

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

HOUSE BILL 2825

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 AN INITIAL PAYMENT OF FIVE HUNDRED DOLLARS OR
9 GREATER FOR THE PURPOSE OF ENABLING THE CONSUMER TO START OR OPERATE A
10 BUSINESS, WHICH SALE OR LEASE IS NOT LIMITED TO SALES INITIATED OR MADE BY
11 THE TELEPHONE.

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

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

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

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

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

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

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

34 (c) DOES NOT INCLUDE:

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

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

40 (iii) THE SALE OF A FRANCHISE AS DEFINED BY THE FEDERAL TRADE
41 COMMISSION REGULATIONS AS SET FORTH IN 16 CODE OF FEDERAL REGULATIONS SECTION
42 436.1.

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

1 3. "GOODS" MEANS ANY MERCHANDISE, EQUIPMENT, PRODUCTS, SUPPLIES OR
2 MATERIALS.

3 4. "INITIAL PAYMENT" MEANS THE TOTAL AMOUNT THE PURCHASER BECOMES
4 OBLIGATED TO PAY TO THE SELLER AND TO ANY THIRD PARTY FOR GOODS, SERVICES OR
5 MERCHANDISE RELATED TO A PREVIOUSLY PURCHASED BUSINESS OPPORTUNITY, EITHER
6 PRIOR TO OR AT THE TIME OF THE DELIVERY OF ANY GOODS, SERVICES OR MERCHANDISE
7 WITHIN SIX MONTHS AFTER THE COMMENCEMENT OF THE OPERATION OF THE BUSINESS
8 OPPORTUNITY BY THE PURCHASER.

9 ~~2-~~ 5. "Licensed associated person of a securities, commodities or
10 investments broker" means any associated person registered or licensed by the
11 national association of securities dealers, a self-regulatory organization as
12 defined in the securities exchange act of 1934 (15 United States Code section
13 78c) or an official or agency of this state or of any other state of the
14 United States.

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

22 ~~4-~~ 7. "Manager" means a person who supervises the work of a
23 solicitor.

24 ~~5-~~ 8. "Merchandise" means objects, wares, goods, commodities,
25 intangibles, real estate, securities or services.

26 ~~6-~~ 9. "Person" means:

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

28 (b) A partnership, a limited liability company, a limited liability
29 partnership or a domestic or foreign corporation.

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

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

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

35 ~~7-~~ 10. "Premium" means any gift, bonus, prize, award or other
36 incentive or inducement to purchase merchandise.

37 ~~8-~~ 11. "Principal" means an owner or an officer of a corporation or
38 limited liability company, a general partner of a partnership, a sole
39 proprietor of a sole proprietorship, a partner of a limited liability
40 partnership, a trustee of a trust and any other individual who controls,
41 manages or supervises a telephone sales operation.

42 ~~9-~~ 12. "Prize" means anything offered or purportedly offered and
43 given or purportedly given to a person by chance. Chance exists if a person
44 is guaranteed to receive an item and at the time of the offer or purported

1 offer the seller or solicitor does not identify the specific item that the
2 person will receive.

3 ~~10-~~ 13. "Prize promotion" means a sweepstakes or other game of chance
4 or an oral or written express or implied representation that a person has
5 won, has been selected to receive or may be eligible to receive a prize or
6 purported prize.

7 ~~11-~~ 14. "Recovery service" means any business or other practice in
8 which a person represents or implies that the person will recover or assist
9 in recovering for a fee any amount of money that a consumer has provided to a
10 seller pursuant to a telephone solicitation.

11 ~~12-~~ 15. "Seller" means a person who, directly or through a solicitor,
12 does any of the following:

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

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

18 (i) The consumer has been specially selected in any manner to receive
19 the notification or communication or the offer contained in the notification
20 or communication.

21 (ii) The consumer will receive a premium if the consumer calls the
22 person.

23 (iii) If the consumer purchases merchandise from the person, the
24 consumer will also receive additional or other merchandise, the same as or
25 different from the type of merchandise purchased, without any additional
26 charge or for a price that the person represents or implies is less than the
27 regular price of the merchandise.

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

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

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

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

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

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

40 (ii) 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 (iii) The consumer will receive a credit card if the consumer pays a
45 fee for the card before receiving the card.

1 (d) SOLICITS CONSUMERS TO PURCHASE A BUSINESS OPPORTUNITY OR
2 MERCHANDISE RELATED TO A BUSINESS OPPORTUNITY THROUGH ANY MEANS INCLUDING THE
3 TELEPHONE, INTERNET OR MAIL OR OTHER HARD COPY TEXT OR THROUGH ANY
4 ELECTRONIC, WIRELESS OR OTHER COMMUNICATION MEDIA.

5 ~~13-~~ 16. "Solicitor" means a person, other than a seller or employee of
6 a seller, who uses a telephone to seek sales or rentals of merchandise on
7 behalf of a seller or uses a telephone to verify sales or rentals for a
8 seller.

9 ~~14-~~ 17. "Subscriber" means a person who subscribes to residential
10 telephone service from a local exchange company and any person who lives or
11 subscribes with that person.

12 ~~15-~~ 18. "Telephone solicitation" means any voice communication to a
13 telephone number in this state from a live operator, announcing device or
14 otherwise to offer merchandise for sale or rent.

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

16 ~~44-1272.~~ Telephone seller; registration; business
17 opportunities; late filing penalty

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

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

36 C. Each registration statement shall contain all of the following
37 information:

38 1. The true legal name of the seller.

39 2. The name under which the seller is doing business or intends to do
40 business.

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

42 4. If the seller is a corporation or limited liability company, a copy
43 of its articles of incorporation and bylaws and amendments to the bylaws. If
44 the seller is a partnership or limited liability partnership, a copy of the

1 partnership agreement. If the seller is operating under a fictitious
2 business name, the location where the fictitious name has been registered.

3 5. The complete street address of the physical location of the
4 principal place of business of the seller, the complete street address of all
5 other locations from which the seller will be conducting business and all
6 telephone numbers for telephones at these locations.

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

12 7. For each manager, the address of the business location for which
13 the manager is responsible.

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

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

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

25 11. Whether a principal or manager:

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

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

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

41 12. A copy of any:

42 (a) Script, outline or presentation the seller will require or suggest
43 that a solicitor use, except that if the seller does not require or suggest a
44 script, outline or presentation, a statement that no such document is
45 required or suggested.

1 (b) Sales information and literature provided by the seller to a
2 solicitor or described by the seller for use by the solicitor, including
3 scripts, outlines, presentations, information on how to conduct telephone
4 sales, sample instructions, sample closings, product information and contest
5 or premium award information.

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

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

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

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

15 (c) THE DATES THAT EACH PRINCIPAL OR MANAGER PREVIOUSLY SOLD BUSINESS
16 OPPORTUNITIES.

17 14. IF A SOLICITATION INVOLVES A BUSINESS OPPORTUNITY OR MERCHANDISE
18 RELATED TO A BUSINESS OPPORTUNITY:

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

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

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

30 1. A description of the premium.

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

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

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

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

38 (a) The manner in which the seller decides which premium the consumer
39 will receive.

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

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

1 E. If the seller expressly represents or implies to any consumer,
2 directly or through a solicitor, that the seller can or may be able to make a
3 loan, arrange a loan, assist in arranging a loan or assist in providing
4 information that may lead to obtaining a loan, the seller shall submit with
5 the registration statement another statement setting forth:

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

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

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

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

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

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

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

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

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

36 Sec. 3. Section 44-1273, Arizona Revised Statutes, is amended to read:
37 44-1273. Limited exemptions

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

41 1. A person acting within the scope of a license issued under
42 title 20.

43 2. A person who is registered with the secretary of state pursuant to
44 section 44-6552 or who is exempt from registration pursuant to section
45 44-6553.

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

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

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

13 (b) A prize promotion or premium.

14 (c) A recovery service.

15 (d) A BUSINESS OPPORTUNITY OR MERCHANDISE RELATED TO A BUSINESS
16 OPPORTUNITY.

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

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

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

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

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

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

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

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

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

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

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

3 (b) The catalog includes the business address or home office address
4 of the person.

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

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

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

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

15 2. If soliciting within the scope of the license, any licensed
16 securities, commodities or investments broker or dealer or investment advisor
17 or any licensed associated person of a securities, commodities or investments
18 broker or dealer or investment advisor.

19 3. An issuer or a subsidiary of an issuer that has a class of
20 securities that is subject to section 12 of the securities exchange act of
21 1934 (15 United States Code sections 78a through 78mm) and that is either
22 registered or exempt from registration under paragraph (A), (B), (C), (E),
23 (F), (G) or (H) or subsection (g)(2) of section 12 of the act. A subsidiary
24 of an issuer that qualifies for exemption under this paragraph is not exempt
25 unless at least sixty per cent of the voting power of the subsidiary's shares
26 is owned by the qualifying issuer or issuers.

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

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

33 6. An issuer or subsidiary of an issuer that is subject to
34 registration under chapter 12, article 6 or 7 of this title or that is exempt
35 from registration under section 44-1843, subsection A, paragraph 1, 2, 3, 4,
36 5, 7 or 9.

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

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

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

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

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

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

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

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

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

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

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

39 1. The true legal name of the seller.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 2. The legal name of the seller on whose behalf the solicitor is
41 making the solicitation.

42 3. The solicitor's true legal name.

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

44 B. During any solicitation or sales presentation made by a seller or
45 solicitor and in any written correspondence provided to the consumer as part

1 of the solicitation, the seller or solicitor shall clearly and conspicuously
2 disclose to the consumer:

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

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

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

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

9 5. The consumer's right to cancel the transaction pursuant to
10 subsection C.

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

14 D. No telephone solicitation sale **OR SALE OF A BUSINESS OPPORTUNITY OR**
15 **MERCHANDISE RELATED TO A BUSINESS OPPORTUNITY** is effective unless the
16 consumer is both:

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

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

21 Notice of Cancellation

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

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

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

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

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

36 at _____
37 (Address of seller's place of business)

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

40 E. The notice of cancellation given by the consumer is effective if it
41 indicates the intention on the part of the consumer not to be bound by the
42 telephone solicitation sale **OR SALE OF A BUSINESS OPPORTUNITY OR MERCHANDISE**
43 **RELATED TO A BUSINESS OPPORTUNITY**.

1 F. A provision of a contract, offer or agreement that waives a
2 consumer's right of cancellation under this section is void and has no
3 effect.

4 G. A SOLICITOR SHALL ACCURATELY IDENTIFY THEMSELVES ON CALLER
5 IDENTIFICATION WHEN MAKING A TELEPHONE SOLICITATION CALL TO A RESIDENTIAL OR
6 MOBILE TELEPHONE IN ARIZONA.

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

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

11 44-1276.01. Business opportunities; disclosure to consumer

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

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

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

25 DISCLOSURES REQUIRED BY ARIZONA LAW

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

33 2. THE SELLER'S NAME AND PRINCIPAL BUSINESS ADDRESS AND THE DATE OF
34 THE DISCLOSURE DOCUMENT.

35 C. THE DISCLOSURE DOCUMENT SHALL CONTAIN AT LEAST THE FOLLOWING
36 INFORMATION, WHICH SHALL BE PRESENTED IN A SINGLE DOCUMENT IN THE FOLLOWING
37 ORDER:

38 1. A FACTUAL DESCRIPTION OF THE BUSINESS OPPORTUNITY THAT THE SELLER
39 IS OFFERING TO SELL TO THE CONSUMER, INCLUDING A FULL AND DETAILED
40 DESCRIPTION OF THE ACTUAL GOODS OR SERVICES THAT THE SELLER UNDERTAKES TO
41 SUPPLY TO OR PERFORM FOR THE CONSUMER AND THE ACTUAL SERVICES THAT THE
42 CONSUMER UNDERTAKES TO PERFORM, INCLUDING COMPLIANCE WITH PROCEDURES
43 ESTABLISHED BY THE SELLER REGARDING THE OPERATION OF THE BUSINESS.

1 2. A STATEMENT OF THE EXACT SUM OF THE TOTAL MONIES THAT THE SELLER
2 REQUIRES THE CONSUMER TO PAY TO A SPECIFICALLY NAMED PERSON OR ANY OTHER
3 PERSON KNOWN TO THE SELLER WHO RECEIVES ANY CONSIDERATION INCIDENT TO THE
4 TRANSACTION OR WHICH THE SELLER OR ANY PERSON AFFILIATED WITH THE SELLER
5 COLLECTS IN WHOLE OR IN PART ON BEHALF OF ANY PARTY IN ORDER TO OBTAIN OR
6 COMMENCE THE BUSINESS OPPORTUNITY OPERATION, INCLUDING INITIAL FEES,
7 DEPOSITS, DOWN PAYMENTS, PREPAID RENT, EQUIPMENT AND INVENTORY PURCHASES OR
8 MARKETING EXPENSES. THE SELLER SHALL DISCLOSE IF ALL OR PART OF THESE FEES
9 OR DEPOSITS ARE RETURNABLE UNDER CERTAIN CONDITIONS OR IF ALL OR PART OF THE
10 FEES OR DEPOSITS ARE NOT RETURNABLE.

11 3. A STATEMENT DESCRIBING ANY RECURRING MONIES THAT THE CONSUMER IS OR
12 MAY BE ASKED TO PAY TO ANY PERSON IN CONNECTION WITH CARRYING ON THE BUSINESS
13 OPPORTUNITY, INCLUDING ADVERTISING, TRAINING, ROYALTY, LEASE OR RENTAL FEES
14 OR EQUIPMENT OR INVENTORY PURCHASES.

15 4. A STATEMENT ADVISING CONSUMERS AS FOLLOWS, "AS REQUIRED BY ARIZONA
16 LAW, THE SELLER HAS FILED ITS ANNUAL REGISTRATION STATEMENT WITH THE ARIZONA
17 SECRETARY OF STATE."

18 5. A STATEMENT ADVISING CONSUMERS OF ONE OF THE FOLLOWING:

19 (a) "AS REQUIRED BY ARIZONA LAW, THE SELLER HAS SECURED A BOND ISSUED
20 BY _____ (NAME AND ADDRESS OF SURETY COMPANY), A SURETY COMPANY
21 AUTHORIZED TO DO BUSINESS IN ARIZONA."

22 (b) "AS REQUIRED BY ARIZONA LAW, THE SELLER HAS DEPOSITED WITH THE
23 ARIZONA STATE TREASURER A CASH DEPOSIT IN THE AMOUNT OF ONE HUNDRED THOUSAND
24 DOLLARS."

25 6. A STATEMENT DISCLOSING THE NAME OF EACH PERSON, INCLUDING THE
26 SELLER AND ITS AFFILIATES, WITH WHOM THE SELLER DIRECTLY OR INDIRECTLY
27 REQUIRES OR ADVISES THE CONSUMER TO DO BUSINESS.

28 7. A STATEMENT DESCRIBING ANY GOODS, SERVICES, REAL ESTATE,
29 INVENTORIES, SIGNS OR FIXTURES RELATING TO THE ESTABLISHMENT OR THE OPERATION
30 OF THE BUSINESS OPPORTUNITY THAT THE SELLER DIRECTLY OR INDIRECTLY REQUIRES
31 THE CONSUMER TO PURCHASE, LEASE OR RENT. IF THE PURCHASE, LEASE OR RENTAL IS
32 MADE FROM SPECIFIC PERSONS INCLUDING THE SELLER, A LIST OF THE NAMES AND
33 ADDRESSES OF EACH PERSON SHALL APPEAR ON THE DISCLOSURE DOCUMENT OR IN A
34 SEPARATE DOCUMENT THAT IS DELIVERED TO THE CONSUMER WITH THE DISCLOSURE
35 DOCUMENT IF THE EXISTENCE OF THE SEPARATE DOCUMENT IS DISCLOSED IN THE
36 DISCLOSURE DOCUMENT.

37 8. A STATEMENT OF ALL MATERIAL TERMS AND CONDITIONS OF ANY FINANCING
38 ARRANGEMENT THE SELLER OR ANY PERSON AFFILIATED WITH THE SELLER OFFERS,
39 DIRECTLY OR INDIRECTLY, TO THE CONSUMER AND A DESCRIPTION OF THE TERMS OF
40 PAYMENT TO THE SELLER FROM ANY PERSON OFFERING FINANCING TO A PROSPECTIVE
41 CONSUMER AND FROM ANY PERSON ARRANGING FOR FINANCING FOR A PROSPECTIVE
42 CONSUMER.

43 9. A STATEMENT THAT THE SELLER MUST PROVIDE A WRITTEN NOTICE OF
44 CANCELLATION PURSUANT TO SECTION 44-1276.

