

1 AN ACT concerning telephone solicitation.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the No
5 Telemarketing Sales Calls Statewide Registry Act.

6 Section 5. Definitions. As used in this Act:

7 "Commission" means the Illinois Commerce Commission.

8 "Customer" means any natural person who is a resident of
9 this State and who is or may be required to pay for or to
10 exchange consideration for goods and services offered through
11 telemarketing.

12 "Doing business in this State" means conducting
13 telephonic sales calls:

14 (i) from a location in this State; or

15 (ii) from a location outside of this State to
16 customers residing in this State.

17 "Established business relationship" means the existence
18 of an oral or written arrangement, agreement, contract, or
19 other such legal state of affairs between a telemarketer and
20 an existing customer where both parties have a course of
21 conduct or established pattern of activity for commercial or
22 mercantile purposes and for the benefit or profit of both
23 parties. A pattern of activity does not necessarily mean
24 multiple previous contacts. The established business
25 relationship must exist between the existing customer and the
26 telemarketer directly, and does not extend to any related
27 business entity or other business organization of the
28 telemarketer or related to the telemarketer or the
29 telemarketer's agent including but not limited to a parent
30 corporation, subsidiary partnership, company or other
31 corporation or affiliate.

1 "Existing customer" means an individual who has either:

2 (1) entered into a transaction, agreement,
3 contract, or other such legal state of affairs between a
4 telemarketer and a customer where the payment or exchange
5 of consideration for any goods or services has taken
6 place within the preceding 18 months, or has been
7 previously arranged to take place at a future time; or

8 (2) opened or maintained a credit card account or
9 other such revolving credit or debit account or discount
10 program offered by the telemarketer and has not requested
11 the telemarketer to close such account or terminate such
12 program.

13 "Goods and services" means any goods and services, and
14 includes any real property or any tangible personal property
15 or services of any kind.

16 "Person" means any natural person, corporation, business
17 trust, estate, trust, partnership, limited partnership,
18 limited liability partnership, limited liability company,
19 association, or other business entity and its affiliates or
20 subsidiaries.

21 "Telemarketer" means any person who, for financial profit
22 or commercial purposes in connection with telemarketing,
23 makes telemarketing sales calls to a customer when the
24 customer is in this State or any person who directly controls
25 or supervises the conduct of a telemarketer. As used in this
26 Act, "commercial purposes" means the sale or offer for sale
27 of goods or services. Telemarketer does not mean an entity
28 organized under Section 501 (c)(3) of the United States
29 Internal Revenue Code, while the entity is engaged in
30 fundraising to support the charitable purpose for which the
31 entity was established.

32 "Telemarketing" means any plan, program, or campaign that
33 is conducted to induce payment or the exchange of any other
34 consideration for any goods or services by use of one or more

1 telephones and that involves more than one telephone call by
 2 a telemarketer in which the customer is located within this
 3 State at the time of the call. "Telemarketing" does not
 4 include the solicitation of sales through any media other
 5 than by telephone calls.

6 "Telemarketing sales call" means a telephone call made by
 7 a telemarketer to a customer for the purpose of inducing
 8 payment or the exchange of any other consideration for any
 9 goods or services.

10 "Unsolicited telemarketing sales call" means any
 11 telemarketing sales call other than a call made:

12 (i) in response to an express written or verbal
 13 request of the customer called; or

14 (ii) in connection with an established business
 15 relationship, which has not been terminated in writing by
 16 either party and which is related to the nature of the
 17 established business relationship; or

18 (iii) to an existing customer, unless the customer
 19 has stated to the telemarketer that the customer no
 20 longer wishes to receive the telemarketing sales calls of
 21 the telemarketer or unless the nature of the call is
 22 unrelated to the established business relationship with
 23 the existing customer; or

24 (iv) by or on behalf of a person licensed by the
 25 State of Illinois to carry out a trade, occupation or
 26 profession in which the sale of goods or services is not
 27 completed, and payment or authorization of payment is not
 28 required, until after a face-to-face sales presentation
 29 by the telemarketer or a meeting between the telemarketer
 30 and customer.

31 Section 10. Registry; establishment and maintenance. The
 32 Commission shall establish and maintain a no telemarketing
 33 sales calls statewide registry which shall contain a list of
 34 the telephone numbers of customers who do not wish to receive

1 unsolicited telemarketing sales calls. The Commission may
2 contract with a private vendor to establish and maintain the
3 registry if: (i) the private vendor has maintained national
4 no telemarketing sales calls registries for more than 2
5 years; and (ii) the contract requires the vendor to provide
6 the no telemarketing sales calls registry in a printed hard
7 copy format, electronically, and in any other format
8 prescribed by the Commission.

9 Section 12. Complaints. The Commission shall receive
10 telephone solicitation complaints from customers who have
11 registered with the Commission to object to such calls.
12 Complaints shall be taken by any means deemed appropriate by
13 the Commission. Complaints against telemarketers that are
14 licensed, certificated, or permitted by a State or federal
15 agency shall be forwarded for investigation by the Commission
16 to the appropriate agency provided that the respective agency
17 has the power to investigate such matters. All other
18 complaints shall be investigated by the Commission. The
19 standards for such referrals and investigations shall be
20 determined by rules established by the Commission.

21 Section 15. Prohibited calls. Beginning January 1, 2002,
22 no telemarketer may make or cause to be made any unsolicited
23 telemarketing sales call to any customer more than 45 days
24 after the customer's telephone number or numbers first appear
25 on the no telemarketing sales calls statewide registry made
26 available by the Commission under this Act.

27 Section 20. Registry; inclusion; removal; updates.

28 (a) The Commission shall provide notice to customers of
29 the establishment of the no telemarketing sales calls
30 statewide registry. Any customer who wishes to be included in
31 the registry shall notify the Commission by calling a

1 toll-free number provided by the Commission, or in any other
2 manner and at times prescribed by the Commission which may
3 include notification via the Internet. A customer in the
4 registry shall be deleted from the registry upon the
5 customer's written request. The Commission shall update the
6 registry not less than quarterly and shall make the registry
7 available to telemarketers in a printed hard copy format,
8 electronically, and in any other format prescribed by the
9 Commission for a fee as the Commission shall prescribe
10 pursuant to subsection (b).

11 (b) The fee for telemarketers obtaining the registry
12 shall be determined by rules established by the Commission,
13 not to exceed \$200 annually. All copies requested in paper
14 form shall be assessed a per page fee to be determined by
15 rules established by the Commission.

16 (c) If the Federal Communications Commission or Federal
17 Trade Commission establishes a single national database of
18 telephone numbers of subscribers who object to receiving
19 telephone solicitations under Title 47 U.S.C., Section
20 227(c)(3), Illinois shall discontinue the database
21 established under this Act.

22 (d) Information contained in the registry established
23 under this Section shall be confidential and afforded
24 reasonable privacy protection except as necessary for the
25 purpose of compliance with Sections 15 and 22 and this
26 Section or in a proceeding or action under Section 30. The
27 information is not a public record under the Freedom of
28 Information Act.

29 Section 22. Enrollment.

30 (a) There shall be no cost to the customer for joining
31 the registry.

32 (b) Enrollment in the registry shall be effective from
33 the start of the quarter following the date of enrollment for

1 a term of 5 years or until the customer disconnects or
2 changes his or her telephone number, whichever occurs first.
3 The customer shall be responsible for notifying the
4 Commission of any changes in his or her telephone number. The
5 Commission shall use its best efforts to notify enrolled
6 customers prior to the end of the 5-year enrollment term of
7 the option to re-enroll. Those customers who do not
8 re-enroll prior to the end of the 5-year term shall be
9 removed from the registry.

10 Section 23. Public Notification. The Commission shall
11 work with local exchange telecommunications companies to
12 disseminate to their customers information about the
13 availability of and instructions about how to request
14 educational literature from the Commission. The Commission
15 may enter into agreements with those companies for the
16 purpose of dissemination of the educational literature.
17 Telecommunications companies shall be required to disseminate
18 the respective literature at least once per year in the form
19 of both a bill message and a notice in the information
20 section of all telephone directories circulated to customers.
21 The Commission shall include on its Internet web site
22 information that informs customers of their rights to be
23 placed on the registry and the various methods, including
24 notice to the Commission, of placing their names on this
25 registry. The Commission shall have this literature developed
26 for dissemination to the public no later than October 1,
27 2001.

28 Section 25. Rules. The Commission shall adopt rules to
29 administer this Act consistent with the provisions of this
30 Act.

31 Section 30. Violations; relief.

1 (a) If it is determined after a hearing that a
2 telemarketer has violated one or more provisions of this
3 Act, the Commission may assess a penalty not to exceed
4 \$2,500 for each violation.

5 (b) A proceeding conducted under subsection (a) is
6 subject to the Illinois Administrative Procedure Act.

7 (c) Nothing in this Section may be construed to restrict
8 any right which any person may have under any other law or at
9 common law.

10 (d) No action or proceeding may be brought under this
11 Section:

12 (1) More than one year after the person bringing
13 the action knew or should have known of the occurrence of
14 the alleged violation; or

15 (2) More than one year after the termination of any
16 proceeding or action arising out of the same violation or
17 violations by the State of Illinois, whichever is later.

18 (e) The remedies, duties, prohibition, and penalties of
19 this Act are not exclusive and are in addition to all other
20 causes of action, remedies, and penalties provided by law.

21 (f) There is created in the State treasury a special
22 fund to be known as the No Telemarketing Sales Calls
23 Statewide Registry Fund. All fees and fines collected in the
24 administration and enforcement of this Act shall be deposited
25 into the Fund. Moneys in the Fund shall, subject to
26 appropriation, be used by the Commission for implementation,
27 administration, and enforcement of this Act.

28 Section 35. Exemption. A telemarketer may not be held
29 liable for violating this Act if:

30 (a) the telemarketer has obtained copies of the no
31 telemarketing sales calls statewide registry and each updated
32 registry and has established and implemented written policies
33 and procedures related to the requirements of this Act;

1 (b) the telemarketer has trained his or her personnel in
2 the requirements of this Act;

3 (c) the telemarketer maintains records demonstrating
4 compliance with subsections (a) and (b) of this Section and
5 the requirements of this Act; and

6 (d) any subsequent unsolicited telemarketing sales call
7 is the result of error.

8 Section 105. The State Finance Act is amended by adding
9 Section 5.545 as follows:

10 (30 ILCS 105/5.545 new)

11 Sec. 5.545. No Telemarketing Sales Calls Statewide
12 Registry Fund.