

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 Restricted Call Registry Act.

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

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

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

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

31 (1) entered into a transaction, agreement,

1 contract, or other legal state of affairs between a
2 person or entity and a residential subscriber under which
3 the payment or exchange of consideration for any goods or
4 services has taken place within the preceding 18 months
5 or has been arranged to take place at a future time; or

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

11 (d) "Registry" means the Restricted Call Registry
12 established under this Act.

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

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

29 (A) The telephone solicitation is made 30
30 business days after the last date on which the
31 subscriber contacted a business with the purpose of
32 inquiring about the potential purchase of goods or
33 services.

34 (B) The telephone solicitation is made 30

1 business days after the last date on which the
2 subscriber consented to be contacted.

3 (C) The telephone solicitation is made 30
4 business days after a product or service becomes
5 available where the subscriber has made a request to
6 the business for that product or service that is not
7 then available, and requests a call when the product
8 or service becomes available;

9 (2) by or on behalf of any person or entity with
10 whom a residential subscriber has an established business
11 relationship which has not been terminated in writing by
12 either party and which is related to the nature and scope
13 of the established business relationship;

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

22 (4) by a volunteer or employee of a charitable
23 organization that is exempt from federal income taxation
24 under Section 501 of the Internal Revenue Code, but only
25 if the person making the telephone solicitation
26 immediately discloses all of the following information
27 upon making contact with the consumer:

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

29 (B) the name, address, and telephone number of
30 the charitable organization;

31 (5) by or on behalf of an individual business
32 person or a small business if the individual business
33 person or small business employs no more than 20 full or
34 part-time employees or independent contractors, the

1 individual business person or a principal of the small
2 business makes the telephone solicitation calls himself
3 or herself for the sale of goods or services offered by
4 that individual business person or small business, and
5 the telephone solicitation calls are made to subscribers
6 within a 50-mile radius of the location of the individual
7 business person or small business and the individual
8 business person or small business either:

9 (A) is setting or attempting to set a face to
10 face appointment for actions relating to that small
11 business; or

12 (B) is encouraging or attempting to encourage
13 the purchase or rental of, or investment in,
14 property, goods, or services, which cannot be
15 completed, and for which payment or authorization of
16 payment is not required, until after a written or
17 electronic agreement is signed by the residential
18 subscriber; or

19 (6) until July 1, 2005, by or on behalf of any
20 entity over which the Federal Communications Commission
21 or the Illinois Commerce Commission has regulatory
22 authority to the extent that, subject to that authority,
23 the entity is required to maintain a license, permit, or
24 certificate to sell or provide telecommunications
25 service, as defined in Section 13-203 of the Public
26 Utilities Act, while the entity is engaged in telephone
27 solicitation for inter-exchange telecommunications
28 service, as defined in Section 13-205 of the Public
29 Utilities Act, or local exchange telecommunications
30 service, as defined in Section 13-204 of the Public
31 Utilities Act.

32 Section 10. Prohibited calls.

33 (a) Beginning July 1, 2003, no person or entity may make

1 or cause to be made any telephone solicitation calls to any
2 residential subscriber more than 45 days after the
3 residential subscriber's telephone number or numbers first
4 appear on the Registry.

5 (b) For telephone solicitations permitted under Section
6 5(e), the caller must ask the residential subscriber if he or
7 she no longer wishes to receive telephone solicitation calls
8 from the person or entity. If the residential subscriber
9 states or otherwise indicates to the caller that he or she
10 does not wish to receive future telephone solicitations, the
11 caller shall follow the person or entity's procedures for
12 ensuring that the residential subscriber receives no further
13 telephone solicitations from that person or entity. If the
14 person or entity making the telephone solicitation calls the
15 residential subscriber thereafter, such person or entity
16 shall be subject to the penalties provided by Section 35 of
17 this Act.

18 Section 15. Complaints. The Illinois Commerce Commission
19 shall receive telephone solicitation complaints from
20 residential subscribers to object to such calls. Complaints
21 shall be taken by any means deemed appropriate by the
22 Illinois Commerce Commission.

23 Section 20. Registry; establishment and maintenance.

24 (a) The Illinois Commerce Commission shall establish and
25 provide for the operation of a Restricted Call Registry,
26 which shall contain a list of the telephone numbers of
27 residential subscribers who do not wish to receive telephone
28 solicitation calls. The Illinois Commerce Commission may
29 contract with a private vendor to establish and maintain the
30 Registry if the contract requires the vendor to provide the
31 Registry in a printed hard copy format, in an electronic
32 format, and in any other format prescribed by the Illinois

1 Commerce Commission. Any person or entity conducting
2 telephone solicitation calls as defined by Section 5(e) of
3 this Act within the State of Illinois shall purchase the
4 Restricted Call Registry and updates exclusively from the
5 Illinois Commerce Commission. Failure to do so prior to
6 conducting telephone solicitation calls is a violation
7 subject to the penalties provided for in Section 35 of this
8 Act.

9 (b) No later than January 1, 2003, the Illinois Commerce
10 Commission shall adopt rules consistent with this Act that
11 the Illinois Commerce Commission deems necessary and
12 appropriate to fully implement this Act. The rules shall
13 include, at a minimum, methods by which any person or entity
14 desiring to make telephone solicitation calls may obtain
15 access to the Registry to avoid calling the telephone numbers
16 of residential subscribers included in the Registry.

17 (c) The fee for obtaining the Registry and updates shall
18 be set forth in rules adopted by the Illinois Commerce
19 Commission. The fee may not exceed \$1,000 annually. All
20 copies requested in a printed hard copy format shall be
21 assessed a per page fee to be determined by rules adopted by
22 the Illinois Commerce Commission.

23 (d) The Illinois Commerce Commission shall update the
24 Registry and make information in the Registry available on a
25 quarterly basis in an electronic format and, if deemed
26 appropriate by the Illinois Commerce Commission, in one or
27 more other formats.

28 (e) If the Federal Communications Commission or Federal
29 Trade Commission establishes a single national database of
30 telephone numbers of subscribers who object to receiving
31 telephone solicitations under Title 47, Section 227(c)(3) of
32 the United States Code, this State shall discontinue the
33 Registry.

34 (f) Information in the Registry is confidential and

1 shall be afforded reasonable privacy protection except as
2 necessary for compliance with Sections 10 and 25 and this
3 Section or in a proceeding or action under Section 35 or 40.
4 The information is not a public record under the Freedom of
5 Information Act.

6 (g) The Illinois Commerce Commission shall periodically
7 obtain subscription listings of residential subscribers in
8 this State who have arranged to be included in any national
9 do-not-call list and add those names to the Registry.

10 (h) A person or entity that obtains the Registry shall
11 not use the Registry for any purpose other than to comply
12 with this Act. These unlawful purposes include, but are not
13 limited to, causing a subscriber to participate in and be
14 included in the Registry without the subscriber's knowledge
15 or consent, selling or leasing the Registry to a person other
16 than a telephone solicitor, selling or leasing by a telephone
17 solicitor of the Registry, and a telephone solicitor, either
18 directly or indirectly, persuading a subscriber with whom it
19 has an established business relationship to place his or her
20 telephone number in the Registry, if the solicitation has the
21 effect of preventing competitors from contacting that
22 solicitor's customers.

23 (i) No person or entity that sells, leases, exchanges,
24 or rents telephone solicitation lists, except for directory
25 assistance and telephone directories sold by telephone
26 companies or their affiliates, shall include in those lists
27 those telephone numbers that appear in the current Registry.

28 Section 25. Enrollment.

29 (a) The Illinois Commerce Commission shall provide
30 notice to residential subscribers of the establishment of the
31 Registry.

32 (b) The Illinois Commerce Commission shall establish any
33 method deemed appropriate for a residential subscriber to

1 notify the Illinois Commerce Commission that the residential
2 subscriber wishes to be included in the Registry.

3 (c) The Commission may, by rule, set an initial fee
4 which shall not exceed \$5 per residential customer for
5 inclusion on the Restricted Call Registry. The Commission
6 shall review the revenues and expenditures of the Restricted
7 Call Registry on a biennial basis and shall, by rule, reduce
8 the fee accordingly if revenues exceed expenditures. The
9 Commission may adopt rules and procedures governing the
10 acceptance of payment by credit card and may enter into such
11 agreements as necessary to accept payment by credit card.

12 (d) A residential subscriber in the Registry shall be
13 deleted from the Registry upon the residential subscriber's
14 written request.

15 (e) Enrollment in the Registry is effective from the
16 start of the quarter following the date of enrollment until
17 the residential subscriber disconnects or changes his or her
18 telephone number or submits a written request to be deleted
19 from the Registry, whichever occurs first. The residential
20 subscriber is responsible for notifying the Illinois Commerce
21 Commission of any changes in his or her telephone number.

22 Section 30. Public notification. The Illinois Commerce
23 Commission shall work with local exchange telecommunications
24 companies to disseminate to their customers information about
25 the availability of and instructions for requesting
26 educational literature from the Illinois Commerce Commission.
27 The Illinois Commerce Commission may enter into agreements
28 with those companies for the dissemination of the educational
29 literature. Telecommunications companies shall disseminate
30 the educational literature at least once per year in both a
31 message contained in customers' bills and a notice in the
32 information section of all telephone directories distributed
33 to customers and shall include on their website a link to the

1 ICC's web page for the Registry. The Illinois Commerce
2 Commission shall include, on its Internet web site,
3 information to customers regarding their right to be included
4 in the Registry and the various methods, including notice to
5 the Illinois Commerce Commission, of being included in the
6 Registry. The Illinois Commerce Commission shall have this
7 literature developed for dissemination to the public no later
8 than March 1, 2003.

9 Section 35. Violation; relief.

10 (a) The Illinois Commerce Commission may initiate
11 administrative proceedings in accordance with rules adopted
12 under this Act relating to a knowing and willful violation of
13 Section 10.

14 (b) If it is determined after a hearing that a person
15 has knowingly and willfully violated one or more provisions
16 of this Section, the Illinois Commerce Commission may assess
17 a fine not to exceed \$2,500 for each violation. Each
18 individual violation of Section 10 of this Act shall be a
19 separate and distinct offense under this Section. In
20 imposing a penalty under this Section, the Commission shall,
21 at a minimum, consider the following factors:

22 (1) whether the offense was knowing or willful;

23 (2) whether the entity committing the offense has a
24 prior history of non-compliance with this Act;

25 (3) the offender's relative ability to pay a
26 penalty;

27 (4) whether the offender has or has not cooperated
28 with the Commission in pursuing the investigation; and

29 (5) such other special, mitigating or aggravating
30 circumstances as the Commission may find to exist.

31 (c) Any proceeding conducted under this Section is
32 subject to the Illinois Administrative Procedure Act.

33 (d) Nothing in this Section may be construed to restrict

1 any right that any person may have under any other law or at
2 common law.

3 (e) No action or proceeding may be brought under this
4 Section:

5 (1) more than one year after the person bringing
6 the action knew or should have known of the occurrence of
7 the alleged violation; or

8 (2) more than one year after the termination of any
9 proceeding or action arising out of the same violation or
10 violations by the State of Illinois, whichever is later.

11 (f) The remedies, duties, prohibitions, and penalties in
12 this Act are not exclusive and are in addition to all other
13 causes of action, remedies, and penalties provided by law.

14 (g) There is created in the State Treasury a special
15 fund to be known as the Restricted Call Registry Fund. All
16 fees and fines collected in the administration and
17 enforcement of this Act shall be deposited into the Fund.
18 Moneys in the Fund shall, subject to appropriation, be used
19 by the Illinois Commerce Commission for implementation,
20 administration, and enforcement of this Act.

21 Section 40. Exemption. A person or entity may not be
22 held liable for violating this Act if:

23 (1) the person or entity has obtained copies of the
24 Registry and each updated Registry from the Illinois
25 Commerce Commission and has established and implemented
26 written policies and procedures related to the
27 requirements of this Act;

28 (2) the person or entity has trained its personnel
29 in the requirements of this Act;

30 (3) the person or entity maintains records
31 demonstrating compliance with subdivisions (1) and (2) of
32 this Section and the requirements of this Act; and

33 (4) any subsequent telephone solicitation is the

1 result of unintentional error.

2 Section 90. The State Finance Act is amended by adding
3 Section 5.570 as follows:

4 (30 ILCS 105/5.570 new)

5 Sec. 5.570. The Restricted Call Registry Fund.

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.