

1 AMENDMENT TO HOUSE BILL 4546

2 AMENDMENT NO. _____. Amend House Bill 4546 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Restricted Call Registry Act.

6 Section 5. Definitions. As used in this Act:

7 (a) "Residential subscriber" means a person or spouse
8 who has subscribed to either residential telephone service
9 from a local exchange company or public mobile services, as
10 defined by Section 13-214 of the Public Utilities Act, a
11 guardian of the person or the person's spouse, or an
12 individual who has power of attorney from or an authorized
13 agent of the person or the person's spouse.

14 (b) "Established business relationship" means the
15 existence of an oral or written arrangement, agreement,
16 contract, or other legal state of affairs between a person or
17 entity and an existing customer under which both parties have
18 a course of conduct or established pattern of activity for
19 commercial or mercantile purposes and for the benefit or
20 profit of both parties. A pattern of activity does not
21 necessarily mean multiple previous contacts. The established
22 business relationship must exist between the existing

1 customer and the person or entity directly, and does not
2 extend to any related business entity or other business
3 organization of the person or entity or related to the person
4 or entity or the person or entity's agent including but not
5 limited to a parent corporation, subsidiary partnership,
6 company or other corporation or affiliate.

7 (c) "Existing customer" means an individual who has
8 either:

9 (1) entered into a transaction, agreement,
10 contract, or other legal state of affairs between a
11 person or entity and a residential subscriber under which
12 the payment or exchange of consideration for any goods or
13 services has taken place within the preceding 18 months
14 or has been arranged to take place at a future time; or

15 (2) opened or maintained a debit account, credit
16 card account, or other revolving credit or discount
17 program offered by the person or entity and has not
18 requested the person or entity to close such account or
19 terminate such program.

20 (d) "Registry" means the Restricted Call Registry
21 established under this Act.

22 (e) "Telephone solicitation" means any voice
23 communication over a telephone line from a live operator,
24 through the use of an autodialer or autodialer system, as
25 defined in Section 5 of the Automatic Telephone Dialers Act,
26 or by other means for the purpose of encouraging the purchase
27 or rental of, or investment in, property, goods, or services,
28 or for the purposes of soliciting charitable contributions
29 but does not include communications:

30 (1) to any residential subscriber with that
31 subscriber's prior express invitation or permission when
32 a voluntary 2-way communication between a person or
33 entity and a residential subscriber has occurred with or
34 without an exchange of consideration. A telephone

1 solicitation is presumed not to be made at the express
2 request of a subscriber if one of the following occurs,
3 as applicable:

4 (A) The telephone solicitation is made 30
5 business days after the last date on which the
6 subscriber contacted a business with the purpose of
7 inquiring about the potential purchase of goods or
8 services.

9 (B) The telephone solicitation is made 30
10 business days after the last date on which the
11 subscriber consented to be contacted.

12 (C) The telephone solicitation is made 30
13 business days after a product or service becomes
14 available where the subscriber has made a request to
15 the business for that product or service that is not
16 then available, and requests a call when the product
17 or service becomes available;

18 (2) by or on behalf of any person or entity with
19 whom a residential subscriber has an established business
20 relationship which has not been terminated in writing by
21 either party and which is related to the nature and scope
22 of the established business relationship;

23 (3) by or on behalf of any person or entity with
24 whom a residential subscriber is an existing customer,
25 unless the customer has stated to the person or entity or
26 the person or entity's agent that he or she no longer
27 wishes to receive the telemarketing sales calls of the
28 person or entity, or unless the nature of the call is
29 unrelated to the established business relationship with
30 the existing customer;

31 (4) by or on behalf of an organization that is
32 exempt from federal income taxation under Section 501 of
33 the Internal Revenue Code;

34 (5) by or on behalf of an individual business

1 person or a small business if the individual business
2 person or small business employs no more than 20 full or
3 part-time employees or independent contractors, the
4 individual business person or a principal of the small
5 business makes the telephone solicitation calls himself
6 or herself for the sale of goods or services offered by
7 that individual business person or small business, and
8 the telephone solicitation calls are made to subscribers
9 within a 50-mile radius of the location of the individual
10 business person or small business and the individual
11 business person or small business either:

12 (A) is setting or attempting to set a face to
13 face appointment for actions relating to that small
14 business; or

15 (B) is encouraging or attempting to encourage
16 the purchase or rental of, or investment in,
17 property, goods, or services, which cannot be
18 completed, and for which payment or authorization of
19 payment is not required, until after a written or
20 electronic agreement is signed by the residential
21 subscriber; or

22 (6) until July 1, 2005, by or on behalf of any
23 entity over which the Federal Communications Commission
24 or the Illinois Commerce Commission has regulatory
25 authority to the extent that, subject to that authority,
26 the entity is required to maintain a license, permit, or
27 certificate to sell or provide telecommunications
28 service, as defined in Section 13-203 of the Public
29 Utilities Act, while the entity is engaged in telephone
30 solicitation for inter-exchange telecommunications
31 service, as defined in Section 13-205 of the Public
32 Utilities Act, or local exchange telecommunications
33 service, as defined in Section 13-204 of the Public
34 Utilities Act.

1 Section 10. Prohibited calls.

2 (a) Beginning July 1, 2003, no person or entity may make
3 or cause to be made any telephone solicitation calls to any
4 residential subscriber more than 45 days after the
5 residential subscriber's telephone number or numbers first
6 appear on the Registry.

7 (b) For telephone solicitations permitted under Section
8 5(e), the caller must ask the residential subscriber if he or
9 she no longer wishes to receive telephone solicitation calls
10 from the person or entity. If the residential subscriber
11 states or otherwise indicates to the caller that he or she
12 does not wish to receive future telephone solicitations, the
13 caller shall follow the person or entity's procedures for
14 ensuring that the residential subscriber receives no further
15 telephone solicitations from that person or entity. If the
16 person or entity making the telephone solicitation calls the
17 residential subscriber thereafter, such person or entity
18 shall be subject to the penalties provided by Section 35 of
19 this Act.

20 Section 15. Complaints. The Illinois Commerce Commission
21 shall receive telephone solicitation complaints from
22 residential subscribers to object to such calls. Complaints
23 shall be taken by any means deemed appropriate by the
24 Illinois Commerce Commission.

25 Section 20. Registry; establishment and maintenance.

26 (a) The Illinois Commerce Commission shall establish and
27 provide for the operation of a Restricted Call Registry,
28 which shall contain a list of the telephone numbers of
29 residential subscribers who do not wish to receive telephone
30 solicitation calls. The Illinois Commerce Commission may
31 contract with a private vendor to establish and maintain the
32 Registry if the contract requires the vendor to provide the

1 Registry in a printed hard copy format, in an electronic
2 format, and in any other format prescribed by the Illinois
3 Commerce Commission. Any person or entity conducting
4 telephone solicitation calls as defined by Section 5(e) of
5 this Act within the State of Illinois shall purchase the
6 Restricted Call Registry and updates exclusively from the
7 Illinois Commerce Commission. Failure to do so prior to
8 conducting telephone solicitation calls is a violation
9 subject to the penalties provided for in Section 35 of this
10 Act.

11 (b) No later than January 1, 2003, the Illinois Commerce
12 Commission shall adopt rules consistent with this Act that
13 the Illinois Commerce Commission deems necessary and
14 appropriate to fully implement this Act. The rules shall
15 include, at a minimum, methods by which any person or entity
16 desiring to make telephone solicitation calls may obtain
17 access to the Registry to avoid calling the telephone numbers
18 of residential subscribers included in the Registry.

19 (c) The fee for obtaining the Registry and updates shall
20 be set forth in rules adopted by the Illinois Commerce
21 Commission. The fee may not exceed \$1,000 annually. All
22 copies requested in a printed hard copy format shall be
23 assessed a per page fee to be determined by rules adopted by
24 the Illinois Commerce Commission.

25 (d) The Illinois Commerce Commission shall update the
26 Registry and make information in the Registry available on a
27 quarterly basis in an electronic format and, if deemed
28 appropriate by the Illinois Commerce Commission, in one or
29 more other formats.

30 (e) If the Federal Communications Commission or Federal
31 Trade Commission establishes a single national database of
32 telephone numbers of subscribers who object to receiving
33 telephone solicitations under Title 47, Section 227(c)(3) of
34 the United States Code, this State shall discontinue the

1 Registry.

2 (f) Information in the Registry is confidential and
3 shall be afforded reasonable privacy protection except as
4 necessary for compliance with Sections 10 and 25 and this
5 Section or in a proceeding or action under Section 35 or 40.
6 The information is not a public record under the Freedom of
7 Information Act.

8 (g) The Illinois Commerce Commission shall periodically
9 obtain subscription listings of residential subscribers in
10 this State who have arranged to be included in any national
11 do-not-call list and add those names to the Registry.

12 (h) A person or entity that obtains the Registry shall
13 not use the Registry for any purpose other than to comply
14 with this Act. These unlawful purposes include, but are not
15 limited to, causing a subscriber to participate in and be
16 included in the Registry without the subscriber's knowledge
17 or consent, selling or leasing the Registry to a person other
18 than a telephone solicitor, selling or leasing by a telephone
19 solicitor of the Registry, and a telephone solicitor, either
20 directly or indirectly, persuading a subscriber with whom it
21 has an established business relationship to place his or her
22 telephone number in the Registry, if the solicitation has the
23 effect of preventing competitors from contacting that
24 solicitor's customers.

25 (i) No person or entity that sells, leases, exchanges,
26 or rents telephone solicitation lists, except for directory
27 assistance and telephone directories sold by telephone
28 companies or their affiliates, shall include in those lists
29 those telephone numbers that appear in the current Registry.

30 Section 25. Enrollment.

31 (a) The Illinois Commerce Commission shall provide
32 notice to residential subscribers of the establishment of the
33 Registry.

1 (b) The Illinois Commerce Commission shall establish any
2 method deemed appropriate for a residential subscriber to
3 notify the Illinois Commerce Commission that the residential
4 subscriber wishes to be included in the Registry.

5 (c) The Commission may, by rule, set an initial fee
6 which shall not exceed \$5 per residential customer for
7 inclusion on the Restricted Call Registry. The Commission
8 shall review the revenues and expenditures of the Restricted
9 Call Registry on a biennial basis and shall, by rule, reduce
10 the fee accordingly if revenues exceed expenditures. The
11 Commission may adopt rules and procedures governing the
12 acceptance of payment by credit card and may enter into such
13 agreements as necessary to accept payment by credit card.

14 (d) A residential subscriber in the Registry shall be
15 deleted from the Registry upon the residential subscriber's
16 written request.

17 (e) Enrollment in the Registry is effective from the
18 start of the quarter following the date of enrollment until
19 the residential subscriber disconnects or changes his or her
20 telephone number or submits a written request to be deleted
21 from the Registry, whichever occurs first. The residential
22 subscriber is responsible for notifying the Illinois Commerce
23 Commission of any changes in his or her telephone number.

24 Section 30. Public notification. The Illinois Commerce
25 Commission shall work with local exchange telecommunications
26 companies to disseminate to their customers information about
27 the availability of and instructions for requesting
28 educational literature from the Illinois Commerce Commission.
29 The Illinois Commerce Commission may enter into agreements
30 with those companies for the dissemination of the educational
31 literature. Telecommunications companies shall disseminate
32 the educational literature at least once per year in both a
33 message contained in customers' bills and a notice in the

1 information section of all telephone directories distributed
2 to customers and shall include on their website a link to the
3 ICC's web page for the Registry. The Illinois Commerce
4 Commission shall include, on its Internet web site,
5 information to customers regarding their right to be included
6 in the Registry and the various methods, including notice to
7 the Illinois Commerce Commission, of being included in the
8 Registry. The Illinois Commerce Commission shall have this
9 literature developed for dissemination to the public no later
10 than March 1, 2003.

11 Section 35. Violation; relief.

12 (a) The Illinois Commerce Commission may initiate
13 administrative proceedings in accordance with rules adopted
14 under this Act relating to a knowing and willful violation of
15 Section 10.

16 (b) If it is determined after a hearing that a person
17 has knowingly and willfully violated one or more provisions
18 of this Section, the Illinois Commerce Commission may assess
19 a fine not to exceed \$2,500 for each violation. Each
20 individual violation of Section 10 of this Act shall be a
21 separate and distinct offense under this Section. In
22 imposing a penalty under this Section, the Commission shall,
23 at a minimum, consider the following factors:

24 (1) whether the offense was knowing or willful;

25 (2) whether the entity committing the offense has a
26 prior history of non-compliance with this Act;

27 (3) the offender's relative ability to pay a
28 penalty;

29 (4) whether the offender has or has not cooperated
30 with the Commission in pursuing the investigation; and

31 (5) such other special, mitigating or aggravating
32 circumstances as the Commission may find to exist.

33 (c) Any proceeding conducted under this Section is

1 subject to the Illinois Administrative Procedure Act.

2 (d) Nothing in this Section may be construed to restrict
3 any right that any person may have under any other law or at
4 common law.

5 (e) No action or proceeding may be brought under this
6 Section:

7 (1) more than one year after the person bringing
8 the action knew or should have known of the occurrence of
9 the alleged violation; or

10 (2) more than one year after the termination of any
11 proceeding or action arising out of the same violation or
12 violations by the State of Illinois, whichever is later.

13 (f) The remedies, duties, prohibitions, and penalties in
14 this Act are not exclusive and are in addition to all other
15 causes of action, remedies, and penalties provided by law.

16 (g) There is created in the State Treasury a special
17 fund to be known as the Restricted Call Registry Fund. All
18 fees and fines collected in the administration and
19 enforcement of this Act shall be deposited into the Fund.
20 Moneys in the Fund shall, subject to appropriation, be used
21 by the Illinois Commerce Commission for implementation,
22 administration, and enforcement of this Act.

23 Section 40. Exemption. A person or entity may not be
24 held liable for violating this Act if:

25 (1) the person or entity has obtained copies of the
26 Registry and each updated Registry from the Illinois
27 Commerce Commission and has established and implemented
28 written policies and procedures related to the
29 requirements of this Act;

30 (2) the person or entity has trained its personnel
31 in the requirements of this Act;

32 (3) the person or entity maintains records
33 demonstrating compliance with subdivisions (1) and (2) of

1 this Section and the requirements of this Act; and
2 (4) any subsequent telephone solicitation is the
3 result of unintentional error.

4 Section 90. The State Finance Act is amended by adding
5 Section 5.570 as follows:

6 (30 ILCS 105/5.570 new)

7 Sec. 5.570. The Restricted Call Registry Fund.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law."