

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 279
SENATE BILL 1375

AN ACT

AMENDING SECTIONS 44-1271 AND 44-1282, 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 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 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 6. "Licensed securities commodities or investments broker, dealer or
16 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 7. "Manager" means a person who supervises the work of a solicitor.

23 8. "Merchandise" means objects, wares, goods, commodities,
24 intangibles, real estate, securities or services.

25 9. "Person" means:

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

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

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

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

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

34 10. "Premium" means any gift, bonus, prize, award or other incentive
35 or inducement to purchase merchandise.

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

41 12. "Prize" means anything offered or purportedly offered and given or
42 purportedly given to a person by chance. Chance exists if a person is
43 guaranteed to receive an item and at the time of the offer or purported offer
44 the seller or solicitor does not identify the specific item that the person
45 will receive.

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

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

9 15. "Seller" means a person who, directly or through a solicitor, does
10 any of the following:

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

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

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

19 (ii) The consumer will receive a premium if the consumer calls the
20 person.

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

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

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

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

34 (vii) The person is offering for sale identity protection assistance.

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

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

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

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

44 (d) Solicits consumers to purchase a business opportunity or
45 merchandise related to a business opportunity through any means including the

1 telephone, internet or mail or other hard copy text or through any
2 electronic, wireless or other communication media.

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

7 17. "Subscriber" means a person who subscribes to residential
8 telephone service from a local exchange company and any person who lives or
9 subscribes with that person.

10 18. "Telephone solicitation" means any voice communication ~~to a~~
11 ~~telephone number in this state~~ from a live operator, announcing device or
12 otherwise ~~to offer~~ THAT OFFERS merchandise for sale or rent AND THAT IS TO OR
13 FROM A PERSON LOCATED IN THIS STATE.

14 Sec. 2. Section 44-1282, Arizona Revised Statutes, is amended to read:

15 44-1282. National do-not-call registry; prohibitions;
16 enforcement; civil penalty; definition

17 A. A seller or solicitor or anyone acting on behalf of a seller or
18 solicitor shall not initiate an ~~intrastate~~ OUTBOUND telephone solicitation
19 CALL to a ~~ANY~~ telephone number ~~in this state~~ if the telephone number is
20 entered in the national do-not-call registry established by the federal trade
21 commission pursuant to the do-not-call implementation act, except that this
22 section does not apply to any ~~intrastate~~ telephone solicitation that would be
23 authorized or permitted by federal law or regulation relating to
24 ~~an interstate~~ A telephone solicitation or to calls made by or on behalf of a
25 seller or solicitor who is licensed pursuant to title 32, chapter 20 if the
26 calls are made under any of the following circumstances:

27 1. In regard to a past or present employment agreement with the
28 consumer pursuant to title 32, chapter 20, article 3 and who is calling in
29 regard to a subject reasonably related to the employment agreement.

30 2. In response to a referral from a natural person with whom the
31 consumer has a personal relationship.

32 3. In response to an express request or permission of a consumer whose
33 telephone number is entered in the national do-not-call registry.

34 ~~B. If a seller or solicitor or person acting on behalf of a seller or~~
35 ~~solicitor is authorized or permitted to perform any action or conduct any~~
36 ~~practice under the do-not-call implementation act with respect to interstate~~
37 ~~telephone solicitations, the seller, solicitor or person may perform the~~
38 ~~action or conduct the practice with respect to intrastate telephone~~
39 ~~solicitations to telephone numbers in this state.~~

40 ~~C.~~ B. A violation of this section is an unlawful practice pursuant to
41 section 44-1522. The attorney general may investigate and take appropriate
42 action pursuant to chapter 10, article 7 of this title, but a civil penalty
43 under section 44-1531 for a violation of this section shall not exceed one
44 thousand dollars per violation. This subsection is in addition to all other
45 causes of action, remedies and penalties available to this state. All monies

1 collected as fines and civil penalties pursuant to this subsection shall be
2 credited to the state general fund.

3 ~~D.~~ C. For the purposes of this section, "do-not-call implementation
4 act" means the do-not-call implementation act (P.L. 108-10; 117 Stat. 557) as
5 enacted on March 11, 2003 and federal regulations adopted to implement that
6 act.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.