

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  
5 No-Call Database Act.

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

7 (a) "Residential subscriber" means a person or spouse  
8 who has subscribed to residential telephone service from a  
9 local exchange company, a guardian of the person, or an  
10 individual who has power of attorney from or an authorized  
11 agent of the person;

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

27 (c) "Existing customer" means an individual who has  
28 either:

29 (1) entered into a transaction, agreement,  
30 contract, or other such legal state of affairs between a  
31 person or entity and a residential subscriber where the

1 payment or exchange of consideration for any goods or  
2 services has taken place within the preceding 18 months,  
3 or has been previously arranged to take place at a future  
4 time; or

5 (2) opened or maintained a debit account, a credit  
6 card account or other such revolving credit or discount  
7 program offered by the person or entity and has not  
8 requested the person or entity to close such account or  
9 terminate such program;

10 (d) "Telephone solicitation" means any voice  
11 communication over a telephone line from a live operator  
12 through the use of ADAD equipment or by other means for the  
13 purpose of encouraging the purchase or rental of, or  
14 investment in property, goods, or services, but does not  
15 include communications:

16 (1) To any residential subscriber with that  
17 subscriber's prior express invitation or permission when  
18 a voluntary 2-way communication between a person or  
19 entity and the residential subscriber has occurred with  
20 or without an exchange of consideration;

21 (2) By or on behalf of any person or entity with  
22 whom a residential subscriber has an established business  
23 relationship, which has not been terminated by either  
24 party in writing;

25 (3) By or on behalf of any person or entity with  
26 whom a residential subscriber is an existing customer,  
27 unless the customer has stated to the person or entity or  
28 the person or entity's agent that he or she no longer  
29 wishes to receive the telemarketing sales calls of such  
30 person or entity;

31 (4) By or on behalf of an entity organized under  
32 Section 501(c)(3) of the United States Internal Revenue  
33 Code, while the entity is engaged in fundraising to  
34 support the charitable purpose for which the entity was

1 established;

2 (5) By or on behalf of any entity over which a  
3 federal or State agency has regulatory authority to the  
4 extent that subject to that authority, the entity is  
5 required to maintain a license, permit, or certificate to  
6 sell or provide telecommunications services while the  
7 entity is engaged in telephone solicitation for long  
8 distance telecommunications services and/or local  
9 telecommunications services until such time as all local  
10 exchange telecommunications services are determined to be  
11 competitive in all areas of the State by the Illinois  
12 Commerce Commission; and

13 (6) By or on behalf of a person licensed by the  
14 State of Illinois to carry out a trade, occupation or  
15 profession, who either:

16 (A) is setting or attempting to set a face to  
17 face appointment for actions relating to that  
18 licensed trade, occupation or profession within the  
19 state, or

20 (B) Is encouraging or attempting to encourage  
21 the purchase or rental of, or investment in  
22 property, goods, or services, which cannot be  
23 completed, and payment or authorization of payment  
24 is not required, until after a written or electronic  
25 agreement is signed by the residential subscriber.

26 Section 10. Complaints. The Office of the Secretary of  
27 State shall receive telephone solicitation complaints from  
28 residential subscribers who have registered with that Office  
29 to object to such calls. Complaints shall be taken by any  
30 means deemed appropriate by the Secretary of State.  
31 Complaints against entities that are licensed, certificated,  
32 or permitted by a State or federal agency shall be forwarded  
33 for investigation by the Office of the Secretary of State to

1 the appropriate agency provided that the respective agency  
2 maintains investigative powers in such matters. All other  
3 complaints shall be investigated by the Office of the  
4 Secretary of State. The standards for such referrals and  
5 investigations shall be determined by rules established by  
6 the Office of the Secretary of State.

7 Section 15. Telephone solicitation. Beginning January 1,  
8 2003, no person or entity shall make or cause to be made any  
9 telephone solicitation to the telephone line of any  
10 residential subscriber in this State who has given notice to  
11 the Secretary of State, in accordance with rules adopted  
12 under this Act, of the subscriber's objection to receiving  
13 telephone solicitations.

14 Section 20. Database.

15 (a) The Secretary of State shall establish and provide  
16 for the operation of a database to compile a list of  
17 telephone numbers of residential subscribers who object to  
18 receiving telephone solicitations. The Secretary of State  
19 may enter into a contract with a third party for the  
20 operation of the database. The database shall be in  
21 operation no later than January 1, 2003.

22 (b) No later than July 1, 2002, the Secretary of State  
23 shall adopt rules consistent with this Act governing the  
24 establishment of a State no-call database the Secretary deems  
25 necessary and appropriate to fully implement this Act. The  
26 rules shall include, at a minimum, methods by which any  
27 person or entity desiring to make telephone solicitations  
28 will obtain access to the database as required to avoid  
29 calling the telephone numbers of residential subscribers  
30 included in the database.

31 (c) The fee for persons or entities obtaining the list  
32 shall be determined by rules established by the Office of the

1 Secretary of State, not to exceed \$200 annually. All copies  
2 requested in paper form shall be assessed a per page fee to  
3 be determined by rules established by the Office of the  
4 Secretary of State.

5 (d) The Secretary shall update the database and make  
6 information within the database available on a quarterly  
7 basis in a manner deemed appropriate by the Secretary, but at  
8 least electronically.

9 (e) Entities shall have 60-days from the quarterly  
10 update of the database to comply with Section 15 of this Act.

11 (f) If the Federal Communications Commission or Federal  
12 Trade Commission establishes a single national database of  
13 telephone numbers of subscribers who object to receiving  
14 telephone solicitations under Title 47 U.S.C., Section  
15 227(c)(3), Illinois shall discontinue the database  
16 established under this Act.

17 (g) Information contained in the database established  
18 under this Section shall be confidential and afforded  
19 reasonable privacy protection except as necessary for the  
20 purpose of compliance with Section 15, 25, and this Section  
21 or in a proceeding or action under Section 30. The  
22 information is not a public record under the Freedom of  
23 Information Act.

24 (h) The Secretary of State shall periodically obtain  
25 subscription listings of residential subscribers in this  
26 State who have arranged to be included in any national  
27 do-not-call list and add those names to the State do-not-call  
28 list.

29 Section 25. Enrollment.

30 (a) The Secretary of State shall establish any method  
31 deemed appropriate for residential subscribers to notify the  
32 Secretary of State that the residential subscriber wishes to  
33 be included in the database.

1 (b) There shall be no cost to the subscriber for joining  
2 the database.

3 (c) Any residential subscriber who wishes to be removed  
4 from the database may contact the Secretary of State in  
5 writing.

6 (d) Enrollment in the database shall be effective from  
7 the start of the quarter following the date of enrollment for  
8 a term of 5 years or until the residential subscriber  
9 disconnects or changes his or her telephone number, whichever  
10 occurs first. The residential subscriber shall be  
11 responsible for notifying the Secretary of State of any  
12 changes in his or her telephone number. The Office of the  
13 Secretary of State shall use its best efforts to notify  
14 enrolled consumers prior to the end of the 5-year enrollment  
15 term of the option to re-enroll. Those consumers who do not  
16 re-enroll prior to the end of the 5-year term shall be  
17 removed from the database.

18 Section 30. Relief.

19 (a) The Secretary of State may initiate administrative  
20 proceedings pursuant to rules promulgated under this Act  
21 relating to a knowing and willful violation of Section 15.  
22 If it is determined after hearing that any person has  
23 knowingly and willfully violated one or more provisions of  
24 this Section, the Secretary may assess a fine not to exceed  
25 \$2,500 for each violation. Any proceeding conducted pursuant  
26 to this Section shall be subject to the Illinois  
27 Administrative Procedure Act.

28 (b) It is a defense in any action or proceeding brought  
29 under this Section that the defendant has established and  
30 implemented, with due care, reasonable practices and  
31 procedures to effectively prevent telephone solicitations in  
32 violation of Section 15.

33 (c) No action or proceeding may be brought under this

1 Section:

2 (1) More than one year after the person bringing the  
3 action knew or should have known of the occurrence of the  
4 alleged violation; or

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

8 (d) The remedies, duties, prohibition, and penalties of  
9 this Act are not exclusive and are in addition to all other  
10 causes of action, remedies, and penalties provided by law.

11 (e) No provider of telephone caller identification  
12 service shall be held liable for violations of Section 15  
13 committed by other persons or entities.

14 (f) There is created in the State treasury a special fund  
15 to be known as the No-Call Database Fund. All fees and fines  
16 collected in the administration and enforcement of this Act  
17 shall be deposited into the Fund. Moneys in the Fund shall,  
18 subject to appropriation, be used by the Office of the  
19 Secretary of State for implementation, administration, and  
20 enforcement of this Act.

21 Section 35. Public Notification. The Secretary of State  
22 shall work with local exchange telecommunications companies  
23 to disseminate to their residential subscribers information  
24 about the availability of and instructions about how to  
25 request educational literature from the Secretary of State.  
26 The Secretary of State may enter into agreements with those  
27 companies for the purpose of dissemination of the educational  
28 literature. Telecommunications companies shall be required  
29 to disseminate the respective literature at least once per  
30 year in the form of both a bill message and a notice in the  
31 information section of all telephone directories circulated  
32 to residential subscribers. The Secretary of State shall  
33 include on his or her Internet web site information that

1 informs residential subscribers of their rights to be placed  
2 on a no-call list and the various methods, including notice  
3 to the Secretary of State, of placing their names on this  
4 no-call list. The Secretary of State shall have this  
5 literature developed for dissemination to the public no later  
6 than January 1, 2002.

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

9 (30 ILCS 105/5.545 new)

10 Sec. 5.545. No-Call Database Fund.

11 Section 999. Effective date. This Act takes effect upon  
12 becoming law.