

**TELEPHONE SOLICITATIONS  
FROM ARKANSAS TELEMARETERS  
TO NON-ARKANSANS**

Aside from general anti-fraud and consumer protection laws, Arkansas regulates telephone solicitation with a body of law codified at Title 4, Chapter 99 of the Arkansas Code Annotated ("ACA"). Among other things, these laws create a "no-call list" and require "telemarketing registration." A question has arisen as to how these laws would affect a telemarketer making telephone solicitations from Arkansas to people or entities outside of Arkansas. In short, the registration law may or may not apply depending on the content of the calls being made by the telemarketer. The "no-call" law would not apply to a telemarketer making calls in Arkansas to consumers outside of Arkansas.

Telemarketing Registration. The telemarketing registration law, codified at ACA § 4-99-101 to 112 requires that "not less than 10 days prior to doing business in [Arkansas], a telephonic seller shall register with the Consumer Protection Division of the Office of the Attorney General by filing the information required by this chapter and a filing fee of \$100." ACA § 4-99-104(a)(1). "Telephonic Seller" means, with some qualifications: a person who on his or her own behalf or through salespersons causes a telephone solicitation or attempted telephone solicitation to occur which meets the following criteria:

- (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:
  - (i) 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;
  - (ii) 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; or
    - (b) Pay any money, including, but not limited to, a delivery or handling charge;
  - (iii) 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;
  - (iv) That the seller is a person other than the person he or she is;
  - (v) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier; OR
- (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:

- (i) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification;
- (ii) That the recipient will receive a prize, gift, or award if the recipient calls the seller; or
- (iii) That, if the recipient buys one (1) 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.

The telemarketer must determine if it meets any of the foregoing criteria. If so, then the telemarketer must register, regardless of whether the solicitation is made to Arkansas residents. ACA § 4-99-103(8).

No Call List. ACA § 4-99-401 to 408 governs Arkansas' "no-call list." In short, any person making or transmitting a telephone solicitation must not call "consumers" listed on the "no-call list" and must not make or transmit a telephone solicitations without checking the "no-call list." ACA § 4-99-405. The phrase "telephone solicitation" means "the initiation of a telephone call or message...for the purpose of encouraging the purchase or rental of or investment in property...which telephone call or message is transmitted to any consumer...". ACA § 4-99-403(6). "Consumers" means "any person to whom has been assigned in the State of Arkansas any residential telephone line and corresponding telephone number." ACA § 4-99-403(3). If a telemarketer located in Arkansas intends to only call persons outside of Arkansas, then those persons would not have Arkansas telephone lines or numbers and thus would not be "consumers" for purposes of the statute.

Miscellaneous. Of course, there are additional laws and regulations that govern the content and manner of telephonic solicitations which have not been addressed here. In the event you would like to pursue a telemarketing enterprise in Arkansas, please contact us for additional information. Also please advise of the nature of your telemarketing program for purposes of determining the applicability of the telemarketing registration rule.