

House Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

CHAPTER 234

# **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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 13-3722. Solicitations for American veterans' organizations;  
5 approval; violation; classification

6 A. It is unlawful for a person to solicit money or other support in  
7 the name of American veterans unless the veterans' organization for which the  
8 person is soliciting money or other support ~~is registered~~ FILES A  
9 REGISTRATION STATEMENT with the secretary of state ~~pursuant to section~~  
10 ~~44-6552~~ IN A FORMAT PRESCRIBED BY THE SECRETARY OF STATE.

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

13 Sec. 2. Section 44-1273, Arizona Revised Statutes, is amended to read:  
14 44-1273. Limited exemptions

15 A. The following sellers are not required to register and, except for  
16 section 44-1278, subsection B and section 44-1282, are exempt from this  
17 article:

18 1. A person acting within the scope of a license issued under  
19 title 20.

20 2. A person who is ~~registered with the secretary of state pursuant to~~  
21 ~~section 44-6552 or who is exempt from registration pursuant to section~~  
22 ~~44-6553~~. EITHER A:

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

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

28 3. A person making telephone solicitations without the intent to  
29 complete and who does not complete the sales presentation during the  
30 telephone solicitation but completes the sales presentation at a later  
31 face-to-face meeting between the solicitor and the consumer provided that the  
32 later face-to-face meeting is not for the purpose of collecting the payment  
33 or delivering any item purchased.

34 4. A person who after making a telephone contact with a consumer sends  
35 the consumer descriptive literature and does not require payment before the  
36 consumer's review of the descriptive literature and the person is not  
37 conducting a solicitation involving any of the following:

38 (a) The sale of an investment or an opportunity for an investment that  
39 is not registered with any state or federal authority.

40 (b) A prize promotion or premium.

41 (c) A recovery service.

42 (d) A business opportunity or merchandise related to a business  
43 opportunity.

1           5. A person or solicitor for a person who operates a retail business  
2 establishment under the same name as the name used in the solicitation of  
3 sales by telephone, if on a continuing basis all of the following apply:

4           (a) Merchandise is displayed and offered for sale or services are  
5 offered for sale and provided at the person's business establishment.

6           (b) At least fifty per cent of the person's business involves the  
7 buyer obtaining the merchandise at the person's business establishment.

8           (c) The person holds a transaction privilege tax license pursuant to  
9 title 42, chapter 5.

10          6. A person or solicitor for a person soliciting another business if  
11 all of the following apply:

12          (a) At least fifty per cent of the person's dollar volume consists of  
13 repeat sales to existing businesses.

14          (b) The person does not conduct a prize promotion that requires or  
15 implies that to win a consumer must pay money or purchase merchandise.

16          (c) Neither the person nor any of the person's principals has within  
17 twenty years been convicted in any state of a felony or crime of moral  
18 turpitude, breach of trust, fraud, theft, dishonesty or violation of  
19 telephone solicitation laws, been subject to a final judgment in a civil  
20 action involving fraud, deceit or misrepresentation or been subject to an  
21 administrative order involving fraud, deceit, misrepresentation or any  
22 violation of telephone solicitations laws of any agency of this state,  
23 another state, the federal government, a territory of the United States or  
24 another country.

25          (d) The person is not selling a business opportunity or merchandise  
26 related to a business opportunity.

27          7. A person or solicitor on behalf of a person who solicits sales by  
28 periodically publishing and delivering a catalog to consumers if all of the  
29 following apply:

30          (a) The catalog contains a written description or illustration of each  
31 item offered for sale and the price of each item offered for sale.

32          (b) The catalog includes the business address or home office address  
33 of the person.

34          (c) The catalog includes at least twenty-four pages of written  
35 material and illustrations.

36          (d) The catalog is distributed in more than one state and has an  
37 annual circulation by mail of at least two hundred fifty thousand.

38          B. The following sellers shall file a limited registration statement  
39 pursuant to section 44-1272.01 and, except for sections 44-1278 and 44-1282,  
40 are exempt from this article:

41           1. A person acting within the scope of a license issued under title 6  
42 or 32 or by the corporation commission pursuant to this title, except persons  
43 licensed under title 6, chapter 13.

44           2. If soliciting within the scope of the license, any licensed  
45 securities, commodities or investments broker or dealer or investment advisor

1 or any licensed associated person of a securities, commodities or investments  
2 broker or dealer or investment advisor.

3 3. An issuer or a subsidiary of an issuer that has a class of  
4 securities that is subject to section 12 of the securities exchange act of  
5 1934 (15 United States Code sections 78a through 78mm) and that is either  
6 registered or exempt from registration under paragraph (A), (B), (C), (E),  
7 (F), (G) or (H) or subsection (g)(2) of section 12 of the act. A subsidiary  
8 of an issuer that qualifies for exemption under this paragraph is not exempt  
9 unless at least sixty per cent of the voting power of the subsidiary's shares  
10 is owned by the qualifying issuer or issuers.

11 4. A person certificated or regulated by the corporation commission  
12 pursuant to title 40, chapter 2 or a subsidiary of that person or a federal  
13 communications commission licensed cellular telephone company or radio  
14 telecommunication services provider.

15 5. A person making telephone solicitations for a newspaper of general  
16 circulation, a magazine or a licensed or franchised cable television system.

17 6. An issuer or subsidiary of an issuer that is subject to  
18 registration under chapter 12, article 6 or 7 of this title or that is exempt  
19 from registration under section 44-1843, subsection A, paragraph 1, 2, 3, 4,  
20 5, 7 or 9.

21 7. A person making telephone solicitations for the sale or purchase of  
22 books, recordings, videocassettes and similar goods through a membership  
23 group or club regulated by the federal trade commission or through a  
24 contractual plan or arrangement such as a continuity plan, subscription  
25 arrangement, series arrangement or single purchase under which the seller  
26 ships goods to a consumer who has consented in advance to receive those goods  
27 and the recipient is given the opportunity to review goods for at least seven  
28 days and to receive a full refund for return of undamaged goods.

29 8. A person or solicitor for a person when soliciting previous  
30 customers, if all of the following apply:

31 (a) The person is not offering to sell or selling a security that is  
32 not registered with any state or federal authority.

33 (b) The person makes the solicitation under the same name as the name  
34 used to sell merchandise to the customer previously.

35 (c) The person does not operate a recovery service.

36 (d) The person does not conduct a prize promotion that requires a  
37 consumer to, or implies that to win a consumer must, pay money or purchase  
38 merchandise.

39 (e) The person has not, or any of its principals have not, within  
40 twenty years been convicted in any state of a felony or a crime of moral  
41 turpitude, breach of trust, fraud, theft, dishonesty or a violation of  
42 telephone solicitation laws, been subject to a final judgment in a civil  
43 action involving fraud, deceit or misrepresentation or been subject to an  
44 administrative order involving fraud, deceit, misrepresentation or any  
45 violation of telephone solicitation laws of any agency of this state, another

1 state, the federal government, a territory of the United States or another  
2 country.

3 9. A person making telephone solicitations exclusively for the purpose  
4 of the sale of telephone answering services to be provided by that person or  
5 that person's employer.

6 10. Any bank holding company, bank, financial institution, trust  
7 company, savings and loan association, credit union, mortgage banker or  
8 broker, consumer lender or insurer that is licensed or supervised by an  
9 official or agency of this state, any other state or the United States,  
10 including any parent, subsidiary or affiliate of these institutions.

11 11. A person providing telemarketing sales service continuously for at  
12 least five years under the same ownership and control that derives  
13 seventy-five per cent of its gross telemarketing sales revenues from  
14 contracts with persons exempted by this section. A seller using an exempt  
15 telemarketing sales service is not exempt unless otherwise qualifying for an  
16 exemption under this section.

17 C. On request by the secretary of state, the director of the  
18 department of insurance shall provide a current list in a mutually acceptable  
19 electronic format to the secretary of state of the requested licensees  
20 described in subsection A, paragraph 1 of this section that includes all of  
21 the following information:

22 1. The true legal name of the seller.

23 2. All of the names under which the seller is doing business or  
24 intends to do business.

25 3. The complete street address of the physical location of the  
26 principal place of business of the seller and the telephone number for the  
27 location.

28 4. The name and address of the seller's agent who is authorized to  
29 receive service of process in this state.

30 D. In any civil proceeding alleging a violation of this article, the  
31 burden of proving an exemption or an exception from a definition is on the  
32 person claiming the exemption or exception. In any criminal proceeding in  
33 which a violation of this article is alleged, the burden of producing  
34 evidence to support a defense based on an exemption or an exception from a  
35 definition is on the person claiming the exemption or exception.

36 E. Any person or solicitor exempted in part from this article by this  
37 section shall not make or submit a charge to a consumer's credit card account  
38 or a consumer's checking, savings, share or similar account unless any of the  
39 following applies:

40 1. The person provides that the consumer may receive a full refund for  
41 the return of undamaged and unused goods or a cancellation of services by  
42 providing notice to the person within seven days after the date that the  
43 consumer receives the merchandise and the person processes:

44 (a) A full refund within thirty days after the date that the person  
45 receives the returned merchandise from the consumer.

1 (b) A full refund within thirty days after the purchaser of services  
2 cancels an order for the services or a pro rata refund for any services not  
3 yet performed for the consumer.

4 2. The person provides the consumer with a signed copy of a written  
5 contract that includes the person's name, address and business telephone  
6 number and that fully describes the merchandise offered by the person, the  
7 total price to be charged by the person and any terms or conditions affecting  
8 the sale.

9 3. The person is ~~an organization that is registered with the secretary~~  
10 ~~of state pursuant to section 44-6552 or that is exempt from registration~~  
11 ~~pursuant to section 44-6553.~~ EITHER A:

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

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

17 Sec. 3. Section 44-6551, Arizona Revised Statutes, is amended to read:  
18 44-6551. Definitions

19 In this article, unless the context otherwise requires:

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

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

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

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

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

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

35 ~~3.~~ 2. "Contracted fund raiser" means a person who for profit either  
36 solicits directly or employs, procures or engages another person to solicit  
37 for a charitable organization. A contracted fund raiser does not include a  
38 lawyer, investment counselor or banker who advises a person to make a  
39 charitable contribution, a bona fide salaried officer, employee or volunteer  
40 of a charitable organization or a person the contracted fund raiser employs,  
41 procures or engages to solicit.

42 ~~4. "Contribution" means the grant, promise or pledge of any money,~~  
43 ~~credit, property, financial assistance or other thing of any kind or value in~~  
44 ~~response to a solicitation. Contribution does not include bona fide fees,~~  
45 ~~dues or assessments paid for membership in the charitable organization.~~

1           ~~5.~~ 3. "Independent solicitor" means a person who for profit engages  
2 to solicit on behalf of a charitable organization or on behalf of a  
3 contracted fund raiser.

4           ~~6.~~ 4. "Solicit" and "solicitation" means a request of any kind for a  
5 contribution or a request for the purchase of goods, tickets or services for  
6 a charitable purpose.

7           Sec. 4. Repeal

8           Sections 44-6552, 44-6553, 44-6554, 44-6555, 44-6556, 44-6557, 44-6558,  
9 44-6559 and 44-6560, Arizona Revised Statutes, are repealed.

10          Sec. 5. Section 44-6561, Arizona Revised Statutes, is amended to read:

11          44-6561. Unlawful acts or practices; violation; classification;  
12                 civil penalty

13          A. The following acts and practices are unlawful as applied to the  
14 planning, conduct or execution of a solicitation and constitute unlawful  
15 practices under section 44-1522 that the attorney general may investigate and  
16 for which the attorney general may take appropriate action as prescribed by  
17 chapter 10, article 7 of this title:

18           1. Knowingly ~~utilizing~~ USING an emblem, device or printed matter  
19 belonging to or associated with a charitable organization without first being  
20 authorized in writing to do so by the charitable organization.

21           2. Knowingly ~~utilizing~~ USING a name, symbol or statement so closely  
22 related or similar to that used by another charitable organization for the  
23 purpose of misleading a solicited person.

24           3. Knowingly making a misrepresentation to a person that the person on  
25 whose behalf a solicitation is being conducted is a charitable organization.

26           4. Knowingly making a representation to a person that another person  
27 sponsors, endorses or approves the solicitation if the other person has not  
28 given consent in writing to the use of that person's name for these purposes.

29           ~~5. Knowingly representing to a person that the registration~~  
30 ~~constitutes an endorsement or approval by this state.~~

31           ~~6.~~ 5. Knowingly failing to post in a clear and conspicuous manner at  
32 a location in which a charitable organization or other business entity  
33 receives donated items for the purpose of reselling the items to financially  
34 benefit a charitable organization one of the following statements:

35           (a) This collection site is owned by [name of charity], a charitable  
36 organization. Donated items received at this location will support the  
37 charitable mission of [name of charity].

38           (b) This collection site is owned by [name of company], a for-profit  
39 company. Donated items received at this location will be sold by [name of  
40 company] with a portion of the proceeds benefiting [name of charity].

41           ~~B. Except as provided in subsection C of this section, a person who~~  
42 ~~fails to register or provide reports as provided by this article or who~~  
43 ~~otherwise fails to comply with any provision of this article is guilty of a~~  
44 ~~class 1 misdemeanor.~~

1           ~~G.~~ B. A contracted fund raiser who knowingly conducts any act or  
2 practice proscribed in subsection A of this section is guilty of a class 6  
3 felony.

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

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

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

APPROVED BY THE GOVERNOR JUNE 20, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 20, 2013.

Passed the House February 28, 20 13

Passed the Senate May 14, 20 13 *On reconsideration*

by the following vote: 35 Ayes,

by the following vote: 19 Ayes,

21 Nays, 4 Not Voting

9 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

13 day of June, 20 13

at 4:45 o'clock P M.

[Signature]  
Secretary to the Governor

Approved this 20th day of

June

at 12:08 o'clock P M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 20th day of June, 20 13

at 2:12 o'clock P M.

[Signature]  
Secretary of State

H.B. 2457