person will receive.

39 ~~10-~~ 12. "Prize promotion" means a sweepstakes or other game of chance
40 or an oral or written express or implied representation that a person has
41 won, has been selected to receive or may be eligible to receive a prize or
42 purported prize.

43 ~~11-~~ 13. "Recovery service" means any business or other practice in
44 which a person represents or implies that the person will recover or assist

1 in recovering for a fee any amount of money that a consumer has provided to a
2 seller pursuant to a telephone solicitation.

3 ~~12-~~ 14. "Seller" means a person who, directly or through a solicitor,
4 does any of the following:

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

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

10 (i) The consumer has been specially selected in any manner to receive
11 the notification or communication or the offer contained in the notification
12 or communication.

13 (ii) The consumer will receive a premium if the consumer calls the
14 person.

15 (iii) If the consumer purchases merchandise from the person, the
16 consumer will also receive additional or other merchandise, the same as or
17 different from the type of merchandise purchased, without any additional
18 charge or for a price that the person represents or implies is less than the
19 regular price of the merchandise.

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

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

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

28 (vii) **THE PERSON IS OFFERING FOR SALE IDENTITY PROTECTION ASSISTANCE.**

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

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

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

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

38 (d) **SOLICITS CONSUMERS TO PURCHASE A BUSINESS OPPORTUNITY OR**
39 **MERCHANDISE RELATED TO A BUSINESS OPPORTUNITY THROUGH ANY MEANS INCLUDING THE**
40 **TELEPHONE, INTERNET OR MAIL OR OTHER HARD COPY TEXT OR THROUGH ANY**
41 **ELECTRONIC, WIRELESS OR OTHER COMMUNICATION MEDIA.**

1 ~~13-~~ 15. "Solicitor" means a person, other than a seller or employee of
2 a seller, who uses a telephone to seek sales or rentals of merchandise on
3 behalf of a seller or uses a telephone to verify sales or rentals for a
4 seller.

5 ~~14-~~ 16. "Subscriber" means a person who subscribes to residential
6 telephone service from a local exchange company and any person who lives or
7 subscribes with that person.

8 ~~15-~~ 17. "Telephone solicitation" means any voice communication to a
9 telephone number in this state from a live operator, announcing device or
10 otherwise to offer merchandise for sale or rent.

11 Sec. 2. Section 44-1272, Arizona Revised Statutes, is amended to read:

12 44-1272. Telephone seller; registration; business
13 opportunities; late filing penalty

14 A. A seller shall file a verified registration statement with the
15 secretary of state before the seller solicits any consumer from a location in
16 this state or any consumer located in this state. Each principal of the
17 seller shall sign the registration statement, have the signature notarized
18 and file the statement with the secretary of state along with the annual
19 registration fee prescribed by section 44-1275. The registration statement
20 expires on June 30 of each year and shall be annually renewed by completing a
21 new registration statement within thirty days before expiration **AND PAYING**
22 **THE ANNUAL REGISTRATION FEE.** If a seller is delinquent in filing its annual
23 registration statement, the secretary of state may assess a late filing
24 penalty **NOT TO EXCEED ONE HUNDRED DOLLARS** when the seller submits its annual
25 registration statement. **IF A SELLER FAILS TO RENEW ITS ANNUAL REGISTRATION**
26 **STATEMENT BEFORE SEPTEMBER 30 OF EACH YEAR, THE SELLER IS UNREGISTERED.**

27 B. If, before the expiration of a seller's annual registration, there
28 is a change in any of the information required by subsection C of this
29 section, within ten days of the change the seller shall file a supplemental
30 statement with the secretary of state, except that a seller shall only update
31 quarterly any changes in solicitors hired by the seller.

32 C. Each registration statement shall contain all of the following
33 information:

34 1. The true legal name of the seller.

35 2. The name under which the seller is doing business or intends to do
36 business.

37 3. The seller's business form and state of organization.

38 4. If the seller is a corporation or limited liability company, a copy
39 of its articles of incorporation and bylaws and amendments to the bylaws. If
40 the seller is a partnership or limited liability partnership, a copy of the
41 partnership agreement. If the seller is operating under a fictitious
42 business name, the location where the fictitious name has been registered.

43 5. The complete street address of the physical location of the
44 principal place of business of the seller, the complete street address of all

1 other locations from which the seller will be conducting business and all
2 telephone numbers for telephones at these locations.

3 6. For each principal and manager, the true legal name, residence
4 address, telephone number and date of birth and a clear and legible copy of
5 the current driver license or valid government issued photo identification
6 card. A seller is not required to submit the information required in this
7 section for the seller's employees.

8 7. For each manager, the address of the business location for which
9 the manager is responsible.

10 8. For each solicitor, the solicitor's true legal name, business
11 address and telephone number and, for each principal and manager of a
12 solicitor, the true legal name, residence address, telephone number and date
13 of birth and a clear and legible copy of the current driver license or valid
14 government issued photo identification card. A solicitor is not required to
15 submit the information required in this section for the solicitor's
16 employees.

17 9. The name and address of the seller's agent in this state who is
18 authorized to receive service of process in this state.

19 10. A copy of the bond filed with the state treasurer pursuant to
20 section 44-1274.

21 11. Whether a principal or manager:

22 (a) Has been convicted or pleaded no contest to a felony or
23 misdemeanor involving moral turpitude or a violation of this article.

24 (b) Has been held liable in a civil action, either by final judgment
25 or by entry of a stipulated judgment, if the civil action alleged fraud,
26 embezzlement, racketeering, fraudulent conversion or misappropriation of
27 property or a violation of this article or the use of untrue or misleading
28 representations in an attempt to sell or dispose of real or personal property
29 or the use of unfair, unlawful or deceptive business practices.

30 (c) Is subject to a currently effective injunction or restrictive
31 order relating to a business activity as a result of an action brought by a
32 public agency or department, including an action affecting a vocational
33 license. The statement shall include the name of the court, the date of the
34 conviction, the judgment, order or injunction and, if applicable, the name of
35 the governmental agency that filed the action resulting in the conviction,
36 judgment, order or injunction.

37 12. A copy of any:

38 (a) Script, outline or presentation the seller will require or suggest
39 that a solicitor use, except that if the seller does not require or suggest a
40 script, outline or presentation, a statement that no such document is
41 required or suggested.

42 (b) Sales information and literature provided by the seller to a
43 solicitor or described by the seller for use by the solicitor, including
44 scripts, outlines, presentations, information on how to conduct telephone

1 sales, sample instructions, sample closings, product information and contest
2 or premium award information.

3 (c) Sales information and any other literature provided by the seller
4 to a consumer in connection with any solicitation.

5 13. IF THE SELLER IS SOLICITING CONSUMERS TO PURCHASE A BUSINESS
6 OPPORTUNITY OR MERCHANDISE RELATED TO A BUSINESS OPPORTUNITY:

7 (a) THE BUSINESS EXPERIENCE OF THE SELLER, INCLUDING THE LENGTH OF
8 TIME THAT THE SELLER HAS SOLD THE BUSINESS OPPORTUNITY BEING OFFERED TO
9 CONSUMERS OR SOLD ANY OTHER BUSINESS OPPORTUNITY TO CONSUMERS.

10 (b) THE NAMES OF ALL BUSINESSES FOR WHICH EACH PRINCIPAL OR MANAGER
11 PREVIOUSLY SOLD BUSINESS OPPORTUNITIES.

12 (c) THE DATES THAT EACH PRINCIPAL OR MANAGER PREVIOUSLY SOLD BUSINESS
13 OPPORTUNITIES.

14 14. A SOLICITATION INVOLVES A BUSINESS OPPORTUNITY OR MERCHANDISE
15 RELATED TO A BUSINESS OPPORTUNITY:

16 (a) A FACTUAL DESCRIPTION OF THE BUSINESS OPPORTUNITY OFFERED TO BE
17 SOLD AND OF THE MERCHANDISE, TRAINING AND ASSISTANCE THAT THE SELLER WILL
18 PROVIDE TO THE CONSUMER.

19 (b) A STATEMENT DESCRIBING ANY GOODS, SERVICES, SIGNS OR FIXTURES
20 RELATING TO THE ESTABLISHMENT OR THE OPERATION OF THE BUSINESS OPPORTUNITY
21 THAT THE CONSUMER IS REQUIRED TO PURCHASE, LEASE OR RENT DIRECTLY OR
22 INDIRECTLY FROM THE SELLER.

23 D. If a seller expressly represents or implies to any consumer,
24 directly or through a solicitor, that the consumer is or may be eligible to
25 receive any premium, the seller shall submit with the registration statement
26 another statement setting forth for each premium mentioned:

27 1. A description of the premium.

28 2. The value or worth of the premium and the basis for the valuation.

29 3. All terms and conditions a consumer must satisfy in order to
30 receive the premium.

31 4. The odds of being able to receive the premium, and if the odds are
32 not calculable in advance, the factors used in calculating the odds.

33 5. If the consumer will receive fewer than all of the premiums
34 described by the seller:

35 (a) The manner in which the seller decides which premium the consumer
36 will receive.

37 (b) The odds of being able to receive each premium, and if the odds
38 are not calculable in advance, the factors used in calculating the odds.

39 (c) The name and address of each person who within the past twelve
40 months has received the premium having the greatest value and the premium
41 with the smallest odds of being received.

42 E. If the seller expressly represents or implies to any consumer,
43 directly or through a solicitor, that the seller can or may be able to make a
44 loan, arrange a loan, assist in arranging a loan or assist in providing

1 information that may lead to obtaining a loan, the seller shall submit with
2 the registration statement another statement setting forth:

3 1. For the previous twenty-four months, the names and addresses of any
4 person who lent money to:

5 (a) Consumers who responded to the solicitations of the seller's
6 predecessor or the seller's officers or owners or those persons having
7 present management responsibilities or to companies with which they were
8 associated.

9 (b) The seller's predecessor or the seller's officers or owners or
10 those persons having present management responsibilities or to those
11 companies with which they were associated for them to lend to consumers who
12 responded to solicitations.

13 2. For the twelve months after the date of the registration, the names
14 and addresses of all persons who informed the seller that they may be able to
15 lend money to consumers solicited by the seller or to the seller for the
16 seller to lend to consumers who respond to the seller's representations that
17 the seller can make a loan, arrange a loan, assist in arranging a loan or
18 assist in providing information that can lead to obtaining a loan.

19 3. Copies of all contracts between the seller and lenders or
20 prospective lenders who may lend money:

21 (a) To the seller to lend to consumers who, in conjunction with the
22 seller's business, respond to the seller's representations that the seller
23 can make a loan, arrange a loan, assist in arranging a loan or assist in
24 providing information that can lead to obtaining a loan.

25 (b) Directly to consumers to whom the seller may represent that it can
26 arrange or assist in providing information that can lead to obtaining a loan.

27 F. If any change is made to any script, outline, presentation, sales
28 information or literature to be used by a seller during any solicitation, the
29 seller shall submit the new or revised material before it is used.

30 G. Compliance with the registration and filing requirements of this
31 article by a seller does not constitute an approval or endorsement by this
32 state of the seller's registration documents or conduct.

33 Sec. 3. Section 44-1273, Arizona Revised Statutes, is amended to read:
34 44-1273. Limited exemptions

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

38 1. A person acting within the scope of a license issued under
39 title 20.

40 2. A person who is registered with the secretary of state pursuant to
41 section 44-6552 or who is exempt from registration pursuant to section
42 44-6553.

43 3. A person making telephone solicitations without the intent to
44 complete and who does not complete the sales presentation during the
45 telephone solicitation but completes the sales presentation at a later

1 face-to-face meeting between the solicitor and the consumer provided that the
2 later face-to-face meeting is not for the purpose of collecting the payment
3 or delivering any item purchased.

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

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

10 (b) A prize promotion or premium.

11 (c) A recovery service.

12 (d) A BUSINESS OPPORTUNITY OR MERCHANDISE RELATED TO A BUSINESS
13 OPPORTUNITY.

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

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

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

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

23 6. A person or solicitor for a person soliciting another business if
24 all of the following ~~occur~~ APPLY:

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

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

29 (c) Neither the person nor any of the person's principals has within
30 twenty years been convicted in any state of a felony or crime of moral
31 turpitude, breach of trust, fraud, theft, dishonesty or violation of
32 telephone solicitation laws, been subject to a final judgment in a civil
33 action involving fraud, deceit or misrepresentation or been subject to an
34 administrative order involving fraud, deceit, misrepresentation or any
35 violation of telephone solicitations laws of any agency of this state,
36 another state, the federal government, a territory of the United States or
37 another country.

38 (d) THE PERSON IS NOT SELLING A BUSINESS OPPORTUNITY OR MERCHANDISE
39 RELATED TO A BUSINESS OPPORTUNITY.

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

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

- 1 (b) The catalog includes the business address or home office address
2 of the person.
- 3 (c) The catalog includes at least twenty-four pages of written
4 material and illustrations.
- 5 (d) The catalog is distributed in more than one state and has an
6 annual circulation by mail of at least two hundred fifty thousand.
- 7 B. The following sellers shall file a limited registration statement
8 pursuant to section 44-1272.01 and, except for sections 44-1278 and 44-1282,
9 are exempt from this article:
- 10 1. A person acting within the scope of a license issued under title 6
11 or 32 or by the corporation commission pursuant to this title, except persons
12 licensed under title 6, chapter 13.
- 13 2. If soliciting within the scope of the license, any licensed
14 securities, commodities or investments broker or dealer or investment advisor
15 or any licensed associated person of a securities, commodities or investments
16 broker or dealer or investment advisor.
- 17 3. An issuer or a subsidiary of an issuer that has a class of
18 securities that is subject to section 12 of the securities exchange act of
19 1934 (15 United States Code sections 78a through 78mm) and that is either
20 registered or exempt from registration under paragraph (A), (B), (C), (E),
21 (F), (G) or (H) or subsection (g)(2) of section 12 of the act. A subsidiary
22 of an issuer that qualifies for exemption under this paragraph is not exempt
23 unless at least sixty per cent of the voting power of the subsidiary's shares
24 is owned by the qualifying issuer or issuers.
- 25 4. A person certificated or regulated by the corporation commission
26 pursuant to title 40, chapter 2 or a subsidiary of that person or a federal
27 communications commission licensed cellular telephone company or radio
28 telecommunication services provider.
- 29 5. A person making telephone solicitations for a newspaper of general
30 circulation, a magazine or a licensed or franchised cable television system.
- 31 6. An issuer or subsidiary of an issuer that is subject to
32 registration under chapter 12, article 6 or 7 of this title or that is exempt
33 from registration under section 44-1843, subsection A, paragraph 1, 2, 3, 4,
34 5, 7 or 9.
- 35 7. A person making telephone solicitations for the sale or purchase of
36 books, recordings, videocassettes and similar goods through a membership
37 group or club regulated by the federal trade commission or through a
38 contractual plan or arrangement such as a continuity plan, subscription
39 arrangement, series arrangement or single purchase under which the seller
40 ships goods to a consumer who has consented in advance to receive those goods
41 and the recipient is given the opportunity to review goods for at least seven
42 days and to receive a full refund for return of undamaged goods.
- 43 8. A person or solicitor for a person when soliciting previous
44 customers, if all of the following apply:

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

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

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

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

9 (e) The person has not, or any of its principals have not, within
10 twenty years been convicted in any state of a felony or a crime of moral
11 turpitude, breach of trust, fraud, theft, dishonesty or a violation of
12 telephone solicitation laws, been subject to a final judgment in a civil
13 action involving fraud, deceit or misrepresentation or been subject to an
14 administrative order involving fraud, deceit, misrepresentation or any
15 violation of telephone solicitation laws of any agency of this state, another
16 state, the federal government, a territory of the United States or another
17 country.

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

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

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

32 C. On request by the secretary of state, the director of the
33 department of insurance shall provide a current list in a mutually acceptable
34 electronic format to the secretary of state of the requested licensees
35 described in subsection A, paragraph 1 of this section that includes all of
36 the following information:

37 1. The true legal name of the seller.

38 2. All of the names under which the seller is doing business or
39 intends to do business.

40 3. The complete street address of the physical location of the
41 principal place of business of the seller and the telephone number for the
42 location.

43 4. The name and address of the seller's agent who is authorized to
44 receive service of process in this state.

1 D. In any civil proceeding alleging a violation of this article, the
2 burden of proving an exemption or an exception from a definition is on the
3 person claiming the exemption or exception. In any criminal proceeding in
4 which a violation of this article is alleged, the burden of producing
5 evidence to support a defense based on an exemption or an exception from a
6 definition is on the person claiming the exemption or exception.

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

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

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

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

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

25 3. The person is an organization that is registered with the secretary
26 of state pursuant to section 44-6552 or that is exempt from registration
27 pursuant to section 44-6553.

28 Sec. 4. Section 44-1276, Arizona Revised Statutes, is amended to read:

29 44-1276. Required disclosures; payment for goods;
30 identification of seller or solicitor; cancellation
31 of telephone solicitation or business opportunity
32 sale; notice of right to cancel

33 A. Before beginning the solicitation or sales presentation over the
34 telephone, the seller or solicitor shall disclose to the consumer:

35 1. The complete street address of the physical location from which the
36 seller or solicitor is making the telephone solicitation and the complete
37 street address of the seller's principal location.

38 2. The legal name of the seller on whose behalf the solicitor is
39 making the solicitation.

40 3. The solicitor's true legal name.

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

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

1 G. For the purposes of this section, business day does not include
2 Sunday or a federal or state holiday.

3 Sec. 5. Title 44, chapter 9, article 6, Arizona Revised Statutes, is
4 amended by adding sections 44-1276.01, 44-1276.02 and 44-1276.03, to read:

5 44-1276.01. Business opportunities; disclosure to consumer

6 A. A PERSON WHO OFFERS OR SELLS A BUSINESS OPPORTUNITY AND WHO IS
7 REQUIRED TO FILE A REGISTRATION STATEMENT PURSUANT TO SECTION 44-1272 SHALL
8 NOT SOLICIT A CONSUMER FROM A LOCATION IN THIS STATE OR A CONSUMER LOCATED IN
9 THIS STATE UNLESS THE PERSON PROVIDES A WRITTEN DISCLOSURE DOCUMENT TO THE
10 CONSUMER. THE PERSON SHALL DELIVER THE WRITTEN DISCLOSURE DOCUMENT TO THE
11 CONSUMER AT LEAST FIVE BUSINESS DAYS BEFORE THE EARLIER OF THE CONSUMER'S
12 EXECUTION OF A CONTRACT IMPOSING A BINDING LEGAL OBLIGATION ON THE CONSUMER
13 OR THE PAYMENT OF ANY MONIES, RECEIPT OF ANYTHING OF VALUE OR AUTHORIZATION
14 TO CHARGE A CREDIT OR DEBIT CARD.

15 B. THE DISCLOSURE DOCUMENT SHALL HAVE A COVER SHEET THAT CONTAINS ONLY
16 THE FOLLOWING INFORMATION:

17 1. A TITLE AND STATEMENT THAT ARE PRINTED IN AT LEAST TEN POINT BOLD
18 TYPE AND THAT SHALL APPEAR AS FOLLOWS:

19 DISCLOSURES REQUIRED BY ARIZONA LAW

20 THE INFORMATION CONTAINED IN THIS DISCLOSURE HAS NOT BEEN
21 VERIFIED BY THE STATE. IF YOU HAVE ANY QUESTIONS ABOUT YOUR
22 PURCHASE OF THIS BUSINESS OPPORTUNITY, SEEK PROFESSIONAL ADVICE
23 BEFORE YOU SIGN A CONTRACT OR MAKE ANY PAYMENT. YOU ARE TO BE
24 PROVIDED FIVE BUSINESS DAYS TO REVIEW THIS DOCUMENT BEFORE
25 SIGNING A CONTRACT OR MAKING ANY PAYMENT TO THE SELLER OR THE
26 SELLER'S REPRESENTATIVE.

27 2. THE SELLER'S NAME AND PRINCIPAL BUSINESS ADDRESS AND THE DATE OF
28 THE DISCLOSURE DOCUMENT.

29 C. THE DISCLOSURE DOCUMENT SHALL CONTAIN AT LEAST THE FOLLOWING
30 INFORMATION, WHICH SHALL BE PRESENTED IN A SINGLE DOCUMENT IN THE FOLLOWING
31 ORDER:

32 1. A FACTUAL DESCRIPTION OF THE BUSINESS OPPORTUNITY THAT THE SELLER
33 IS OFFERING TO SELL TO THE CONSUMER, INCLUDING A FULL AND DETAILED
34 DESCRIPTION OF THE ACTUAL GOODS OR SERVICES THAT THE SELLER UNDERTAKES TO
35 SUPPLY TO OR PERFORM FOR THE CONSUMER AND THE ACTUAL SERVICES THAT THE
36 CONSUMER UNDERTAKES TO PERFORM, INCLUDING COMPLIANCE WITH PROCEDURES
37 ESTABLISHED BY THE SELLER REGARDING THE OPERATION OF THE BUSINESS.

38 2. A STATEMENT OF THE EXACT SUM OF THE TOTAL MONIES THAT THE SELLER
39 REQUIRES THE CONSUMER TO PAY TO A SPECIFICALLY NAMED PERSON OR ANY OTHER
40 PERSON KNOWN TO THE SELLER WHO RECEIVES ANY CONSIDERATION INCIDENT TO THE
41 TRANSACTION OR WHICH THE SELLER OR ANY PERSON AFFILIATED WITH THE SELLER
42 COLLECTS IN WHOLE OR IN PART ON BEHALF OF ANY PARTY IN ORDER TO OBTAIN OR
43 COMMENCE THE BUSINESS OPPORTUNITY OPERATION, INCLUDING INITIAL FEES,
44 DEPOSITS, DOWN PAYMENTS, PREPAID RENT, EQUIPMENT AND INVENTORY PURCHASES OR
45 MARKETING EXPENSES. THE SELLER SHALL DISCLOSE IF ALL OR PART OF THESE FEES

- 1 OR DEPOSITS ARE RETURNABLE UNDER CERTAIN CONDITIONS OR IF ALL OR PART OF THE
2 FEES OR DEPOSITS ARE NOT RETURNABLE.
- 3 3. A STATEMENT DESCRIBING ANY RECURRING MONIES THAT THE CONSUMER IS OR
4 MAY BE ASKED TO PAY TO ANY PERSON IN CONNECTION WITH CARRYING ON THE BUSINESS
5 OPPORTUNITY, INCLUDING ADVERTISING, TRAINING, ROYALTY, LEASE OR RENTAL FEES
6 OR EQUIPMENT OR INVENTORY PURCHASES.
- 7 4. A STATEMENT ADVISING CONSUMERS AS FOLLOWS, "AS REQUIRED BY ARIZONA
8 LAW, THE SELLER HAS FILED ITS ANNUAL REGISTRATION STATEMENT WITH THE ARIZONA
9 SECRETARY OF STATE."
- 10 5. A STATEMENT ADVISING CONSUMERS OF ONE OF THE FOLLOWING:
- 11 (a) "AS REQUIRED BY ARIZONA LAW, THE SELLER HAS SECURED A BOND ISSUED
12 BY _____ (NAME AND ADDRESS OF SURETY COMPANY), A SURETY COMPANY
13 AUTHORIZED TO DO BUSINESS IN ARIZONA."
- 14 (b) "AS REQUIRED BY ARIZONA LAW, THE SELLER HAS DEPOSITED WITH THE
15 ARIZONA STATE TREASURER A CASH DEPOSIT IN THE AMOUNT OF ONE HUNDRED THOUSAND
16 DOLLARS."
- 17 6. A STATEMENT DISCLOSING THE NAME OF EACH PERSON, INCLUDING THE
18 SELLER AND ITS AFFILIATES, WITH WHOM THE SELLER DIRECTLY OR INDIRECTLY
19 REQUIRES OR ADVISES THE CONSUMER TO DO BUSINESS.
- 20 7. A STATEMENT DESCRIBING ANY GOODS, SERVICES, REAL ESTATE,
21 INVENTORIES, SIGNS OR FIXTURES RELATING TO THE ESTABLISHMENT OR THE OPERATION
22 OF THE BUSINESS OPPORTUNITY THAT THE SELLER DIRECTLY OR INDIRECTLY REQUIRES
23 THE CONSUMER TO PURCHASE, LEASE OR RENT. IF THE PURCHASE, LEASE OR RENTAL IS
24 MADE FROM SPECIFIC PERSONS INCLUDING THE SELLER, A LIST OF THE NAMES AND
25 ADDRESSES OF EACH PERSON SHALL APPEAR ON THE DISCLOSURE DOCUMENT OR IN A
26 SEPARATE DOCUMENT THAT IS DELIVERED TO THE CONSUMER WITH THE DISCLOSURE
27 DOCUMENT IF THE EXISTENCE OF THE SEPARATE DOCUMENT IS DISCLOSED IN THE
28 DISCLOSURE DOCUMENT.
- 29 8. A STATEMENT OF ALL MATERIAL TERMS AND CONDITIONS OF ANY FINANCING
30 ARRANGEMENT THE SELLER OR ANY PERSON AFFILIATED WITH THE SELLER OFFERS,
31 DIRECTLY OR INDIRECTLY, TO THE CONSUMER AND A DESCRIPTION OF THE TERMS OF
32 PAYMENT TO THE SELLER FROM ANY PERSON OFFERING FINANCING TO A PROSPECTIVE
33 CONSUMER AND FROM ANY PERSON ARRANGING FOR FINANCING FOR A PROSPECTIVE
34 CONSUMER.
- 35 9. A STATEMENT THAT THE SELLER MUST PROVIDE A WRITTEN NOTICE OF
36 CANCELLATION PURSUANT TO SECTION 44-1276.
- 37 44-1276.02. Business opportunity contracts in writing; required
38 information
- 39 A. A BUSINESS OPPORTUNITY CONTRACT OR AGREEMENT SHALL BE IN WRITING
40 AND SHALL BE GIVEN TO THE CONSUMER WITH THE DISCLOSURE DOCUMENT REQUIRED
41 UNDER SECTION 44-1276.01.
- 42 B. A BUSINESS OPPORTUNITY CONTRACT OR AGREEMENT SHALL INCLUDE THE
43 FOLLOWING:

- 1 1. THE TERMS AND CONDITIONS OF PAYMENT.
- 2 2. A FULL AND DETAILED DESCRIPTION OF THE ACTS OR SERVICES THAT THE
- 3 SELLER UNDERTAKES TO PERFORM FOR THE CONSUMER.
- 4 3. THE SELLER'S PRINCIPAL BUSINESS ADDRESS AND THE NAME AND ADDRESS OF
- 5 ITS AGENT IN THIS STATE THAT IS AUTHORIZED TO RECEIVE SERVICE OF PROCESS.
- 6 4. THE APPROXIMATE DELIVERY DATE OF ANY GOODS THAT THE SELLER IS TO
- 7 DELIVER TO THE CONSUMER AND AN APPROXIMATE TIMETABLE FOR PERFORMANCE OF
- 8 SERVICES NECESSARY TO BEGIN SUBSTANTIAL OPERATION OF THE BUSINESS.
- 9 44-1276.03. Business opportunity contract cancellation
- 10 A CONSUMER MAY CANCEL A BUSINESS OPPORTUNITY CONTRACT OR AGREEMENT WITH
- 11 A SELLER FOR ANY REASON AT ANY TIME WITHIN TEN BUSINESS DAYS AFTER THE DATE
- 12 THAT THE CONSUMER SIGNS THE CONTRACT OR AGREEMENT OR THE DATE THAT THE SELLER
- 13 NOTIFIES THE CONSUMER IN WRITING THAT THE CONTRACT OR AGREEMENT IS ACCEPTED
- 14 BY THE SELLER, WHICHEVER IS LATER.
- 15 Sec. 6. Section 44-1279, Arizona Revised Statutes, is amended to read:
- 16 44-1279. Civil remedies
- 17 A consumer may rescind a sale by an unregistered seller at any time.
- 18 The consumer may recover any PURCHASE MONIES PAID TO THE UNREGISTERED SELLER,
- 19 financial damages caused by the unregistered seller and reasonable attorney
- 20 fees and costs.
- 21 Sec. 7. Section 44-1281, Arizona Revised Statutes, is amended to read:
- 22 44-1281. Duties of secretary of state
- 23 The secretary of state shall:
- 24 1. Prescribe and publish the forms and adopt the rules necessary to
- 25 carry out this article.
- 26 2. Refer to the attorney general or county attorney for investigation
- 27 any matter ~~which~~ THAT the secretary of state has reason to believe
- 28 constitutes a violation of this article.
- 29 3. Preserve for five years from the date of filing all information
- 30 required to be filed pursuant to this article, after which the information
- 31 shall be destroyed. This information is public information and is open to
- 32 public inspection.
- 33 4. WITHIN TEN WORKING DAYS AFTER RECEIVING REGISTRATION STATEMENTS AND
- 34 ATTACHMENTS, PROVIDE THE ATTORNEY GENERAL WITH A COMPLETE COPY OF ALL
- 35 REGISTRATION STATEMENTS AND ATTACHMENTS, INCLUDING RENEWALS AND SUPPLEMENTAL
- 36 STATEMENTS, THAT ARE FILED PURSUANT TO SECTION 44-1272 BY A SELLER OF
- 37 BUSINESS OPPORTUNITIES OR MERCHANDISE RELATED TO BUSINESS OPPORTUNITIES.