

| REFERENCE TITLE: telephone call centers; consumer rights |

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

SB 1260

Introduced by  
Senators Brotherton, Garcia, Rios: Soltero

## AN ACT

AMENDING SECTIONS 44-1271 AND 44-1276, ARIZONA REVISED STATUTES;  
AMENDING TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES,  
BY ADDING SECTION 44-1283; RELATING TO TELEPHONE SOLICITATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 44-1271, Arizona Revised Statutes, is amended to read:

### 44-1271. Definitions

In this article, unless the context otherwise requires:

1. "Consumer" means a person who is solicited by a seller or solicitor.
2. "CONSUMER SALES CALL CENTER" MEANS AN ENTITY WHOSE PRIMARY PURPOSE INCLUDES THE INITIATING OR RECEIVING OF TELEPHONIC COMMUNICATIONS ON BEHALF OF ANY PERSON FOR THE PURPOSE OF INITIATING SALES, INCLUDING TELEPHONE SOLICITATIONS.
3. "CONSUMER SERVICE CALL CENTER" MEANS AN ENTITY WHOSE PRIMARY PURPOSE INCLUDES THE INITIATING OR RECEIVING OF TELEPHONIC COMMUNICATIONS ON BEHALF OF ANY PERSON FOR THE PURPOSES OF PROVIDING OR RECEIVING SERVICES OR INFORMATION NECESSARY IN CONNECTION WITH PROVIDING SERVICES OR BENEFITS.

4. "CONSUMER SERVICES EMPLOYEE" MEANS A PERSON EMPLOYED BY OR WORKING ON BEHALF OF A CONSUMER SALES CALL CENTER OR A CONSUMER SERVICE CALL CENTER.

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

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

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

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

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

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

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

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

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

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

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

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

~~9~~ 12. "Prize" means anything offered or purportedly offered and given or purportedly given to a person by chance. Chance exists if a person is guaranteed to receive an item

and at the time of the offer or purported offer the seller or solicitor does not identify the specific item that the person will receive.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. Section 44-1276, Arizona Revised Statutes, is amended to read:

44-1276. Required disclosures; payment for goods; identification of seller, solicitor or consumer services employee; cancellation of telephone solicitation sale; notice of right to cancel; information sent to other countries prohibited

A. Before beginning the solicitation or sales presentation over the telephone, the seller ~~or~~, solicitor **OR CONSUMER SERVICES EMPLOYEE** shall disclose to the consumer:

1. The complete street address of the physical location, **INCLUDING THE CITY, STATE AND COUNTRY**, from which the seller ~~or~~, solicitor **OR CONSUMER SERVICES EMPLOYEE** is making the telephone solicitation and the complete street address of the seller's principal location.
2. The legal name of the seller on whose behalf the solicitor is making the solicitation **OR THE EMPLOYER OF THE CONSUMER SERVICES EMPLOYEE**.
3. The solicitor's **OR CONSUMER SERVICES EMPLOYEE'S** true legal name.
4. That the purpose of the call is to sell merchandise.

**B. ANY PERSON WHO RECEIVES A TELEPHONE CALL FROM OR PLACES A TELEPHONE CALL TO A CONSUMER SALES CALL CENTER OR A CONSUMER SERVICE CALL CENTER, ON REQUEST, HAS THE RIGHT TO SPEAK TO A QUALIFIED EMPLOYEE OF THE COMPANY OR GOVERNMENT AGENCY WITH WHICH THE PERSON IS DOING BUSINESS.**

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

1. Any charge, including the amount for the use of any premium being offered.
2. Any material restriction, requirement, condition, limitation or exception that is associated with the use of the premium.
3. Any charge connected with the sale of merchandise.
4. The time period within which any premium will be delivered.
5. The consumer's right to cancel the transaction pursuant to subsection ~~C~~D.

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

~~D~~. E. No telephone solicitation sale is effective unless the consumer is both:

1. Advised orally and in writing of the legal name, telephone number and complete street address of the physical location of the seller.
2. Advised orally of the right of cancellation along with a written notice containing the following information:

Notice of Cancellation

1. You may cancel this order without any penalty or obligation within three business days from the delivery of the merchandise or premium (gift, bonus, prize or award), whichever is later.
2. If you cancel, any payments made by you will be returned within ten days after the receipt by the seller of your notice of cancellation.
3. To cancel this transaction, mail or deliver a signed and dated copy of your cancellation notice or send a telegram to \_\_\_\_\_ at \_\_\_\_\_.

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

4. If you cancel, any merchandise or premium delivered to you must be returned at our expense to \_\_\_\_\_ (Name of seller)

at \_\_\_\_\_ (Address of seller's place of business)

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

~~F.~~ F. The notice of cancellation given by the consumer is effective if it indicates the intention on the part of the consumer not to be bound by the telephone solicitation sale.

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

H. A CONSUMER SERVICES EMPLOYEE SHALL NOT SEND TO ANY FOREIGN COUNTRY A PERSON'S FINANCIAL, CREDIT OR IDENTIFYING INFORMATION IF THE PERSON RECEIVES A TELEPHONE CALL FROM OR PLACES A TELEPHONE CALL TO A CONSUMER SALES CALL CENTER OR A CONSUMER SERVICE CALL CENTER UNLESS THE PERSON GIVES EXPRESS WRITTEN PERMISSION.

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

Sec. 3. Title 44, chapter 9, article 6, Arizona Revised Statutes, is amended by adding section 44-1283, to read:

44-1283. Contracts with vendors located in the United States; violation; classification; void contracts

A. ENTITIES REGISTERED PURSUANT TO THIS ARTICLE SHALL ONLY CONTRACT FOR TELEPHONE SOLICITATION SERVICES, CONSUMER SALES CALL CENTER SERVICES OR CONSUMER SERVICE CALL CENTER SERVICES WITH VENDORS THAT OPERATE TELEPHONE SOLICITATION SERVICES, CONSUMER SALES CALL CENTER SERVICES OR CONSUMER SERVICE CALL CENTER SERVICES ON BEHALF OF THIS STATE IN THE UNITED STATES.

B. THE SECRETARY OF STATE SHALL REQUIRE EACH VENDOR SUBMITTING A BID OR CONTRACT TO PROVIDE SERVICES FOR THIS STATE AS SET FORTH IN SUBSECTION A TO CERTIFY THAT ONLY VENDORS WHO OPERATE IN THE UNITED STATES WILL BE PERFORMING SERVICES UNDER THE CONTRACT. ANY PERSON WHO KNOWINGLY SUBMITS A FALSE CERTIFICATION IS GUILTY OF A CLASS \_\_\_\_\_ FELONY.

C. A CONTRACT ENTERED INTO OR PERFORMED IN VIOLATION OF THIS SECTION IS VOID. A CONTRACT THAT IS VOID UNDER THIS SECTION MAY CONTINUE IN EFFECT UNTIL AN ALTERNATE CONTRACT CAN BE ARRANGED IF BOTH OF THE FOLLOWING APPLY:

1. IMMEDIATE TERMINATION WOULD RESULT IN HARM TO THE PUBLIC HEALTH OR WELFARE. APPROVAL UNDER THIS PARAGRAPH SHALL BE GIVEN FOR THE MINIMUM PERIOD NECESSARY TO PROTECT THE PUBLIC HEALTH OR WELFARE.

2. THE SECRETARY OF STATE APPROVES THE CONTINUATION.