

1                                    AMENDMENT TO SENATE BILL 1830

2            AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1830 by replacing  
3 everything after the enacting clause with the following:

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

1 customer and the person or entity directly, and does not  
2 extend to any related business entity or other business  
3 organization of the person or entity or related to the person  
4 or entity or the person or entity's agent including but not  
5 limited to a parent corporation, subsidiary partnership,  
6 company or other corporation or affiliate.

7 (c) "Existing customer" means an individual who has  
8 either:

9 (1) entered into a transaction, agreement,  
10 contract, or other legal state of affairs between a  
11 person or entity and a residential subscriber under which  
12 the payment or exchange of consideration for any goods or  
13 services has taken place within the preceding 18 months  
14 or has been arranged to take place at a future time; or

15 (2) opened or maintained a debit account, credit  
16 card account, or other credit or discount program offered  
17 by or in conjunction with the person or entity and has  
18 not requested the person or entity to close such account  
19 or terminate such program.

20 (d) "Registry" means the Restricted Call Registry  
21 established under this Act.

22 (e) "Telephone solicitation" means any voice  
23 communication over a telephone line from a live operator,  
24 through the use of an autodialer or autodialer system, as  
25 defined in Section 5 of the Automatic Telephone Dialers Act,  
26 or by other means for the purpose of encouraging the purchase  
27 or rental of, or investment in, property, goods, or services,  
28 or for the purposes of soliciting charitable contributions  
29 but does not include communications:

30 (1) to any residential subscriber with that  
31 subscriber's prior express invitation or permission when  
32 a voluntary 2-way communication between a person or  
33 entity and a residential subscriber has occurred with or  
34 without an exchange of consideration. A telephone

1 solicitation is presumed not to be made at the express  
2 request of a subscriber if one of the following occurs,  
3 as applicable:

4 (A) The telephone solicitation is made 30  
5 business days after the last date on which the  
6 subscriber contacted a business with the purpose of  
7 inquiring about the potential purchase of goods or  
8 services.

9 (B) The telephone solicitation is made 30  
10 business days after the last date on which the  
11 subscriber consented to be contacted.

12 (C) The telephone solicitation is made 30  
13 business days after a product or service becomes  
14 available where the subscriber has made a request to  
15 the business for that product or service that is not  
16 then available, and requests a call when the product  
17 or service becomes available;

18 (2) by or on behalf of any person or entity with  
19 whom a residential subscriber has an established business  
20 relationship which has not been terminated in writing by  
21 either party and which is related to the nature of the  
22 established business relationship;

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

31 (4) by or on behalf of an organization that is  
32 exempt from federal income taxation under Section 501(c)  
33 of the Internal Revenue Code, but only if the person  
34 making the telephone solicitation immediately discloses

1 all of the following information upon making contact with  
2 the consumer:

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

4 (B) the name, address, and telephone number of  
5 the organization;

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

9 (A) is setting or attempting to set a face to  
10 face appointment for actions relating to that  
11 individual's real estate or insurance 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. Beginning July 1, 2003,  
33 no person or entity may make or cause to be made any

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

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

9 Section 20. Registry; establishment and maintenance.

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

27 (b) No later than January 1, 2003, the Illinois Commerce  
28 Commission shall adopt rules consistent with this Act that  
29 the Illinois Commerce Commission deems necessary and  
30 appropriate to fully implement this Act. The rules shall  
31 include, at a minimum, methods by which any person or entity  
32 desiring to make telephone solicitation calls may obtain

1 access to the Registry to avoid calling the telephone numbers  
2 of residential subscribers included in the Registry.

3 (c) The fee for obtaining the Registry and updates shall  
4 be set forth in rules adopted by the Illinois Commerce  
5 Commission. The fee may not exceed \$1,000 annually and may  
6 not exceed the costs incurred by the Commission in the  
7 preparation, maintenance, production, and distribution of the  
8 Registry. All copies requested in a printed hard copy format  
9 shall be assessed a per page fee to be determined by rules  
10 adopted by the Illinois Commerce Commission.

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

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

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

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

33 (h) A person or entity that obtains the Registry shall  
34 not use the Registry for any purpose other than to comply

1 with this Act. These unlawful purposes include, but are not  
2 limited to, causing a subscriber to participate in and be  
3 included in the Registry without the subscriber's knowledge  
4 or consent, selling or leasing the Registry to a person other  
5 than a telephone solicitor, selling or leasing by a telephone  
6 solicitor of the Registry, and a telephone solicitor, either  
7 directly or indirectly, persuading a subscriber with whom it  
8 has an established business relationship to place his or her  
9 telephone number in the Registry, if the solicitation has the  
10 effect of preventing competitors from contacting that  
11 solicitor's customers.

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

17 Section 25. Enrollment.

18 (a) The Illinois Commerce Commission shall provide  
19 notice to residential subscribers of the establishment of the  
20 Registry.

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

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

1 agreements as necessary to accept payment by credit card.

2 (d) A residential subscriber's telephone number shall be  
3 deleted from the Registry upon the residential subscriber's  
4 written request.

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

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



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

10 Section 35. Violation; relief.

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

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

- 24 (1) whether the offense was knowing or willful;
- 25 (2) whether the entity committing the offense has a  
26 prior history of non-compliance with this Act;
- 27 (3) the offender's relative ability to pay a  
28 penalty;
- 29 (4) whether the offender has or has not cooperated  
30 with the Commission in pursuing the investigation; and
- 31 (5) such other special, mitigating or aggravating  
32 circumstances as the Commission may find to exist.

33 (c) Any proceeding conducted under this Section is

1 subject to the Illinois Administrative Procedure Act.

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

5 (e) No action or proceeding may be brought under this  
6 Section:

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

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

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

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

23 Section 40. Exemption.

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

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

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

33 (3) the person or entity maintains records

1 demonstrating compliance with subdivisions (1) and (2) of  
2 this Section and the requirements of this Act; and

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

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

15 Section 90. The State Finance Act is amended by adding  
16 Section 5.570 as follows:

17 (30 ILCS 105/5.570 new)

18 Sec. 5.570. The Restricted Call Registry Fund.

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law."