HOUSE BILL 2457

AN ACT

AMENDING SECTIONS 13-3722, 44-1273 AND 44-6551, ARIZONA REVISED STATUTES; REPEALING SECTIONS 44-6552, 44-6553, 44-6554, 44-6555, 44-6556, 44-6557, 44-6558, 44-6559 AND 44-6560, ARIZONA REVISED STATUTES; AMENDING SECTION 44-6561, ARIZONA REVISED STATUTES; RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3722, Arizona Revised Statutes, is amended to read:

13-3722. Solicitations for American veterans' organizations; approval; violation; classification

A. It is unlawful for a person to solicit money or other support in the name of American veterans unless the veterans' organization for which the person is soliciting money or other support is registered FILES A REGISTRATION STATEMENT with the secretary of state pursuant to section 44-6552 in a format prescribed by the secretary of state.

B. A person who violates this section is guilty of a class 3 misdemeanor.

Sec. 2. Section 44-1273, Arizona Revised Statutes, is amended to read:

44-1273. Limited exemptions

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, either a:

(a) CHARITABLE ORGANIZATION AS DEFINED IN SECTION 44-6551, THIS STATE OR ANY COUNTY OR MUNICIPALITY OF THIS STATE OR ITS AGENCIES.

(b) POLITICAL PARTY, CANDIDATE FOR FEDERAL, STATE OR LOCAL OFFICE OR CAMPAIGN COMMITTEE REQUIRED TO FILE FINANCIAL INFORMATION WITH FEDERAL, STATE OR LOCAL ELECTION AGENCIES.

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 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 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. EITHER A:

(a) CHARITABLE ORGANIZATION AS DEFINED IN SECTION 44-6551, THIS STATE OR ANY COUNTY OR MUNICIPALITY OF THIS STATE OR ITS AGENCIES.

(b) POLITICAL PARTY, CANDIDATE FOR FEDERAL, STATE OR LOCAL OFFICE OR CAMPAIGN COMMITTEE REQUIRED TO FILE FINANCIAL INFORMATION WITH FEDERAL, STATE OR LOCAL ELECTION AGENCIES.

Sec. 3. Section 44-6551, Arizona Revised Statutes, is amended to read:

44-6551. Definitions

In this article, unless the context otherwise requires:

1. "Charitable organization" means either of the following:

(a) A person determined by the internal revenue service to be a tax exempt organization pursuant to section 501(c)(3) of the internal revenue code.

(b) A person who is or who is held out to be established for a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary purpose or a person who in any manner employs a charitable appeal as the basis of a solicitation.

2. "Charitable purpose" means either of the following:

(a) A purpose described in section 501(c)(3) of the internal revenue code.

(b) A benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective.

3. 2. "Contracted fund raiser" means a person who for profit either solicits directly or employs, procures or engages another person to solicit for a charitable organization. A contracted fund raiser does not include a lawyer, investment counselor or banker who advises a person to make a charitable contribution, a bona fide salaried officer, employee or volunteer of a charitable organization or a person the contracted fund raiser employs, procures or engages to solicit.

4. "Contribution" means the grant, promise or pledge of any money, credit, property, financial assistance or other thing of any kind or value in response to a solicitation. Contribution does not include bona fide fees, dues or assessments paid for membership in the charitable organization.
3. "Independent solicitor" means a person who for profit engages
to solicit on behalf of a charitable organization or on behalf of a
contracted fund raiser.

4. "Solicit" and "solicitation" means a request of any kind for a
contribution or a request for the purchase of goods, tickets or services for
a charitable purpose.

Sec. 4. Repeal
Sections 44-6552, 44-6553, 44-6554, 44-6555, 44-6556, 44-6557, 44-6558,
44-6559 and 44-6560, Arizona Revised Statutes, are repealed.

Sec. 5. Section 44-6561, Arizona Revised Statutes, is amended to read:
44-6561. Unlawful acts or practices; violation; classification;
civil penalty
A. The following acts and practices are unlawful as applied to the
planning, conduct or execution of a solicitation and constitute unlawful
practices under section 44-1522 that the attorney general may investigate and
for which the attorney general may take appropriate action as prescribed by
chapter 10, article 7 of this title:
1. Knowingly utilizing USING an emblem, device or printed matter
belonging to or associated with a charitable organization without first being
authorized in writing to do so by the charitable organization.
2. Knowingly utilizing USING a name, symbol or statement so closely
related or similar to that used by another charitable organization for the
purpose of misleading a solicited person.
3. Knowingly making a misrepresentation to a person that the person on
whose behalf a solicitation is being conducted is a charitable organization.
4. Knowingly making a representation to a person that another person
sponsors, endorses or approves the solicitation if the other person has not
given consent in writing to the use of that person's name for these purposes.
5. Knowingly representing to a person that the registration
constitutes an endorsement or approval by this state.

6. 5. Knowingly failing to post in a clear and conspicuous manner at
a location in which a charitable organization or other business entity
receives donated items for the purpose of reselling the items to financially
benefit a charitable organization one of the following statements:
(a) This collection site is owned by [name of charity], a charitable
organization. Donated items received at this location will support the
charitable mission of [name of charity].
(b) This collection site is owned by [name of company], a for-profit
company. Donated items received at this location will be sold by [name of
company] with a portion of the proceeds benefiting [name of charity].

B. Except as provided in subsection C of this section, a person who
fails to register or provide reports as provided by this article or who
otherwise fails to comply with any provision of this article is guilty of a
class 1 misdemeanor.
A. A contracted fund raiser who knowingly conducts any act or practice proscribed in subsection A of this section is guilty of a class 6 felony.

C. An independent solicitor who knowingly conducts any act or practice proscribed in subsection A of this section or who fails to comply with section 44-6555, subsection D is guilty of a class 1 misdemeanor.

D. In addition to the criminal offenses provided in subsections B, C and D of this section, if a person conducts an act or practice proscribed in subsection A of this section, the attorney general may recover from the person on behalf of the state a civil penalty of not more than one thousand dollars per violation. The civil penalty prescribed by this subsection is in lieu of the penalty prescribed by section 44-1531.

E. For the purposes of subsection A, paragraph 6–5 of this section, an entity owns a collection site if the entity receives at least fifty-one per cent of the proceeds generated by the retail sale of the donated items received at the collection site.

APPROVED BY THE GOVERNOR JUNE 20, 2013.

Passed the House  February 28, 2013
by the following vote: 35 Ayes, 21 Nays, 4 Not Voting

Speaker of the House
Cheryl Finley

Passed the Senate  May 14, 2013
by the following vote: 19 Ayes, 9 Nays, 2 Not Voting

President of the Senate
Kathy Brogan

Chief Clerk of the House
Cheryl Finley

SECRETARY OF STATE

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this
13 day of June, 2013
at 4:45 o'clock P.M.

Secretary to the Governor
Mikaela Howard

Approved this 20th day of

June

at 12:08 o'clock P.M.

Governor of Arizona
Janet Napolitano

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State
this 20th day of June, 2013
at 2:12 o'clock P.M.

Secretary of State
Kurt Bondurant