



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4432

Introduced 02/03/04, by Elaine Nekritz

SYNOPSIS AS INTRODUCED:

815 ILCS 402/5

Amends the Restricted Call Registry Act. Makes changes in the definitions of "established business relationship" and "telephone solicitation". Deletes the definition of "existing customer". Effective immediately.

LRB093 16202 AMC 41835 b

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 5. The Restricted Call Registry Act is amended by
5 changing Section 5 as follows:

6 (815 ILCS 402/5)

7 Sec. 5. Definitions. As used in this Act:

8 (a) "Residential subscriber" means a person or spouse who
9 has subscribed to either residential telephone service from a
10 local exchange company or public mobile services, as defined by
11 Section 13-214 of the Public Utilities Act, a guardian of the
12 person or the person's spouse, or an individual who has power
13 of attorney from or an authorized agent of the person or the
14 person's spouse.

15 (b) "Established business relationship" means a
16 relationship between a person or entity and a residential
17 subscriber:

18 (1) based on the residential subscriber's purchase,
19 rental, or lease of the seller's goods or services or a
20 financial transaction between a person or entity and a
21 residential subscriber, within the 18 months immediately
22 preceding the date of a telemarketing call;

23 (2) who has opened or maintained a deposit account,
24 debit account, credit card account, or other credit or
25 discount program or account offered by or in conjunction
26 with the person or entity for which the residential
27 subscriber has not requested the person or entity to close
28 such account or terminate such program; or

29 (3) when there is an oral or written transaction,
30 agreement, contract, or other legal state of affairs
31 involving the person or entity and the residential
32 subscriber under which both parties have a course of

1 conduct or established pattern of activity for commercial
2 or mercantile purposes and for the benefit or profit of
3 both parties. A pattern of activity does not necessarily
4 mean multiple previous contacts. ~~the existence of an oral~~
5 ~~or written transaction, agreement, contract, or other~~
6 ~~legal state of affairs involving a person or entity and an~~
7 ~~existing customer under which both parties have a course of~~
8 ~~conduct or established pattern of activity for commercial~~
9 ~~or mercantile purposes and for the benefit or profit of~~
10 ~~both parties. A pattern of activity does not necessarily~~
11 ~~mean multiple previous contacts.~~

12 The established business relationship must exist between the
13 residential subscriber ~~existing customer~~ and the person or
14 entity directly, and does not extend to any other person or
15 entity related to the person or entity that has the established
16 business relationship, including, but not limited to, a parent,
17 subsidiary, affiliate, joint venture, or partnership of the
18 business entity that has the established business
19 relationship. An agent of a person or entity that has an
20 established business relationship with a residential
21 subscriber shall be considered to have an established business
22 relationship with the residential subscriber only within the
23 scope and to the extent of that agency relationship. ~~related~~
24 ~~business entity or other business organization of the person or~~
25 ~~entity or related to the person or entity or the person or~~
26 ~~entity's agent including but not limited to a parent~~
27 ~~corporation, subsidiary partnership, company or other~~
28 ~~corporation or affiliate.~~

29 (c) (Blank) ~~"Existing customer"~~ means an individual who has
30 ~~either:~~

31 ~~(1) entered into a transaction, agreement, contract,~~
32 ~~or other legal state of affairs between a person or entity~~
33 ~~and a residential subscriber under which the payment or~~
34 ~~exchange of consideration for any goods or services has~~
35 ~~taken place within the preceding 18 months or has been~~
36 ~~arranged to take place at a future time; or~~

1 ~~(2) opened or maintained a debit account, credit card~~
2 ~~account, or other credit or discount program offered by or~~
3 ~~in conjunction with the person or entity and has not~~
4 ~~requested the person or entity to close such account or~~
5 ~~terminate such program.~~

6 (d) "Registry" means the Restricted Call Registry
7 established under this Act.

8 (e) "Telephone solicitation" means any voice communication
9 over a telephone line from a live operator, through the use of
10 an autodialer or autodialer system, as defined in Section 5 of
11 the Automatic Telephone Dialers Act, or by other means for the
12 purpose of encouraging the purchase or rental of, or investment
13 in, property, goods, or services, or for the purposes of
14 soliciting charitable contributions but does not include
15 communications:

16 (1) to any residential subscriber with that
17 subscriber's prior express invitation or permission when a
18 voluntary 2-way communication between a person or entity
19 and a residential subscriber has occurred with or without
20 an exchange of consideration. A telephone solicitation is
21 presumed not to be made at the express request of a
22 subscriber if one of the following occurs, as applicable:

23 (A) The telephone solicitation is made 30 business
24 days or more after the last date on which the
25 subscriber contacted a business with the purpose of
26 inquiring about the potential purchase of goods or
27 services.

28 (B) The telephone solicitation is made 30 business
29 days or more after the last date on which the
30 subscriber consented to be contacted.

31 (C) The telephone solicitation is made 90 days or
32 more ~~30 business days~~ after a product or service
33 becomes available where the subscriber has made a
34 request to the business for that product or service
35 that is not then available, and requests a call when
36 the product or service becomes available, and the

1 telephone solicitation is made based on that request;

2 (2) by or on behalf of any person or entity with whom a
3 residential subscriber has an established business
4 relationship that ~~which~~ has not been terminated in writing
5 by either party, unless the residential subscriber has
6 stated to the person or entity or the person or entity's
7 agent that he or she no longer wishes to receive
8 telemarketing calls from that person or entity ~~and which is~~
9 ~~related to the nature of the established business~~
10 ~~relationship;~~

11 (3) (blank) ~~by or on behalf of any person or entity~~
12 ~~with whom a residential subscriber is an existing customer,~~
13 ~~unless the customer has stated to the person or entity or~~
14 ~~the person or entity's agent that he or she no longer~~
15 ~~wishes to receive the telemarketing sales calls of the~~
16 ~~person or entity, or unless the nature of the call is~~
17 ~~unrelated to the established business relationship with~~
18 ~~the existing customer;~~

19 (4) by or on behalf of an organization that is exempt
20 from federal income taxation under Section 501(c) of the
21 Internal Revenue Code, but only if the person making the
22 telephone solicitation immediately discloses all of the
23 following information upon making contact with the
24 consumer:

25 (A) the caller's true first and last name; and

26 (B) the name, address, and telephone number of the
27 organization;

28 (5) by or on behalf of an individual licensed under the
29 Real Estate License Act of 2000 or as an insurance producer
30 under the Illinois Insurance Code who either:

31 (A) is setting or attempting to set a face to face
32 appointment for actions relating to that individual's
33 real estate or insurance business; or

34 (B) is encouraging or attempting to encourage the
35 purchase or rental of, or investment in, property,
36 goods, or services, which cannot be completed, and for

1 which payment or authorization of payment is not
2 required, until after a written or electronic
3 agreement is signed by the residential subscriber; or

4 (6) until July 1, 2005, by or on behalf of any entity
5 over which the Federal Communications Commission or the
6 Illinois Commerce Commission has regulatory authority to
7 the extent that, subject to that authority, the entity is
8 required to maintain a license, permit, or certificate to
9 sell or provide telecommunications service, as defined in
10 Section 13-203 of the Public Utilities Act, while the
11 entity is engaged in telephone solicitation for
12 inter-exchange telecommunications service, as defined in
13 Section 13-205 of the Public Utilities Act, or local
14 exchange telecommunications service, as defined in Section
15 13-204 of the Public Utilities Act or to the extent,
16 subject to the regulatory authority of the Federal
17 Communications Commission, the entity is defined by Title
18 47 Section 522(5) of the United States Code, or providers
19 of information services as defined by Title 47 Section
20 153(20) of the United States Code.

21 (Source: P.A. 92-795, eff. 8-9-02.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.