

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 transaction, agreement,
16 contract, or other legal state of affairs involving a person
17 or entity and an existing customer under which both parties
18 have a course of conduct or established pattern of activity
19 for 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 credit or discount program offered
8 by or in conjunction with the person or entity and has
9 not requested the person or entity to close such account
10 or 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 of the
13 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 or on behalf of an organization that is
23 exempt from federal income taxation under Section 501(c)
24 of the Internal Revenue Code, but only if the person
25 making the telephone solicitation immediately discloses
26 all of the following information upon making contact with
27 the consumer:

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

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

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

34 (A) is setting or attempting to set a face to

1 face appointment for actions relating to that
2 individual's real estate or insurance business; or

3 (B) is encouraging or attempting to encourage
4 the purchase or rental of, or investment in,
5 property, goods, or services, which cannot be
6 completed, and for which payment or authorization of
7 payment is not required, until after a written or
8 electronic agreement is signed by the residential
9 subscriber; or

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

28 Section 10. Prohibited calls. Beginning July 1, 2003,
29 no person or entity may make or cause to be made any
30 telephone solicitation calls to any residential subscriber
31 more than 45 days after the residential subscriber's
32 telephone number or numbers first appear on the Registry.

1 Section 15. Complaints. The Illinois Commerce Commission
2 shall receive telephone solicitation complaints from
3 residential subscribers to object to such calls. Complaints
4 shall be taken by any means deemed appropriate by the
5 Illinois Commerce Commission.

6 Section 20. Registry; establishment and maintenance.

7 (a) The Illinois Commerce Commission shall establish and
8 provide for the operation of a Restricted Call Registry,
9 which shall contain a list of the telephone numbers of
10 residential subscribers who do not wish to receive telephone
11 solicitation calls. The Illinois Commerce Commission may
12 contract with a private vendor to establish and maintain the
13 Registry if the contract requires the vendor to provide the
14 Registry in a printed hard copy format, in an electronic
15 format, and in any other format prescribed by the Illinois
16 Commerce Commission. Any person or entity conducting
17 telephone solicitation calls as defined by Section 5(e) of
18 this Act within the State of Illinois shall purchase the
19 Restricted Call Registry and updates exclusively from the
20 Illinois Commerce Commission. Failure to do so prior to
21 conducting telephone solicitation calls is a violation
22 subject to the penalties provided for in Section 35 of this
23 Act.

24 (b) No later than January 1, 2003, the Illinois Commerce
25 Commission shall adopt rules consistent with this Act that
26 the Illinois Commerce Commission deems necessary and
27 appropriate to fully implement this Act. The rules shall
28 include, at a minimum, methods by which any person or entity
29 desiring to make telephone solicitation calls may obtain
30 access to the Registry to avoid calling the telephone numbers
31 of residential subscribers included in the Registry.

32 (c) The fee for obtaining the Registry and updates shall
33 be set forth in rules adopted by the Illinois Commerce

1 Commission. The fee may not exceed \$1,000 annually and may
2 not exceed the costs incurred by the Commission in the
3 preparation, maintenance, production, and distribution of the
4 Registry. All copies requested in a printed hard copy format
5 shall be assessed a per page fee to be determined by rules
6 adopted by the Illinois Commerce Commission.

7 (d) The Illinois Commerce Commission shall update the
8 Registry and make information in the Registry available on a
9 quarterly basis in an electronic format that can be sorted by
10 individual fields and, if deemed appropriate by the Illinois
11 Commerce Commission, in one or more other formats.

12 (e) If the Federal Communications Commission or Federal
13 Trade Commission establishes a single national database of
14 telephone numbers of subscribers who object to receiving
15 telephone solicitations, which restricts both inter-state and
16 intra-state calls and at a minimum covers all telephone
17 solicitations covered by this Act, this State shall
18 discontinue the Registry.

19 (f) Information in the Registry is confidential and
20 shall be afforded reasonable privacy protection except as
21 necessary for compliance with Sections 10 and 25 and this
22 Section or in a proceeding or action under Section 35 or 40.
23 The information is not a public record under the Freedom of
24 Information Act.

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

29 (h) A person or entity that obtains the Registry shall
30 not use the Registry for any purpose other than to comply
31 with this Act. These unlawful purposes include, but are not
32 limited to, causing a subscriber to participate in and be
33 included in the Registry without the subscriber's knowledge
34 or consent, selling or leasing the Registry to a person other

1 than a telephone solicitor, selling or leasing by a telephone
2 solicitor of the Registry, and a telephone solicitor, either
3 directly or indirectly, persuading a subscriber with whom it
4 has an established business relationship to place his or her
5 telephone number in the Registry, if the solicitation has the
6 effect of preventing competitors from contacting that
7 solicitor's customers.

8 (i) No person or entity that sells, leases, exchanges,
9 or rents telephone solicitation lists, except for directory
10 assistance and telephone directories sold by telephone
11 companies or their affiliates, shall include in those lists
12 those telephone numbers that appear in the current Registry.

13 Section 25. Enrollment.

14 (a) The Illinois Commerce Commission shall provide
15 notice to residential subscribers of the establishment of the
16 Registry.

17 (b) The Illinois Commerce Commission shall establish any
18 method deemed appropriate for a residential subscriber to
19 notify the Illinois Commerce Commission that the residential
20 subscriber wishes to have its telephone number included in or
21 remain on the Registry.

22 (c) The Commission may, by rule, set an initial fee
23 which shall not exceed \$5 per residential subscriber for
24 inclusion on the Restricted Call Registry. The Commission
25 shall review the revenues and expenditures of the Restricted
26 Call Registry on a biennial basis and shall, by rule, reduce
27 the fee accordingly if revenues exceed expenditures. The
28 Commission may adopt rules and procedures governing the
29 acceptance of payment by credit card and may enter into such
30 agreements as necessary to accept payment by credit card.

31 (d) A residential subscriber's telephone number shall be
32 deleted from the Registry upon the residential subscriber's
33 written request.

1 (e) Enrollment in the Registry is effective from the
2 start of the quarter following the date of enrollment for a
3 term of 5 years or until the residential subscriber
4 disconnects or changes his or her telephone number, unless
5 the subscriber complies with the notice provision contained
6 in this Section, whichever occurs first. The residential
7 subscriber shall be permitted to extend their enrollment for
8 additional 5 year periods and shall not be subject to any fee
9 for this extension. The residential subscriber is
10 responsible for notifying the Illinois Commerce Commission of
11 any changes in his or her telephone number. The Illinois
12 Commerce Commission shall use its best efforts to notify
13 enrolled residential subscribers before the end of the 5-year
14 enrollment term of the option to extend their enrollment.
15 Residential subscribers who do not indicate their desire to
16 extend their enrollment before the end of the 5-year term
17 shall be given a one quarter grace period before being
18 removed from the Registry.

19 Section 30. Public notification. The Illinois Commerce
20 Commission shall work with local exchange telecommunications
21 companies to disseminate to their customers information about
22 the availability of and instructions for requesting
23 educational literature from the Illinois Commerce Commission.
24 The Illinois Commerce Commission may enter into agreements
25 with those companies for the dissemination of the educational
26 literature. Telecommunications companies shall disseminate
27 the educational literature at least once per year in a
28 message contained in customers' bills or a notice in the
29 information section of all telephone directories distributed
30 to customers and shall include on their website a link to the
31 ICC's web page for the Registry. The Illinois Commerce
32 Commission shall include, on its Internet web site,
33 information to customers regarding their right to be included

1 in the Registry and the various methods, including notice to
2 the Illinois Commerce Commission, of being included in the
3 Registry. The Illinois Commerce Commission shall have this
4 literature developed for dissemination to the public no later
5 than March 1, 2003.

6 Section 35. Violation; relief.

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

11 (b) If it is determined after a hearing that a person
12 has knowingly and willfully violated one or more provisions
13 of this Section, the Illinois Commerce Commission may assess
14 a fine not to exceed \$1,000 for the first violation and not
15 to exceed \$2,500 for a second or subsequent violation. Each
16 individual violation of Section 10 of this Act shall be a
17 separate and distinct offense under this Section. In
18 imposing a penalty under this Section, the Commission shall,
19 at a minimum, consider the following factors:

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

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

23 (3) the offender's relative ability to pay a
24 penalty;

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

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

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

31 (d) Nothing in this Section may be construed to restrict
32 any right that any person may have under any other law or at
33 common law.

1 (e) No action or proceeding may be brought under this
2 Section:

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

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

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

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

19 Section 40. Exemption.

20 (a) A person or entity may not be held liable for
21 violating this Act if:

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

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

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

32 (4) any subsequent telephone solicitation is the
33 result of unintentional error.

1 (b) A person or entity that has entered into a contract
2 with another person or entity to make telephone solicitations
3 on its behalf is not liable for a violation of this Act by
4 the person or entity making telephone solicitations under the
5 contract if the person or entity on whose behalf the
6 telephone solicitations were made has provided written
7 notification to the person or entity making telephone
8 solicitations under the contract that it is necessary to
9 comply with the provisions of this Act when making telephone
10 solicitations.

11 Section 90. The State Finance Act is amended by adding
12 Section 5.570 as follows:

13 (30 ILCS 105/5.570 new)

14 Sec. 5.570. The Restricted Call Registry Fund.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.