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TELEMARKETING; REQUIRE REGISTRATION AND BOND

House Bill 5439
Sponsor: Rep. Paul Wojno
Committee: Public Utilities

Complete to 1-23-98

A SUMMARY OF HOUSE BILL 5439 AS INTRODUCED 12-10-97

The bill would create a new act to require telemarketers to register with the Department of Consumer and Industry Services and provide surety bonds before engaging in telephone solicitations in this state.

Registration. The Department of Consumer and Industry Services would be required to create a form for registering telemarketers. The form would have to include all of the following information:

1) The name of the telemarketer.

2) The address and telephone number of the telemarketer's principal office.

3) If the telemarketer is not located in this state, the address and telephone number of the telemarketer's registered office and the name and telephone number of the telemarketer's registered agent authorized to receive service of process in this state.

4) Any other information that the department considers necessary to enforce the bill's provisions.

5) The legal name and address of each individual who will be paid to make or supervise telephone solicitations.

The completed form would have to be submitted with a $200 registration fee and a surety bond. Registration would last one year from the date that the registration was filed with the department and would take effect immediately upon receipt of the form, fee, and bond by the department. Registration could be renewed prior to its expiration for an additional one-year term by filing a renewal form as prescribed by the department, with a new bond and new $250 fee. The renewal form could not ask for more information that the initial registration form had, and the amount of the bond required for a renewed registration would be set by the department. The fees collected by the department would be deposited in the state treasury and credited to the general fund.

The required surety bond would be in a form as required by the department and would require the telemarketing company to faithfully conform to and abide by the bill's provisions. For the first year that a telemarketer registered, the amount of a bond required by the bill would be

$25,000, after that the department would set the amount. The telemarketing company would be the obligor and the bond would be payable to the department for the benefit of the people of this state and could be used or sued upon by the state or any person who had a cause of action under the bill against the bond's obligor (the telemarketing company). A surety company would have to be qualified to write bonds in this state in order to write the bonds required under the bill.

Exceptions. The bill would not apply to telemarketers whose telephone solicitations included any of the following:

1) Telephone solicitations made in accordance with a prior or existing business relationship formed by a voluntary communication between the buyer and telemarketer, with or without an exchange of consideration, on the basis of an inquiry by the buyer, provided that the relationship has not previously been terminated by either party.

2) A telephone solicitation made by a tax-exempt organization under section 501(c)(3) of the internal revenue code.

3) A telephone call made to set up a subsequent in-person meeting at which a sales solicitation would be made.

4) An isolated telephone solicitation that is not part of a pattern of solicitations regularly made by the solicitor in the ordinary course of business.

5) A telephone solicitation made by a person or other legal entity that maintains a do-not-call list required by the Federal Communications Commission under subpart L of chapter 64 of title 47 of the Code of Federal Regulations.

6) A telephone solicitation by an employer of less than 25 employees, unless the employer is sufficiently related to another employer to qualify together as a single employer under section 414(b) or (c) of the Internal Revenue Code.

Other requirements. The bill would also require a telemarketer to maintain a list of the names and addresses of each individual who had made a telephone solicitation within one year, was currently soliciting, or will be soliciting on behalf of the telemarketer. The bill would also prohibit a telemarketer from debiting a person's account with a financial institution without that person's written authorization to make the transfer from the account to the telemarketer.

Violations. Violation of the bill's provisions would subject the violator to a civil fine of not more than $250 per violation. In addition, the person who had been aggrieved by the violation could bring a civil action and recover the greater of his or her actual damages or $500, plus reasonable attorney fees and costs. However, neither of these penalties and remedies would apply to a violator who was found liable for a penalty or remedy under federal law for conduct prohibited by the bill.

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