Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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

CHAPTER 186

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)

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. "BUSINESS OPPORTUNITY"

(a) MEANS THE SALE OR LEASE, OR OFFER FOR SALE OR LEASE, OF ANY GOODS OR SERVICES TO A CONSUMER FOR AN INITIAL PAYMENT OF FIVE HUNDRED DOLLARS OR GREATER FOR THE PURPOSE OF ENABLING THE CONSUMER TO START OR OPERATE A BUSINESS, WHICH SALE OR LEASE IS NOT LIMITED TO SALES INITIATED OR MADE BY THE TELEPHONE.

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

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

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

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

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

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

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

(c) DOES NOT INCLUDE:

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

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

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

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

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

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

~~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.

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

(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.

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

~~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 44-1272, Arizona Revised Statutes, is amended to read:

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

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

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

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

1. The true legal name of the seller.

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

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

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

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

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

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

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

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

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

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

11. Whether a principal or manager:

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

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

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

12. A copy of any:

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

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

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

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

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

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

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

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

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

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

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

1. A description of the premium.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44-1273. <u>Limited exemptions</u>

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

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

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

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

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

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

(b) A prize promotion or premium.

(c) A recovery service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The true legal name of the seller.

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

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

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

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

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

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

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

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

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

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

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

44-1276. <u>Required disclosures; payment for goods; identification of seller or solicitor; cancellation of telephone solicitation or business opportunity sale; notice of right to cancel</u>

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

1. The complete street address of the physical location from which the seller or solicitor 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.

3. The solicitor's true legal name.

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

B. 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.

C. 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. No telephone solicitation sale OR SALE OF A BUSINESS OPPORTUNITY OR MERCHANDISE RELATED TO A BUSINESS OPPORTUNITY 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.

E. 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 OR SALE OF A BUSINESS OPPORTUNITY OR MERCHANDISE RELATED TO A BUSINESS OPPORTUNITY.

F. 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.

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

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

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

44-1276.01. Business opportunities; disclosure to consumer

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

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

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

DISCLOSURES REQUIRED BY ARIZONA LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44-1276.02. Business opportunity contracts in writing; required information

A. A BUSINESS OPPORTUNITY CONTRACT OR AGREEMENT SHALL BE IN WRITING AND SHALL BE GIVEN TO THE CONSUMER WITH THE DISCLOSURE DOCUMENT REQUIRED UNDER SECTION 44-1276.01.

B. A BUSINESS OPPORTUNITY CONTRACT OR AGREEMENT SHALL INCLUDE THE FOLLOWING:

1. THE TERMS AND CONDITIONS OF PAYMENT.

2. A FULL AND DETAILED DESCRIPTION OF THE ACTS OR SERVICES THAT THE SELLER UNDERTAKES TO PERFORM FOR THE CONSUMER.

3. THE SELLER'S PRINCIPAL BUSINESS ADDRESS AND THE NAME AND ADDRESS OF ITS AGENT IN THIS STATE THAT IS AUTHORIZED TO RECEIVE SERVICE OF PROCESS.

4. THE APPROXIMATE DELIVERY DATE OF ANY GOODS THAT THE SELLER IS TO DELIVER TO THE CONSUMER AND AN APPROXIMATE TIMETABLE FOR PERFORMANCE OF SERVICES NECESSARY TO BEGIN SUBSTANTIAL OPERATION OF THE BUSINESS.

44-1276.03. Business opportunity contract cancellation

A CONSUMER MAY CANCEL A BUSINESS OPPORTUNITY CONTRACT OR AGREEMENT WITH A SELLER FOR ANY REASON AT ANY TIME WITHIN TEN BUSINESS DAYS AFTER THE DATE THAT THE CONSUMER SIGNS THE CONTRACT OR AGREEMENT OR THE DATE THAT THE SELLER NOTIFIES THE CONSUMER IN WRITING THAT THE CONTRACT OR AGREEMENT IS ACCEPTED BY THE SELLER, WHICHEVER IS LATER.

Sec. 6. Section 44-1279, Arizona Revised Statutes, is amended to read:

44-1279. Civil remedies

A consumer may rescind a sale by an unregistered seller at any time. The consumer may recover any PURCHASE MONIES PAID TO THE UNREGISTERED SELLER, financial damages caused by the unregistered seller and reasonable attorney fees and costs.

Sec. 7. Section 44-1281, Arizona Revised Statutes, is amended to read:

44-1281. Duties of secretary of state

The secretary of state shall:

1. Prescribe and publish the forms and adopt the rules necessary to carry out this article.

2. Refer to the attorney general or county attorney for investigation any matter ~~which~~ THAT the secretary of state has reason to believe constitutes a violation of this article.

3. Preserve for five years from the date of filing all information required to be filed pursuant to this article, after which the information shall be destroyed. This information is public information and is open to public inspection.

4. WITH REFERRAL, PROVIDE THE ATTORNEY GENERAL WITH A COMPLETE COPY OF ALL REGISTRATION STATEMENTS AND ATTACHMENTS, INCLUDING RENEWALS AND SUPPLEMENTAL STATEMENTS, THAT ARE FILED PURSUANT TO SECTION 44-1272 BY A SELLER OF BUSINESS OPPORTUNITIES OR MERCHANDISE RELATED TO BUSINESS OPPORTUNITIES.

APPROVED BY THE GOVERNOR APRIL 4, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.

Passed the House March 5, 2012

by the following vote: 37 Ayes,

21 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 28, 2012

by the following vote: 17 Ayes,

13 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____ day of

_____

at _____ o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2825

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 2, 2012,

by the following vote: 40 Ayes,

20 Nays, 0 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2012,

at 3:20 o'clock P M.

Secretary to the Governor

Approved this 4th day of

April, 2012,

at 6:56 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 5th day of April, 2012,

at 8:11 o'clock a M.

Secretary of State

H.B. 2825