

Assembly Bill No. 578

CHAPTER 109

An act to amend Section 17511.5 of the Business and Professions Code, relating to telemarketing.

[Approved by Governor July 17, 1995. Filed with
Secretary of State July 18, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 578, Napolitano. Telemarketing.

Under existing law, a telephonic seller is required, at the time the solicitation is made and prior to consummation of a sales transaction, to provide specified information to the prospective purchaser.

This bill would require a telephonic seller who engages in a home solicitation contract or offer, as defined, to provide the buyer both orally and in writing, information concerning the buyer's right of cancellation, as specified.

Under existing law, willful violation of the telephonic seller provision is punishable as a crime.

This bill would require telephonic sellers soliciting prospective purchasers to comply with additional disclosure requirements, thereby imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17511.5 of the Business and Professions Code is amended to read:

17511.5. 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

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

