

REFERENCE TITLE: telephone solicitations; seller

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

SB 1254

Introduced by
Senator Smith

AN ACT

AMENDING SECTIONS 44-1271, 44-1273 AND 44-1278, 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. "Consumer" means a person who is solicited by a seller or
7 solicitor.

8 2. "Licensed associated person of a securities, commodities or
9 investments broker" means any associated person registered or licensed by the
10 national association of securities dealers, a self-regulatory organization as
11 defined in the securities exchange act of 1934 (15 United States Code ~~section~~
12 ~~SECTION~~ 78a through 7811) or an official or agency of this state or of any
13 other state of the United States.

14 3. "Licensed securities commodities or investments broker, dealer or
15 investment advisor" means a person licensed or registered as a securities
16 commodities or investments broker, dealer or investment advisor by the
17 securities and exchange commission, the national association of securities
18 dealers, a self-regulatory organization as defined in the securities exchange
19 act of 1934 (15 United States Code ~~section~~ ~~SECTION~~ 78a through 7811) or an
20 official or agency of this state or of any other state of the United States.

21 4. "Manager" means a person who supervises the work of a solicitor.

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

24 6. "Person" means:

25 (a) A natural person or his legal representative.

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

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

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

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

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

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

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

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

5 11. "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 12. "Seller" means a person who, directly or through a solicitor, seeks
10 orders for the sale of merchandise by means of telephone solicitation ~~under~~
11 ~~any of the following circumstances:~~

12 ~~(a) The person initiates contact by telephone with a consumer and~~
13 ~~represents or implies that:~~

14 ~~(i) A consumer who buys merchandise will receive additional~~
15 ~~merchandise, the same as or different from the type of merchandise~~
16 ~~purchased, without any additional charge, except for actual postage or~~
17 ~~common carrier charges.~~

18 ~~(ii) A consumer will receive or has a chance or opportunity to receive~~
19 ~~a premium.~~

20 ~~(iii) The person is offering to sell the services of a recovery~~
21 ~~service.~~

22 ~~(iv) 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 ~~(v) The consumer will receive a credit card if the consumer pays a fee~~
27 ~~for the card before receiving the card OR INITIATES OR RECEIVES TELEPHONE~~
28 ~~CALLS TO PROVIDE OR ARRANGE TO PROVIDE GOODS OR SERVICES TO CONSUMERS IN~~
29 ~~EXCHANGE FOR PAYMENT. THIS ACTIVITY INCLUDES:~~

30 ~~(b)~~ (a) ~~The~~ Solicitation by telephone ~~is~~ made by the person in
31 response to inquiries from a consumer generated by a notification or
32 communication sent or delivered to the consumer that represents or implies
33 that:

34 (i) The consumer has been specially selected in any manner to receive
35 the notification or communication or the offer contained in the notification
36 or communication.

37 (ii) The consumer will receive a premium if the consumer calls the
38 person.

39 (iii) If the consumer purchases merchandise from the person, the
40 consumer will also receive additional or other merchandise, the same as or
41 different from the type of merchandise purchased, without any additional
42 charge or for a price that the person represents or implies is less than the
43 regular price of the merchandise.

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

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

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

7 ~~(c)~~ (b) ~~The~~ Solicitation by telephone ~~is~~ made by the person in
8 response to inquiries generated by advertisements on behalf of the person
9 that represent or imply that:

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

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

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

17 13. "Solicitor" means a person who uses a telephone to seek sales of
18 merchandise on behalf of a seller or uses a telephone to verify sales for a
19 seller.

20 ~~14. "Telephone solicitation sale" means a sale of merchandise by a~~
21 ~~seller.~~

22 Sec. 2. Section 44-1273, Arizona Revised Statutes, is amended to read:

23 44-1273. Limited exemptions

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

26 1. A person acting within the scope of a license issued under title
27 20.

28 2. A person who is registered with the secretary of state pursuant to
29 section 44-6552 or who is exempt from registration pursuant to section
30 44-6553.

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

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

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

43 (b) A prize promotion or premium.

44 (c) A recovery service.

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

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

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

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

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

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

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

16 (c) Neither the person nor any of the person's principals has within
17 twenty years been convicted in any state of a felony or crime of moral
18 turpitude, breach of trust, fraud, theft, dishonesty or violation of
19 telephone solicitation laws, been subject to a final judgment in a civil
20 action involving fraud, deceit or misrepresentation or been subject to an
21 administrative order involving fraud, deceit, misrepresentation or any
22 violation of telephone solicitations laws of any agency of this state,
23 another state, the federal government, a territory of the United States or
24 another country.

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

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

30 (b) The catalog includes the business address or home office address
31 of the person.

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

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

36 B. The following sellers shall file a limited registration statement
37 pursuant to section 44-1272.01 and, except for section 44-1278, are exempt
38 from this article:

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

42 2. If soliciting within the scope of the license, any licensed
43 securities, commodities or investments broker, ~~OR~~ OR dealer or investment
44 advisor or any licensed associated person of a securities, commodities or
45 investments broker, ~~OR~~ OR dealer or investment advisor.

1 3. An issuer or a subsidiary of an issuer that has a class of
2 securities that is subject to section 12 of the securities exchange act of
3 1934 (15 United States Code sections 78a through 7811) and that is either
4 registered or exempt from registration under paragraph (A), (B), (C), (E),
5 (F), (G) or (H) or subsection (g) (2) of section 12 of the act. A subsidiary
6 of an issuer that qualifies for exemption under this paragraph is not exempt
7 unless at least sixty per cent of the voting power of the subsidiary's shares
8 is owned by the qualifying issuer or issuers.

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

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

15 6. An issuer or subsidiary of an issuer that is subject to
16 registration under chapter 12, article 6 or 7 of this title or that is exempt
17 from registration under section 44-1843, **SUBSECTION A**, paragraph 1, 2, 3, 4,
18 5, 7 or 9.

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

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

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

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

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

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

37 (e) The person has not, or any of its principals have not, within
38 twenty years been convicted in any state of a felony or a crime of moral
39 turpitude, breach of trust, fraud, theft, dishonesty or **A** violation of
40 telephone solicitation laws, been subject to a final judgment in a civil
41 action involving fraud, deceit or misrepresentation or been subject to an
42 administrative order involving fraud, deceit, misrepresentation or any
43 violation of telephone ~~solicitations~~ **SOLICITATION** laws of any agency of this
44 state, another state, the federal government, a territory of the United
45 States or another country.

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

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

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

15 C. On request by the secretary of state, the director of the
16 department of insurance shall provide a current list in a mutually acceptable
17 electronic format to the secretary of state of the requested licensees
18 described in subsection A, paragraph 1 of this section that includes all of
19 the following information:

20 1. The true legal name of the seller.

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

23 3. The complete street address of the physical location of the
24 principal place of business of the seller and the telephone number for the
25 location.

26 4. The name and address of the seller's agent who is authorized to
27 receive service of process [IN THIS STATE](#).

28 D. In any civil proceeding alleging a violation of this article, the
29 burden of proving an exemption or an exception from a definition is on the
30 person claiming the exemption or exception. In any criminal proceeding in
31 which a violation of this article is alleged, the burden of producing
32 evidence to support a defense based on an exemption or an exception from a
33 definition is on the person claiming the exemption or exception.

34 E. Any person or solicitor exempted in part from this article by this
35 section shall not make or submit a charge to a consumer's credit card account
36 or a consumer's checking, savings, share or similar account unless any of the
37 following apply:

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

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

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

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

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

12 Sec. 3. Section 44-1278, Arizona Revised Statutes, is amended to read:
13 44-1278. Unlawful practice; powers of attorney general;
14 cumulative remedies

15 A. It is an unlawful practice pursuant to section 44-1522 for a seller
16 to make or authorize to any consumer any reference to the seller's compliance
17 with this article other than on inquiry by the consumer.

18 B. It is an unlawful practice pursuant to section 44-1522 for any
19 seller or solicitor who conducts a telephone solicitation in this state to do
20 any of the following:

21 1. Use telephone equipment that blocks the caller identification
22 function on the telephone or telephone equipment of the telephone number
23 dialed so that the telephone number of the caller is not displayed on the
24 telephone or telephone equipment that is capable of displaying the telephone
25 number of the caller.

26 2. Initiate an outbound telephone call to a person if that person has
27 previously stated a desire not to receive outbound telephone calls made by or
28 on behalf of the seller whose goods or services are being offered. A seller
29 or solicitor is not liable under this paragraph or paragraph 3 if all of the
30 following apply:

31 (a) The seller or solicitor has established and implemented written
32 procedures to comply with this paragraph.

33 (b) The seller or solicitor has trained the seller's or solicitor's
34 personnel according to the written procedures prescribed in subdivision (a)
35 of this paragraph.

36 (c) The seller or the solicitor acting on behalf of the
37 seller establishes and maintains a no call list comprised of all persons who
38 request not to be contacted and keeps all do not call requests for at least
39 ten years.

40 (d) The initial outbound call or any subsequent outbound call made by
41 the seller or solicitor is the result of an error.

42 3. Intentionally make or cause to be made any unsolicited telephone
43 sales call to any mobile or telephone paging device.

44 4. Make a telephone call to any residential telephone using an
45 artificial or prerecorded voice to deliver a message unless the call is

1 initiated for emergency purposes or the call is made with the prior express
2 consent of the called party.

3 5. Use any automatic terminal equipment that uses a random or
4 sequential number generator unless the equipment excludes calls to the
5 following telephone numbers:

6 (a) Emergency telephone numbers, including 911, of any hospital,
7 medical physician, health care facility, poison control center, fire
8 protection facility or law enforcement agency.

9 (b) Any guest room or patient room of a hospital, health care
10 facility, elderly care home or similar establishment.

11 (c) A paging service, a cellular telephone service, a specialized
12 mobile radio service or any service for which the called party is charged for
13 the call.

14 (d) The telephone numbers maintained on a no call list established
15 pursuant to paragraph 2 of this subsection.

16 C. IT IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522 FOR A SELLER
17 TO INITIATE ANY OUTBOUND CALL PURSUANT TO THIS ARTICLE OTHER THAN BETWEEN
18 8:00 A.M. AND 9:00 P.M.

19 ~~C.~~ D. Failure to comply with this article is an unlawful practice
20 pursuant to section 44-1522. The attorney general may investigate and take
21 appropriate action as prescribed by chapter 10, article 7 of this title.

22 ~~D.~~ E. The provisions of this article are in addition to all other
23 causes of action, remedies and penalties available to this state.

24 ~~E.~~ F. The attorney general may bring an action in federal court in
25 accordance with 15 United States Code sections 6101 through 6108.