

Article 1.4. Telephonic Sellers

Business and Professions Code § 17511. Legislative finding, declaration and intent

(a) The Legislature finds and declares that the widespread use of telephone solicitors to initiate sales of goods, real property, and investment opportunities has created numerous problems for purchasers and investors which are inimical to good business practices. Telephonic sales have a significant impact upon the economy and well-being of this state and its local communities. However, purchasers have suffered substantial losses because of (1) misrepresentations, (2) lack of full and complete information regarding both the telephonic seller and the goods and investments the telephonic seller is offering, and (3) failure of delivery. The provisions of this article relating to telephonic sellers are necessary for the public welfare.

(b) It is the intent of the Legislature in enacting this article to (1) provide each prospective telephonic sales purchaser with information necessary to make an intelligent decision regarding the offer made, (2) safeguard the public against deceit and financial hardship, (3) insure, foster, and encourage competition and fair dealings among telephonic sellers by requiring adequate disclosure, and (4) prohibit representations that tend to mislead. This article shall be construed liberally in order to achieve these purposes.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.1. Telephonic seller defined; exemptions; burden of proof in civil and criminal proceedings

As used in this article, "telephonic seller" or "seller" means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a), (b), (c), or (d) and who is not exempted by subdivision (e), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, "further cost" does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser is able to obtain any item or service at a price which the seller states or implies is below the regular price of the item or service offered. This paragraph shall not apply to retailers who, within the previous 12 months, have sold a majority of their goods or services through in-person sales at retail stores.

(4) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those

that are usually charged or will be charged for the items.

(5) That the seller is a person other than the person he or she is.

(6) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(7) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(8) That the seller is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(9) That a prospective purchaser will receive a credit card, as defined in subdivision (a) of Section 1747.02 of the Civil Code, if the purchaser pays an up front or preapplication fee for the credit card to the telephonic seller.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the seller to persons who have not previously purchased goods or services from the seller or who have not previously requested credit from the seller, to a prospective purchaser wherein the seller represents or implies to the recipient of the notification that any of the following applies to the recipient:

(1) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification.

(2) That the recipient will receive a prize or gift if the recipient calls the seller.

(3) That if the recipient buys one or more items from the seller, the recipient will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of such items.

However, this subdivision does not apply to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to potential purchasers by mail or by other means. This exception only applies if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least 24 full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than 250,000 customers.

(c) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(d) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to make a loan or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(e) For purposes of this article, "telephonic seller" or "seller" does not include any of the following:

(1) A person offering or selling a security qualified under Section 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an

exemption under the Corporate Securities Law of 1968 is filed with the Department of Corporations does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Corporations does not create an exemption under this paragraph.

(6) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Attorney General the documents required by Section 1812.203 of the Civil Code.

(7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.

(8) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(10) Any supervised financial institution or parent, subsidiary, or subsidiary of parent thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.

(12) A person licensed pursuant to Chapter 19 (commencing with Section 9600) of Division 3 when acting pursuant to that licensure.

(13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.

(15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars (\$100).

(16) An issuer or subsidiary of an issuer that has a security listed on a national securities exchange or

designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies for exemption under this paragraph is not itself exempt unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.), and the registration or license has not expired or been suspended or revoked.

(19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.

(20) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if the license has not expired or been suspended or revoked.

(21) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(22) A corporation that meets all of the following conditions:

(A) It has been exempt from taxation under Section 23701e of the Revenue and Taxation Code for a minimum of 10 years.

(B) It has maintained its principal purpose for a minimum of 10 years.

(C) It has been incorporated in the state for a minimum of 25 years.

(f) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

(g) Compliance with this article does not satisfy nor substitute for any requirements for license, registration, or regulation mandated by other laws.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1. Amended by Stats.1987, c. 708, § 1; Stats.1989, c. 550, § 1; Stats.1992, c. 240 (A.B.2633), § 1; Stats.1992, c. 885 (A.B.3715), § 1; Stats.1993, c. 803 (A.B.1421), § 1; Stats.1995, c. 564 (S.B.946), § 3.)

(Amended by Stats.1998, c. 863 (A.B.1629), § 1.)

Business and Professions Code § 17511.2. Definitions

As used in this article, the following terms have the following meanings:

(a) "Department" means the Department of Justice.

(b) "Item" means any goods and services, and includes coupon books which are to be used with

businesses other than the seller's business.

(c) "Owner" means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, a telephonic seller.

(d) "Person" includes an individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(e) "Principal" means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(f) "Purchaser" or "prospective purchaser" means a person who is solicited to become or does become obligated to a telephonic seller.

(g) "Salesperson" means any individual employed, appointed or authorized by a telephonic seller, whether referred to by the telephonic seller as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller. The principals of a seller are themselves salespersons if they solicit sales on behalf of the telephonic seller.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.3. Registration procedures; fees; duration; addendum; confirmation

(a) Not less than 10 days prior to doing business in this state, a telephonic seller shall register with the department by filing with the Consumer Law Section of the department the information required by Section 17511.4 and a filing fee of fifty dollars (\$50). 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.

A person claiming an exemption pursuant to paragraph (19) of subdivision (d) of Section 17511.1 shall file with the Consumer Law Section of the department, in lieu of the information required by subdivisions (a) to (o), inclusive, of Section 17511.4, the information required by subdivision (p) of Section 17511.4 and a filing fee of fifty dollars (\$50).

The information required by Section 17511.4 shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the telephonic seller under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to subdivision (j) or (k) of Section 17511.4 shall be clearly identified and appended to the filing. The information submitted pursuant to Section 17511.4 shall become part of the investigatory records and intelligence information compiled by the department for law enforcement purposes.

(b) Registration of a telephonic seller shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required by Section 17511.4 and paying a filing fee of fifty dollars (\$50).

(c) Whenever, prior to expiration of a seller's annual registration, there is a material change in the information required by Section 17511.4, the seller shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the department. However, changes in salespersons soliciting on behalf of a seller shall be updated by addendums filed, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall provide the required information for all salespersons who are currently soliciting or have solicited on behalf of the seller at any time during the period between the filing of the registration, or the last addendum,

and the current addendum, and shall include salespersons no longer soliciting for the seller as of the date of the filing of the current addendum.

(d) Upon receipt of a filing and filing fee pursuant to subdivision (a) or (b), the department shall send the telephonic seller a written confirmation of receipt of the filing. If the seller has more than one business location, the written confirmation shall be sent to the principal business location identified in the seller's filing in sufficient number so that the seller has receipt of filing, within 10 days of receipt thereof, in a conspicuous place at each of the seller's business locations and shall have available for inspection by any governmental agency at each location a copy of the entire registration statement which has been filed with the department. Until confirmation of receipt of filing 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 department. The seller shall also post in close proximity to either the confirmation of receipt of filing, or until the confirmation is received, the first page of the submitted registration form, the name of the individual or individuals in charge of each location from which the seller does business in this state, as defined in subdivision (a).

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1. Amended by Stats.1987, c. 708, § 2; Stats.1991, c. 1091 (A.B.1487), § 12.)

Business and Professions Code § 17511.4. Filing information; exemption information

Each filing pursuant to Section 17511.3 shall contain the following information:

(a) The name or names of the seller, including the name under which the seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization (1) that will engage in business transactions with purchasers relating to sales solicited by the seller or (2) that accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller.

(b) The seller's business form and place of organization and, if the seller is a corporation, a copy of its articles of incorporation and bylaws and amendments thereto, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to subdivision (a).

(c) The complete street address or addresses of all locations, designating the principal location from which the telephonic seller will be conducting business. If the principal business location of the seller is not in this state, then the seller shall also designate which of its locations within this state is its main location in the state.

(d) A listing of all telephone numbers to be used by the seller and the address where each telephone using each of these telephone numbers is located.

(e) The name of, and the office held by, the seller's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the seller's business activities.

(f) The complete address of the principal residence, the date of birth, and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to subdivision (e).

(g) The name and principal residence address of each person the telephonic seller leaves in charge at each location from which the seller does business in this state, as defined in subdivision (a) of Section 17511.3, and the business location which each of these persons is or will be in charge of.

(h) A statement, meeting the requirements of this subdivision, as to both the seller, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether identified pursuant to subdivision (e) or (g) or not), and as to any person identified pursuant to subdivision (e) or (g) who:

(1) Has been convicted of a felony or misdemeanor involving an alleged violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere is a conviction.

(2) Has had entered against him or her a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of this article, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit thereof, including, but not limited to, an action affecting any vocational license.

(4) Has at any time during the previous seven tax years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the person held that position.

For purposes of paragraphs (1), (2), and (3), the statement required by this subdivision shall identify the seller or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (4), the statement required by this subdivision shall include the name and location of the seller or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter.

(i) A list of the names, principal residence addresses, the date of birth, and the driver's license number and state of issuance thereof, of salespersons who solicit on behalf of the telephonic seller and the names the salespersons use while so soliciting. No salesperson shall use the same name as used by any other salesperson soliciting for the telephonic seller and no telephonic seller shall permit a salesperson to use the same name as used by any other salesperson soliciting for the telephonic seller.

(j) A description of the items the seller is offering for sale and a copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect.

(k) A copy of all sales information and literature (including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information) provided by the telephonic seller to salespersons or of which the seller informs salespersons, and a copy of all written materials the seller sends to any prospective or actual purchaser.

(l) If the telephonic seller represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one or more items from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes,

or otherwise, the filing shall include the following:

- (1) A list of the items offered.
- (2) The value or worth of each item described to prospective purchasers and the basis for the valuation.
- (3) The price paid by the telephonic seller to its supplier for each of these items and the name, address, and telephone number of each item's supplier.
- (4) If the purchaser is to receive fewer than all of the items described by the seller, the filing shall include the following:
 - (A) The manner in which the telephonic seller decides which item or items a particular prospective purchaser is to receive.
 - (B) The odds a single prospective purchaser has of receiving each described item.
 - (C) The name and address of each recipient who has, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business) received the item having the greatest value and the item with the smallest odds of being received.
- (5) All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item.
- (m) If the telephonic seller is offering to sell any metal, stone, or mineral, the filing shall include the following:
 - (1) The name, address, and telephone number of each of the seller's suppliers and a description of each metal, stone, or mineral provided by the supplier.
 - (2) If possession of any metal, stone, or mineral is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the filing shall include the following:
 - (A) The address of each location where the metal, stone, or mineral will be kept.
 - (B) If not kept on premises owned by the seller or at an address or addresses set forth in compliance with subdivision (c), the name of the owner of the business at which the metal, stone, or mineral will be kept.
 - (C) A copy of any contract or other document which evidences the seller's right to store the metal, stone, or mineral at the address or addresses designated pursuant to subparagraph (A).
 - (3) If the seller is not selling the metal, stone, or mineral from its own inventory, but instead purchases the metal, stone, or mineral to fill orders taken from purchasers, the filing shall include copies of all contracts or other documents evidencing the seller's ability to call upon suppliers to fill the seller's orders.
 - (4) If the seller represents to purchasers that the seller has insurance or a surety bond of any type relating to a purchaser's purchase of any metal, stone, or mineral from the seller, the filing shall include a complete copy of all these insurance policies and bonds.
 - (5) If the seller makes any representation as to the earning or profit potential of purchases of any metal, stone, or mineral, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, substantiating data shall be based on the experiences of at least 50 percent of the persons who have purchased the particular metal, stone, or mineral from the seller or related entity during the preceding six months (or if the seller or related entity has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:
 - (A) The length of time the seller or related entity has been selling the particular metal, stone, or mineral being offered.
 - (B) The number of purchasers thereof from the seller or related entity known to the seller or related

entity to have made at least the same earnings or profit as those represented.

(C) The percentage that the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers from the seller or related entity of the particular metal, stone, or mineral.

(n) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, the filing shall include disclosure of the following:

(1) The seller's ownership interest, if any, in each field, well, or site being offered for sale.

(2) The total number of interests to be sold in each field, well, or site being offered for sale.

(3) If, in selling an interest in any particular field, well, or site, reference is made to an investigation of these fields, wells, or sites by the seller or anyone else, the filing shall include the following:

(A) The name, business address, telephone number, and professional credentials of the person or persons who made the investigation.

(B) A copy of the report and other documents relating to the investigation prepared by the person or persons.

(4) If the seller makes any representation as to the earning or profit potential of purchases of any interest in these fields, wells, or sites, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, the substantiating data shall be based on the experiences of at least 50 percent of the purchasers of the particular interests from the seller or the related entity during the preceding six months (or if the seller has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular interests in the fields, wells, or sites being offered.

(B) The number of purchasers of the particular interests from the seller or related entity known to the seller to have made, at least the same earnings as those represented.

(C) The percentage the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers of the particular interests from the seller or related entity.

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

(p) If a person, based on paragraph (19) of subdivision (c) of Section 17511.1, claims an exemption from having to file the information required by subdivisions (a) to (o), inclusive, the person shall file, on a form provided by the Attorney General, the following information:

(1) The name or names of the person claiming the exemption, including the name under which the person is doing or intends to do business.

(2) The person's business form, and place of organization, whether corporate or otherwise; or, if operating under a fictitious business name, the location where the fictitious name has been registered.

(3) The complete street address of the person's retail locations, and telephone numbers located therein and a statement as to how long the person has been selling at retail from each location.

(4) A copy of the person's currently valid business license.

(5) A statement reflecting the dollar amount of the person's total retail sales during the 12 months preceding the filing.

(6) A statement reflecting the dollar amount of the person's sales made telephonically during the 12 months preceding the filing.

The filing shall be verified by a declaration signed under penalty of perjury by each principal of the person claiming the exemption. The declaration shall specify the date and location of signing.

If a person filing pursuant to subdivision (p) makes any representation to a prospective purchaser as

to the historical movements or changes in the price or value of any coin or bullion, the person shall maintain in its records sufficient data to substantiate each representation. This data shall be retained in the person's records for a period of at least three years after the last date on which a representation is made and shall be made available for inspection upon request by any governmental agency at each of its business locations.

(q) If the telephonic seller represents or implies, or directs salespersons to represent or imply, that the telephonic seller can, or may be able to, make a loan or arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, the filing shall include the following:

(1) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the seller's solicitations or lent money to the telephonic seller for the seller to lend to those who responded to the seller's representations that it could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan.

(2) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the solicitations of the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies with which they were associated, that they could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan or lent money to the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies with which they were associated for them to lend to those who responded to these representations.

(3) The names and addresses of all persons who have informed the telephonic seller that they may be able to lend money, within the next 12 months from the date of this registration, to persons solicited by the seller or to the telephonic seller for the seller to lend to those who respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan.

(4) Copies of all contracts between the seller and lenders or prospective lenders who may lend money: (A) to the seller to lend to individuals who, in connection with the seller's business activities, respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan; or (B) directly to persons to whom the seller may represent that it can arrange or assist in providing information which can lead to the obtaining of a loan.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1. Amended by Stats.1987, c. 708, § 3; Stats.1992, c. 885 (A.B.3715), § 2; Stats.1993, c. 803 (A.B.1421), § 2.)

Business and Professions Code § 17511.5. Information to be provided each prospective purchaser

In addition to complying with the requirements of Section 17500.3, as applicable, a telephonic seller, shall, at the time the solicitation is made and prior to consummation of a sales transaction, provide all of the following information to a prospective purchaser:

(a) If the telephonic seller represents or implies that a prospective purchaser will receive, without charge therefor, certain specific items or one item from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the seller shall provide the following:

(1) The information required to be filed by subparagraphs (A) and (B) of paragraph (4) of, and paragraph (5) of, subdivision (l) of Section 17511.4. In addition, each time the telephonic seller makes reference to an item or items, the telephonic seller shall state that no purchase is necessary, and that the purchase of goods will have no greater chance of receiving the more valuable item or items than the person who does not purchase. The seller shall state, in a manner enabling a consumer to copy the information, the method, including the telephonic seller's address, for obtaining without purchase the item or items or for a chance to obtain the item or items. The provisions of Section 17537.2 of the Business and Professions Code shall apply to all offers.

(2) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(3) The total number of individuals who have actually received from the telephonic seller, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business), the item having the greatest value and the item with the smallest odds of being received.

(b) If the telephonic seller is offering to sell any metal, stone, or mineral, the seller shall provide the following information:

(1) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(2) When required to be filed pursuant to Section 17511.4, the information specified in subparagraphs (A) and (B) of paragraph (2) of, and paragraph (5) of, subdivision (m) of Section 17511.4.

(c) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites the seller shall provide the following information:

(1) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(2) The information required to be filed by paragraphs (1), (2), and (4) of, and subparagraph (A) of paragraph (3) of, subdivision (n) of Section 17511.4.

(d) If the telephonic seller represents that office equipment or supplies being offered are offered at prices which are below those usually charged for these items, the seller shall provide the following information:

(1) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(2) The name of the manufacturer of each of the items the telephonic seller has represented for sale and in which the prospective purchaser expresses interest.

(e) If the solicitation is a "home solicitation contract or offer" within the meaning of Section 1689.5 of the Civil Code, the seller shall comply with the following:

(1) At the time the solicitation is made, the telephonic seller shall inform the buyer orally of the following:

(A) The buyer has the right to cancel the contract or offer until midnight of the third business day after the day on which the buyer receives the product or products ordered or the notice of confirmation of services ordered. This right of cancellation begins to run from the date of the buyer's receipt of the product or products ordered or, in the case of services ordered, from the buyer's receipt of the notice of confirmation of services ordered.

(B) A written notice of cancellation will be sent with the product or products ordered or, in the case of services, the notice of cancellation shall accompany a notice of confirmation that shall be sent to the purchaser immediately following the telephonic agreement to purchase those services.

(2) The telephonic seller shall provide the buyer with a written notice of cancellation that shall accompany and be attached to any product or products sent to the purchaser in response to a telephone solicitation or, in the case of services, shall accompany a notice of confirmation of the agreement to purchase services. The notice of cancellation shall be in duplicate, captioned "Notice of Buyer's Right of Cancellation," which shall be separate from or easily detachable from any agreement or offer to purchase which accompanies the product or products or notice of confirmation, and shall contain, in type of at least 10-point, the following cancellation statement, and no other information or statement, written in the same language used in the telephone solicitation:

"NOTICE OF BUYER'S RIGHT OF CANCELLATION"

You may cancel this transaction, without any penalty or obligation, within three business days following your receipt of this notice of cancellation and the receipt of any products, or in the case of services, within three business days following receipt of the attached notice of confirmation.

If you cancel, any payments made by you or authorized by you, pursuant to any telephonic solicitation and purchase agreement shall be returned to you within 10 days following receipt by the seller of your cancellation notice.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract, agreement, or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for the performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____ (name of seller), at _____ (address of seller's place of business) not later than midnight of the third business day after receipt of the products and this notice of cancellation.

I HEREBY CANCEL THIS TRANSACTION.

DATE

BUYER'S SIGNATURE

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1. Amended by Stats.1993, c. 803 (A.B.1421),§ 3; Stats.1995, c. 109 (A.B.578), § 1.)

Business and Professions Code § 17511.6. Irrevocable consent appointing attorney general to act as seller's attorney to receive service; conditions of effective service

Every telephonic seller shall file with the Attorney General, in the form prescribed by the Attorney General, an irrevocable consent appointing the Attorney General 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 may arise under this article, when the agent designated pursuant to subdivision (o) of Section 17511.4 has resigned and has not been replaced or if the agent so designated cannot with reasonable diligence be found at the address

designated pursuant to subdivision (o) of Section 17511.4 or if no agent has been designated pursuant thereto. When service is made upon the Attorney General in conformance with this section, it shall have the same force and validity as if served personally on the seller. Service may be made by leaving a copy of the process in the office of the Attorney General, but it shall not be effective unless both of the following are done:

(a) When service is effected pursuant to this section, the plaintiff shall forthwith send by first-class mail a notice of the service and a copy of the process to the defendant or respondent at the last address on file with the department.

(b) 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.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.7. Reference to compliance with this article

No seller shall make or authorize the making of any references to its compliance with this article to any prospective or actual purchaser.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.8. Soliciting prospective purchasers on behalf of unregistered telephonic seller prohibited; violation, misdemeanor

No salesperson shall solicit prospective purchasers on behalf of a telephonic seller who is not currently registered with the department pursuant to this article. Any salesperson who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six months, by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.9. Punishment for violation of provisions of this article

Except as provided in Section 17511.8, any person, including, but not limited to, the seller, a salesperson, agent or representative of the seller, or an independent contractor, who willfully violates any provision of this article or who directly or indirectly employs any device, scheme, or artifice to deceive in connection with the offer or sale by any telephonic seller, or who willfully, directly, or indirectly, engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with a sale by any telephonic seller shall, upon conviction, be punished as follows:

(a) By a fine not exceeding ten thousand dollars (\$10,000) for each unlawful transaction.

(b) By imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

(c) By both the fine and imprisonment specified in subdivisions (a) and (b).

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.10. Remedies provided for violation of provisions of this article not exclusive; rights of attorney general

The provisions of this article are not exclusive. The remedies specified in this article for violation of any section of this article or for conduct proscribed by any section of this article shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law. Nothing in this article shall limit any other statutory or any common law rights of the Attorney General, any district attorney or city attorney, or any other person. If any act or practice proscribed by this article is also the basis for a cause of action in common law or a violation of another statute, the purchaser may assert the common law or statutory cause of action under the procedures and with the remedies applicable thereto.

CREDIT(S)

(Added by Stats.1985, c. 1009, § 1.)

Business and Professions Code § 17511.12. Bond requirement; promotions; notice and payment of additional bond prior to inception of promotion; liability upon and enforcement of bond

(a) Every telephonic seller shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall be in the amount of one hundred thousand dollars (\$100,000) in favor of the State of California for the benefit of any person suffering pecuniary loss in a transaction commenced during the period of bond coverage with a telephonic seller who violated this chapter. The bond shall include coverage for the payment of the portion of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for restitution to any person suffering pecuniary loss, notwithstanding whether the surety is joined or served in the action or proceeding. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. This bond shall not be required of any cable television operator franchised or licensed pursuant to Section 53066 of the Government Code.

(b)(1) At least 10 days prior to the inception of any 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 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 customer, and the date the premium shall be awarded. All premiums offered shall be awarded. 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. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. The bond shall be for the benefit of any person entitled to the premium who did not receive it within 30 days of the date disclosed to the Attorney General as the date on which the premium would be awarded. The amount paid to a person under a bond required by this subdivision shall not exceed the greater of the current market value or advertised or represented value of the premium offered to that person. The bond shall include coverage for the payment of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for payment of the value of premiums that were not timely awarded, notwithstanding whether the surety is joined or served in the action or proceeding. The bond shall also provide for payment upon motion by the Attorney General pursuant to subdivision (d) in the event the seller fails to provide the Attorney General with proof of the award of premiums as required in paragraph (2).

(2) Within 45 days after the date disclosed to the Attorney General for the award of premiums, the seller shall provide to the Attorney General proof that all premiums were awarded. The proof shall include the names, addresses, and telephone numbers of the recipients of the premiums and the date or dates on which the premiums were awarded. The bond shall be maintained until the seller files proof with the Attorney General as required by this subdivision or until payment of the amount of the bond is ordered pursuant to subdivision (d).

(c)(1) In addition to any other means for the enforcement of the surety's liability on a bond required by this section, the surety's liability on the bond may be enforced by motion, as provided in this subdivision, after a judgment has been obtained against the seller.

(2) The Attorney General, district attorney, city attorney, or any other person who obtained a judgment for restitution against the seller, as described in subdivision (a), may file a motion in the court that entered the judgment to enforce liability on the bond without first attempting to enforce the judgment against any party liable under the judgment.

(3) The notice of motion, the motion, and a copy for the judgment shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the Consumer Law Section of the Department of Justice.

(4) The court shall grant the motion unless (A) the surety establishes that the claim is not covered by the bond or (B) the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest.

(d)(1) In addition to any other means for the enforcement of the surety's liability on a bond required by subdivision (b), the surety's liability on the bond may be enforced by motion as provided in this subdivision.

(2) The Attorney General, district attorney, city attorney, or any person who claims the premium, may file a motion in a court of competent jurisdiction in the county or judicial district from which the seller made an offer of a premium, in which the seller maintains any office or place of business, or in which an offeree of the premium resides. The motion shall set forth the nature of the seller's offer, the greater of the current market value or advertised or represented value of the premium, the date by which the premium should have been awarded, and the fact that the premium was not awarded as represented.

(3) The notice of motion and motion shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

(4) The court shall grant the motion unless the surety establishes that the claim is untrue or is not covered by the bond.

(5) The Attorney General may file a motion in a court of competent jurisdiction in the county or judicial district from which the seller made an offer of a premium, or in which an offeree of a premium resides, for the payment of the entire bond if the seller fails to file proof with the Attorney General of the award of all premiums as required by paragraph (2) of subdivision (b). The notice of motion and motion shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The motion shall be granted if the Attorney General establishes that the seller failed to file proof of making the timely award of all premiums. The recovery on the bond shall be distributed pro rata to the promised recipients of the premiums to the extent their identity is actually known to the Attorney General at the time payment is made by the surety. The balance of the recovery shall be paid to any judicially established consumer protection trust fund designated by the Attorney General or as directed by the court under the cy pres doctrine.

(e) No stay of a motion filed pursuant to this section shall be granted pending the determination of

conflicting claims among beneficiaries. An order enforcing liability on a bond may be enforced in the same manner as a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. Nothing herein affects the rights of the surety against the principal.

(f) The surety shall not be liable on the bond for payment of a judgment against a seller for any violation of this chapter unless the action or proceeding is filed within two years after the cancellation or termination of the bond, the termination of the seller's registration, or the seller's cessation of business, whichever is later.

(g) The surety shall not be liable on a motion made pursuant to subdivision (d) unless the motion is filed within two years of the date on which the seller represented the premium was to have been awarded.

(h) For the purpose of this section, "judgment" includes a final order in a proceeding for the termination of telephone service pursuant to Public Utilities Commission Tariff Rule 31.

(i) Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure shall apply to the enforcement of a bond given pursuant to this section except to the extent of any inconsistency with this section, in which event this section shall apply.

CREDIT(S)

(Added by Stats.1990, c. 336 (A.B.2658), § 1. Amended by Stats.1993, c. 803 (A.B.1421), § 4; Stats.1995, c. 91 (S.B.975), § 6.)

Business and Professions Code § 17512. Consideration for recovery of money or item of value

(a) It shall be unlawful for any person to request or receive payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven business days after that money or other item is delivered to that person.

(b) This section shall not apply to an attorney licensed to practice law in this state and specifically retained for the recovery of money or any other item of value.

(c) Notwithstanding Section 17511.9, any person who violates subdivision (a) shall be guilty of a misdemeanor, and shall be punished by imprisonment in a county jail for up to one year.

CREDIT(S)

(Added by Stats.1998, c. 446 (A.B.1872), § 1.)

Business and Professions Code § 17513. Third-party collections

(a) It shall be unlawful for any telephonic seller to procure, either directly or through an agent, the services of any third-party delivery, courier, or other pickup service, for the purpose of obtaining a purchaser's payment for goods sold by the telephonic seller, unless the goods are delivered before or at the same time the purchaser's payment is obtained.

(b) Notwithstanding Section 17511.9, any person who violates subdivision (a) shall be guilty of a misdemeanor, and shall be punished by imprisonment in a county jail for up to one year.

CREDIT(S)

(Added by Stats.1998, c. 446 (A.B.1872), § 2.)