

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 2043

By: Representative Drown
By: Senator G. Stubblefield

For An Act To Be Entitled

AN ACT CONCERNING THE REGULATION OF TELEPHONIC
SELLERS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE REGULATION OF TELEPHONIC
SELLERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-99-103(2), concerning the definitions used to regulate telephonic sellers, is repealed.

~~(2) "Consumer Protection Division" means the Consumer Protection Division of the Office of the Attorney General;~~

SECTION 2. Arkansas Code § 4-99-104 is amended to read as follows:

4-99-104. Registration procedures – Fees – Duration.

(a)(1) Not less than ten (10) days ~~prior to~~ before doing business in this state, a telephonic seller shall register with the ~~Consumer Protection Division of the Office of the Attorney General~~ Secretary of State by filing the information required by this chapter and a filing fee of one hundred dollars (\$100).

(2) A seller shall be deemed to do business in this state if the seller solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration of a telephonic seller shall be valid for one (1) year from the effective date thereof and may be renewed by making the filing



required by this chapter and paying a filing fee of one hundred dollars (\$100).

(c) The information required by this chapter shall be submitted on a form prescribed by the ~~Attorney General~~ Secretary of State and shall be verified by a declaration signed by each principal of the telephonic seller under penalty of perjury.

(d)(1) ~~Whenever, prior to~~ Except as provided in subdivision (d)(2) of this section and before expiration of a seller's annual registration, if there is a material change in the information required under this chapter, the seller shall, within ten (10) days, file an addendum updating the information with the ~~division~~ Secretary of State.

(2) ~~However, changes~~ Changes in salespersons soliciting on behalf of a seller shall be updated in quarterly intervals computed from the effective date of registration.

(e)(1) Upon receipt of a filing and filing fee ~~pursuant to~~ under subsection (a) or (b) of this section, the ~~division~~ Secretary of State shall send the telephonic seller a written confirmation of registration.

(2) If the seller has more than one (1) business location, the confirmation of registration shall be sent to the principal business location identified in the seller's filing in sufficient number so that the seller has a confirmation of registration for each location to be displayed in a conspicuous place at each of the seller's business locations and available for inspection by any governmental agency at each location.

(3) Until confirmation of registration is received and posted, the seller shall post in a conspicuous place at each of the seller's business locations within this state a copy of the first page of the registration form sent to the ~~division~~ Secretary of State.

(f)(1) Every salesperson ~~must~~ shall be employed in a principal-agent relationship by a telephonic seller registered ~~pursuant to~~ under this chapter and shall, within seventy-two (72) hours after accepting such employment, register with the ~~division~~ Secretary of State.

(2) ~~Application~~ An application for registration shall be on a form prescribed by the ~~Attorney General~~ Secretary of State, verified by a declaration signed by each salesperson under penalty of perjury, and shall be accompanied by a fee in the sum of ten dollars (\$10.00).

(3) When effective, ~~such~~ the registration shall be for a period

of one (1) year and may be renewed upon the payment of the fee prescribed in this section for additional one-year periods.

(g) All fees collected by the ~~Attorney General~~ Secretary of State under this section shall be deposited in the State Treasury as general revenues.

SECTION 3. Arkansas Code § 4-99-105(11), concerning registration of a telephonic seller, is amended to read as follows:

(11) The name and address of the telephonic seller's agent in this state, other than the ~~Attorney General~~ Secretary of State, authorized to receive service of process in this state.

SECTION 4. Arkansas Code § 4-99-106(a), concerning the requirements for exemption from registration of a telephonic seller, is amended to read as follows:

(a) ~~Any~~ A person claiming an exemption from registration as provided by this chapter shall keep full and accurate records ~~in such form as~~ in a form that will enable the person to provide to the Secretary of State or the Attorney General upon request the information required to substantiate an exemption under this chapter.

SECTION 5. Arkansas Code § 4-99-107 is amended to read as follows:

4-99-107. Bond requirement – Promotions – Notice prior to inception.

(a)(1) ~~Every~~ A telephonic seller shall maintain a bond issued by a surety company authorized to do business in this state.

(2) The bond shall be in the amount of fifty thousand dollars (\$50,000) in favor of the State of Arkansas for the benefit of ~~any~~ a person suffering injury or loss by reason of ~~any~~ a violation of this chapter, to be paid under the terms of any order of a court of competent jurisdiction obtained by the Attorney General or prosecuting attorney as a result of ~~any~~ a violation of this chapter.

~~(2)(3)~~ (3) A copy of the bond shall be filed with the ~~Consumer Protection Division of the Office of the Attorney General~~ Secretary of State.

(b)(1) At least ten (10) days ~~prior to~~ before the inception of ~~any~~ a promotion offering a premium with an actual market value or advertised value of five hundred dollars (\$500) or more, the telephonic seller shall notify

the ~~Attorney General~~ Secretary of State in writing of the details of the promotion, describing the premium, its current market value, the value at which it is advertised or held out to the consumer, the date the premium shall be awarded, and the conditions under which the award shall be made.

(2)(A)(i) The telephonic seller shall maintain an additional bond for the total current market value or advertised value, whichever is greater, of the premiums held out or advertised to be available to a purchaser or recipient.

(ii) A copy of the bond shall be filed with the ~~division~~ Secretary of State.

(B) The bond or portion thereof necessary to cover the cost of the award shall be forfeited if the premium is not awarded to a bona fide customer within thirty (30) days of the date disclosed as the time of award or other time required by law.

(C) ~~The proceeds of the bond shall be paid to any~~ A person suffering injury or loss by reason of any violation of this chapter shall be paid the proceeds of the bond, or shall be paid ~~pursuant to~~ under the terms of any order of a court of competent jurisdiction obtained by the Attorney General or prosecuting attorney as a result of any violation of this chapter.

(D) The bond shall be maintained until the seller files with the ~~Attorney General~~ Secretary of State proof that the premium was awarded.

SECTION 6. Arkansas Code § 4-99-109 is amended to read as follows:

4-99-109. Irrevocable consent appointing ~~Attorney General~~ Secretary of State to act as seller's attorney to receive service – Conditions of effective service.

(a) ~~Every~~ A telephonic seller shall file with the ~~Attorney General~~ Secretary of State, in the form prescribed by the ~~Attorney General~~ Secretary of State, an irrevocable consent appointing the ~~Attorney General~~ Secretary of State to act as the seller's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator, ~~which that~~ may arise under this chapter, when the agent designated in the seller's registration filing cannot with reasonable diligence be found at the address designated or if no agent has been designated pursuant thereto.

(b) When service is made upon the ~~Attorney General~~ Secretary of State in conformance with this section, it ~~shall have~~ has the same force and validity as if served personally on the seller.

(c) Service may be made by leaving a copy of the process ~~in the office of the Attorney General~~ with the Secretary of State, but ~~it shall not be service is not~~ effective ~~unless~~ until both of the following are done:

(1) When service is effected ~~pursuant to~~ under this section, the plaintiff shall forthwith send by certified first class mail, return receipt requested, a notice of the service and a copy of the process to the defendant or respondent at the last address on file with the ~~Consumer Protection Division~~ Secretary of State; and

(2) The plaintiff's affidavit of compliance with this section shall be filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

SECTION 7. Arkansas Code § 4-99-110 is amended to read as follows:

4-99-110. Soliciting prospective purchasers on behalf of unregistered telephonic seller prohibited – Violation.

(a)(1) ~~No~~ A salesperson shall not solicit prospective purchasers on behalf of a telephonic seller who is not currently registered with the ~~Consumer Protection Division pursuant to~~ Secretary of State under this chapter.

(2) ~~Any~~ A salesperson who violates this section shall be guilty of a Class A misdemeanor.

(b) Except as provided in ~~subsection (a) subdivision (a)(2)~~ of this section, any person, including, ~~but not limited to,~~ without limitation the seller, a salesperson, agent or representative of the seller, or an independent contractor, who willfully violates ~~any~~ a provision of this chapter or who directly or indirectly employs ~~any~~ a device, scheme, or artifice to deceive in connection with the offer or sale by ~~any~~ a telephonic seller, or who willfully, directly or indirectly engages in any act, practice, or course of business ~~which~~ that operates or would operate as fraud or deceit upon ~~any~~ a person in connection with a sale by ~~any~~ a telephonic seller shall be, upon conviction, guilty of a Class D felony.

(c)(1) ~~Every~~ A person who controls a seller liable under this section, or a salesperson liable under ~~subsection (a) subdivision (a)(2)~~ of this

section, every partner, officer, or director of such a seller or salesperson, ~~every~~ a person occupying a similar status or performing a similar function, and ~~every~~ an employee of such a seller or salesperson who materially aids in the sale or attempted sale are also liable jointly and severally with and to the same extent as the seller or salesperson, unless the nonseller or nonsalesperson who is so liable sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(2) There is contribution as in cases of contract among the several persons so liable.

SECTION 8. DO NOT CODIFY. Effective date. This act is effective on and after January 1, 2018.