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REFERENCE TITLE: **direct marketing; no contact list**

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

## **HB 2399**

Introduced by  
Representatives Hatch-Miller, Marsh, McClure, Pierce, Laughter, Senators  
Guenther, Burns, Hamilton, Bundgaard: Representatives Brimhall, Cannell,  
Carruthers, Chase, Flake, Gleason, Graf, Hanson, May, Nelson, Senator  
Petersen

**AN ACT**

**CHANGING THE DESIGNATION OF TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, TO "DIRECT SOLICITATION MARKETING"; AMENDING SECTIONS 44-1271 AND 44-1278, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1282; RELATING TO DIRECT MARKETING SOLICITATIONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Heading change

3 The article heading of title 44, chapter 9, article 6, Arizona Revised  
4 Statutes, is changed from "TELEPHONE SOLICITATIONS" to "DIRECT SOLICITATION  
5 MARKETING".

6 Sec. 2. Section 44-1271, Arizona Revised Statutes, is amended to read:  
7 44-1271. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Consumer" means a person who is solicited by a seller or  
10 solicitor.

11 2. "DOOR-TO-DOOR SOLICITATION" INCLUDES DIRECT PERSONAL CONTACT OR THE  
12 DISTRIBUTION OF BROCHURES, PAMPHLETS, FLYERS, DOOR HANGINGS OR OTHER LEAFLETS  
13 TO RESIDENTIAL DWELLINGS WITHOUT PERSONAL CONTACT.

14 3. "ELECTRONIC MESSAGE" INCLUDES FAX AND ELECTRONIC MAIL.

15 ~~2-~~ 4. "Licensed associated person of a securities, commodities or  
16 investments broker" means any associated person registered or licensed by the  
17 national association of securities dealers, a self-regulatory organization as  
18 defined in the securities exchange act of 1934 (15 United States Code  
19 ~~sections 78a through 7811~~ SECTION 78c) or an official or agency of this state  
20 or of any other state of the United States.

21 ~~3-~~ 5. "Licensed securities commodities or investments broker, dealer  
22 or investment advisor" means a person licensed or registered as a securities  
23 commodities or investments broker, dealer or investment advisor by the  
24 securities and exchange commission, the national association of securities  
25 dealers, a self-regulatory organization as defined in the securities exchange  
26 act of 1934 (15 United States Code ~~sections 78a through 7811~~ SECTION 78c) or  
27 an official or agency of this state or of any other state of the United  
28 States.

29 ~~4-~~ 6. "Manager" means a person who supervises the work of a  
30 solicitor.

31 ~~5-~~ 7. "Merchandise" means objects, wares, goods, commodities,  
32 intangibles, real estate, securities or services.

33 ~~6-~~ 8. "Person" means:

34 (a) A natural person or ~~his~~ THE PERSON'S legal representative.

35 (b) A partnership, a limited liability company, a limited liability  
36 partnership or a domestic or foreign corporation.

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

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

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

42 ~~7-~~ 9. "Premium" means any gift, bonus, prize, award or other  
43 incentive or inducement to purchase merchandise.

44 ~~8-~~ 10. "Principal" means an owner or an officer of a corporation or  
45 limited liability company, a general partner of a partnership, a sole

1 proprietor of a sole proprietorship, a partner of a limited liability  
2 partnership, a trustee of a trust and any other individual who controls,  
3 manages or supervises a telephone sales operation.

4 ~~9.~~ 11. "Prize" means anything offered or purportedly offered and  
5 given or purportedly given to a person by chance. Chance exists if a person  
6 is guaranteed to receive an item and at the time of the offer or purported  
7 offer the seller or solicitor does not identify the specific item that the  
8 person will receive.

9 ~~10.~~ 12. "Prize promotion" means a sweepstakes or other game of chance  
10 or an oral or written express or implied representation that a person has  
11 won, has been selected to receive or may be eligible to receive a prize or  
12 purported prize.

13 ~~11.~~ 13. "Recovery service" means any business or other practice in  
14 which a person represents or implies that the person will recover or assist  
15 in recovering for a fee any amount of money that a consumer has provided to a  
16 seller pursuant to a telephone solicitation.

17 ~~12.~~ 14. "Seller" means a person who, directly or through a solicitor  
18 does any of the following:

19 (a) Initiates telephone calls OR OTHER ELECTRONIC MESSAGES, DIRECT  
20 MAIL OR DOOR-TO-DOOR SOLICITATION to provide or arrange to provide goods or  
21 services to consumers in exchange for payment.

22 (b) Solicits by telephone OR OTHER ELECTRONIC MESSAGE, DIRECT MAIL OR  
23 DOOR-TO-DOOR in response to inquiries from a consumer generated by a  
24 notification or communication sent or delivered to the consumer that  
25 represents or implies that:

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

29 (ii) The consumer will receive a premium if the consumer calls the  
30 person.

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

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

38 (v) 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 (vi) The consumer will receive a credit card if the consumer pays a  
43 fee for the card before receiving the card.

1 (c) Solicits by telephone OR OTHER ELECTRONIC MESSAGE, DIRECT MAIL OR  
2 DOOR-TO-DOOR in response to inquiries generated by advertisements on behalf  
3 of the person that represent or imply that:

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

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

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

11 15. "SOLICITATION" MEANS ANY TELEPHONE OR OTHER ELECTRONIC MESSAGE,  
12 DIRECT MAIL OR DOOR-TO-DOOR SOLICITATION TO A TELEPHONE OR FAX NUMBER,  
13 ELECTRONIC MAIL ADDRESS OR MAILING OR RESIDENTIAL ADDRESS IN THIS STATE TO  
14 OFFER MERCHANDISE FOR SALE OR RENT.

15 ~~13-~~ 16. "Solicitor" means a person, other than a seller or employee of  
16 a seller, who uses a telephone OR OTHER ELECTRONIC MESSAGE, DIRECT MAIL OR  
17 DOOR-TO-DOOR SOLICITATION to seek sales of merchandise on behalf of a seller  
18 or uses a telephone to verify sales for a seller.

19 Sec. 3. Section 44-1278, Arizona Revised Statutes, is amended to read:

20 44-1278. Unlawful practice; powers of attorney general;  
21 cumulative remedies

22 A. It is an unlawful practice pursuant to section 44-1522 for a seller  
23 or solicitor or anyone acting on ~~their~~ behalf OF EITHER A SELLER OR SOLICITOR  
24 to make or authorize to any consumer any reference to the seller's or  
25 solicitor's compliance with this article other than on inquiry by the  
26 consumer.

27 B. It is an unlawful practice pursuant to section 44-1522 for any  
28 seller or solicitor or anyone acting on ~~their~~ behalf OF EITHER A SELLER OR  
29 SOLICITOR who conducts a telephone OR OTHER ELECTRONIC MESSAGE solicitation  
30 in this state to do any of the following:

31 1. Use telephone equipment that blocks the caller identification  
32 function on the telephone or telephone equipment of the telephone number  
33 dialed so that the telephone number of the caller is not displayed on the  
34 telephone or telephone equipment that is capable of displaying the telephone  
35 number of the caller.

36 2. Initiate an outbound telephone call OR OTHER ELECTRONIC MESSAGE to  
37 a person if that person has previously stated a desire not to receive  
38 outbound telephone ~~calls~~ OR OTHER ELECTRONIC MESSAGES made by or on behalf of  
39 the seller whose goods or services are being offered. A seller or solicitor  
40 is not liable under this paragraph or paragraph 3 if all of the following  
41 apply:

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

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

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

8 (d) The initial outbound ~~call~~ MESSAGE or any subsequent outbound call  
9 made by the seller or solicitor is the result of an error.

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

12 4. Make a telephone call to any residential telephone using an  
13 artificial or prerecorded voice to deliver a message unless the call is  
14 initiated for emergency purposes or the call is made with the prior express  
15 consent of the called party.

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

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

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

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

27 (d) The telephone numbers maintained on a no call list established  
28 pursuant to paragraph 2 of this subsection ~~OR THE NO CONTACT LIST ESTABLISHED~~  
29 ~~PURSUANT TO SECTION 44-1282.~~

30 6. Initiate an outbound call except as provided in 47 Code of Federal  
31 Regulations, ~~—~~ section 64.1200 or 16 Code of Federal Regulations section  
32 310.4.

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

36 D. The provisions of this article are in addition to all other causes  
37 of action, remedies and penalties available to this state.

38 E. The attorney general may bring an action in federal court in  
39 accordance with 15 United States Code sections 6101 through 6108.

40 Sec. 4. Title 44, chapter 9, article 6, Arizona Revised Statutes, is  
41 amended by adding section 44-1282, to read:

42 44-1282. No contact list; prohibited solicitations; civil  
43 penalties; fund

44 A. BY JANUARY 1, 2003, THE SECRETARY OF STATE SHALL ESTABLISH AND  
45 PROVIDE FOR THE MAINTENANCE AND OPERATION OF A NO CONTACT LIST OF TELEPHONE

1 AND FAX NUMBERS, ELECTRONIC MAIL ADDRESSES AND MAIL AND RESIDENTIAL ADDRESSES  
2 OF RESIDENTS OF THIS STATE WHO OBJECT TO RECEIVING TELEPHONE OR OTHER  
3 ELECTRONIC SOLICITATIONS AND DIRECT MAIL AND DOOR-TO-DOOR SOLICITATIONS. THE  
4 SECRETARY OF STATE MAY CONTRACT WITH A PRIVATE VENDOR TO OPERATE THE NO  
5 CONTACT LIST.

6 B. ANY PERSON WHO DESIRES TO BE INCLUDED ON THE NO CONTACT LIST MUST  
7 NOTIFY THE SECRETARY OF STATE IN A MANNER PRESCRIBED BY THE SECRETARY OF  
8 STATE. AN ENTRY ON THE NO CONTACT LIST EXPIRES FIVE YEARS AFTER IT IS  
9 ORIGINALLY ENTERED UNLESS THE PERSON REMOVES OR RENEWS THE ENTRY BEFORE THE  
10 EXPIRATION DATE IN A MANNER PRESCRIBED BY THE SECRETARY OF STATE. THE  
11 SECRETARY OF STATE SHALL NOT DELETE ANY ENTRY FROM THE NO CONTACT LIST EXCEPT  
12 ON THE PERSON'S REQUEST OR EXPIRATION OF THE ENTRY.

13 C. THE SECRETARY OF STATE SHALL PROVIDE A COPY OF THE NO CONTACT LIST  
14 IN A FORMAT PRESCRIBED BY THE SECRETARY OF STATE TO EACH SELLER AT THE TIME  
15 THE SELLER PAYS THE ANNUAL REGISTRATION FEE PRESCRIBED BY SECTION  
16 44-1275. THE SECRETARY OF STATE SHALL POST AND CONTINUALLY UPDATE THE LIST  
17 ON A SECURE INTERNET WEB SITE, AND SELLERS ARE RESPONSIBLE FOR ACCESSING AND  
18 USING THE CURRENT LIST.

19 D. IT IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522 FOR ANY  
20 SELLER OR SOLICITOR OR ANYONE ACTING ON BEHALF OF A SELLER OR SOLICITOR TO  
21 INITIATE A TELEPHONE CALL OR OTHER ELECTRONIC MESSAGE, DIRECT MAIL OR A  
22 DOOR-TO-DOOR SOLICITATION TO A TELEPHONE OR FAX NUMBER, ELECTRONIC MAIL  
23 ADDRESS OR A MAIL OR RESIDENTIAL ADDRESS ON THE NO CONTACT LIST ESTABLISHED  
24 PURSUANT TO THIS SECTION, EXCEPT THAT:

25 1. THIS SUBSECTION DOES NOT APPLY TO COMMUNICATIONS OR OTHER CONTACTS  
26 MADE:

27 (a) IN RESPONSE TO AN EXPRESS REQUEST BY THE PERSON BEING CONTACTED.

28 (b) PRIMARILY IN CONNECTION WITH AN EXISTING DEBT PAYMENT OR CONTRACT  
29 PERFORMANCE THAT HAS NOT BEEN PAID OR COMPLETED AT THE TIME OF THE CONTACT.

30 (c) TO ANY PERSON WITH WHOM THE SELLER OR SOLICITOR HAS AN ESTABLISHED  
31 BUSINESS RELATIONSHIP.

32 (d) BY ANY SELLER OR SOLICITOR WHO MAKES FEWER THAN ONE HUNDRED SUCH  
33 CONTACTS DURING THE CALENDAR YEAR.

34 (e) BY OR ON BEHALF OF A CHARITABLE ORGANIZATION THAT IS REGISTERED  
35 WITH THE SECRETARY OF STATE PURSUANT TO SECTION 44-6552 OR THAT IS EXEMPT  
36 FROM REGISTRATION PURSUANT TO SECTION 44-6553.

37 (f) AS A RESULT OF AN ERROR IF BOTH OF THE FOLLOWING APPLY:

38 (i) THE SELLER OR SOLICITOR HAS ESTABLISHED AND IMPLEMENTED WRITTEN  
39 PROCEDURES TO COMPLY WITH THIS SUBSECTION.

40 (ii) THE SELLER OR SOLICITOR HAS TRAINED THE SELLER'S OR SOLICITOR'S  
41 PERSONNEL ACCORDING TO THE WRITTEN PROCEDURES UNDER ITEM (i).

42 E. IF, PURSUANT TO 47 UNITED STATES CODE SECTION 47(c)(3), AN AGENCY  
43 OF THE UNITED STATES ESTABLISHES A SINGLE NATIONAL DATABASE OF TELEPHONE  
44 NUMBERS OF RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING TELEPHONE  
45 SOLICITATIONS, THE SECRETARY OF STATE SHALL INCLUDE THE PART OF THE NATIONAL

1 DATABASE THAT RELATES TO THIS STATE IN THE NO CONTACT LIST UNDER THIS  
2 SECTION.  
3 F. THE SECRETARY OF STATE MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN:  
4 1. TWO HUNDRED FIFTY DOLLARS ON ANY SELLER THAT WILFULLY VIOLATES  
5 SUBSECTION D OF THIS SECTION.  
6 2. FIVE HUNDRED DOLLARS FOR ANY SUBSEQUENT WILFUL VIOLATION OF  
7 SUBSECTION D OF THIS SECTION.  
8 G. THE NO CONTACT LIST FUND IS ESTABLISHED CONSISTING OF MONIES  
9 COLLECTED AS CIVIL PENALTIES UNDER SUBSECTION F OF THIS SECTION. THE  
10 SECRETARY OF STATE SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE  
11 CONTINUOUSLY APPROPRIATED TO THE SECRETARY OF STATE SOLELY FOR PURPOSES OF  
12 ADMINISTERING THE NO CONTACT LIST UNDER THIS SECTION. ON NOTICE FROM THE  
13 SECRETARY OF STATE, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE  
14 FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL  
15 BE CREDITED TO THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS  
16 OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.