



S.B. 159
123rd General Assembly
(As Introduced)

Sen. Watts

BILL SUMMARY

- Generally increases the penalty for certain violations of the Telephone Solicitations Law if the purchaser injured by the violation was 65 years of age or older or a disabled adult at the time of the commission of the offense and regardless of whether the offender knew the age of the purchaser.

TABLE OF CONTENTS

Operation of the bill.....	1
Existing law.....	2
In general.....	2
Registration and related prohibitions	3
Prior submission of representation concerning gift, award, or prize	4
Information to be disclosed by solicitor or salesperson.....	4
Written confirmation of purchaser.....	5
General prohibitions related to consumer fraud	6
Other general prohibitions	7
Influencing purchaser to waive rights.....	7
Penalties.....	7

CONTENT AND OPERATION

Operation of the bill

The bill provides new penalties for a violation of the prohibitions in the Telephone Solicitations Law that are described below in "**Information to be disclosed by solicitor or salesperson,**" "**Written confirmation of purchaser,**" "**General prohibitions related to consumer fraud,**" and "**Influencing purchaser to waive rights,**" if the court determines that a purchaser injured by the violation was

65 years of age or older or a "disabled adult" (see below) at the time of the commission of the offense and regardless of whether the offender knew the age of the purchaser. The bill does not change the penalty for a violation of any prohibition in any other circumstances.

Under the bill, if the court determines that a purchaser injured by a violation of any of the specified prohibitions was 65 years of age or older or a "disabled adult" at the time of the commission of the offense and regardless of whether the offender knew the age of the purchaser, the following penalty provisions apply to the offender: (1) if the loss to the purchaser is less than \$500, the violation is a felony of the fifth degree, (2) if the loss to the purchaser is \$500 or more but less than \$5,000, the violation is a felony of the fourth degree, (3) if the loss to the purchaser is \$5,000 or more but less than \$25,000, the violation is a felony of the third degree, and (4) if the loss to the purchaser is \$25,000 or more, the offender is guilty of a felony of the third degree. (R.C. 4719.99.)

For purposes of the Telephone Solicitations Law, the bill defines "disabled adult" as a person who is 18 years of age or older and has some impairment in body or mind that makes the person unfit to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an agency of Ohio or the United States having the function of so classifying persons (R.C. 4719.01(A)(3)).

Existing law

In general

Existing R.C. Chapter 4719., generally referred to as the Telephone Solicitations Law, regulates "telephone solicitations" and "telephone solicitors" through a series of prohibitions and requirements that are reviewed in the following portions of this analysis (see **COMMENT 1**). The Telephone Solicitations Law exempts certain telephone solicitors from its prohibitions and requirements (R.C. 4719.01(B))--the exempt telephone solicitors are listed in **COMMENT 2**.

As used in the Telephone Solicitations Law (R.C. 4719.01):

(1) "Telephone solicitation" means a communication to a person that is initiated by or on behalf of a telephone solicitor or by a salesperson and that either represents a price or the quality of available goods or services or is used to induce the person to purchase foods or service, including, but not limited to, inducement through the offering of a gift, award, or prize;

(2) "Telephone solicitor" means a person that engages in telephone solicitation directly or through one or more salespersons either from a location in Ohio or from a location outside Ohio to persons in Ohio. "Telephone solicitor" includes, but is not limited to, any person described in the preceding sentence that is an owner, operator, officer, or director of, partner in, or other individual engaged in the management activities of a business.

(3) "Communication" means a written or oral notification or advertisement that meets both of the following criteria, as applicable: (a) it is transmitted by or on behalf of the seller of goods or services and by or through any printed, audio, video, cinematic, telephonic, or electronic means, and (b) in the case of a notification or advertisement other than by telephone, either it is followed by a telephone call from a telephone solicitor or salesperson, or it invites a response by telephone, and, during the course of that response, a telephone solicitor or salesperson attempts to make or makes a sale of goods or services (in this provision, "invites a response by telephone" excludes the mere listing or inclusion of a telephone number in a notification or advertisement).

(4) "Salesperson" means an individual who is employed, appointed, or authorized by a telephone solicitor to make telephone solicitations, but does not mean an individual who is: (a) included within one of the exemptions from the Telephone Solicitations Law, as described below in **COMMENT 2**, (b) employed, appointed, or authorized by a person who is included within one of those exemptions, or (c) under a written contract with a person who is included within one of those exemptions if liability for all transactions with purchasers is assumed by the person so exempted.

Registration and related prohibitions

Existing law prohibits any person from acting as a telephone solicitor without first having obtained a certificate of registration or registration renewal from the Attorney General (the AG) under a specified provision of the Telephone Solicitations Law. The application for a certificate of registration or registration renewal must contain certain information that is specified by statute and described in **COMMENT 3**. (R.C. 4719.02(A) and (B)--not in the bill.)

Existing law also prohibits a telephone solicitor from: (1) except as otherwise provided in clauses (2) and (3) of this paragraph, failing to notify the AG in writing any later than 30 days after the date of a change in the information required in the application for a certificate or renewal, (2) failing to notify the AG in writing any later than 30 days before any change in the information in the application for a certificate or renewal that is described in **COMMENT 3(a)**, (k), and (l), or (3) failing to notify the AG in writing of any change in the information in the application

for a certificate or renewal that is described in **COMMENT 3(u)** prior to its use in a solicitation. (R.C. 4719.02(C).)

Additionally, existing law prohibits any nonresident telephone solicitor from failing to maintain a resident of Ohio as its statutory agent for the purpose of service of process (R.C. 4719.02(D)).

Prior submission of representation concerning gift, award, or prize

Existing law prohibits any telephone solicitor that intends to represent or cause to be represented, expressly or impliedly, to a purchaser that the purchaser is or may be eligible to receive a gift, award, or prize, however denominated, from failing to submit to the AG, any later than 14 days prior to first making that representation, a statement setting forth all of the following, for each item mentioned (R.C. 4719.05):

- (1) A description of the item;
- (2) The item's verifiable market value and the basis for the valuation;
- (3) All terms and conditions a purchaser must satisfy in order to receive the item; the statement must be accompanied by a copy of the written confirmation provided to purchasers pursuant to R.C. 4719.07.
- (4) Verification that no payment or purchase of any kind is required to win a prize or to participate in a prize promotion, and a description of the no-purchase or no-payment method of participating in the prize promotion;
- (5) If they are ascertainable, the odds, for a given purchaser, of receiving the item, and, if the odds are not ascertainable, all the factors and methods used in calculating the odds.
- (6) If a purchaser is to receive fewer than all the items described by the seller: (a) the manner in which the telephone solicitor decides which item a given purchaser is to receive, (b) if they are ascertainable, the odds, for a given purchaser, of receiving each item described, (c) if the odds are not ascertainable, all the factors and methods used in calculating the odds, and (d) the name, address, and telephone number of each person that, during the preceding 12 months or any portion of that 12-month period in which the telephone solicitor has done business, has received each gift, award, or prize.

Information to be disclosed by solicitor or salesperson

Existing law prohibits a telephone solicitor or salesperson, within the first 60 seconds of a telephone call and before requesting any financial information or

conveying to the consumer any substantive information about a prize, product, or service, from failing to do all of the following: (1) stating the solicitor's or salesperson's true name and the company on whose behalf the solicitation is being made, (2) stating that the purpose of the telephone call is to effect a sale, and (3) identifying the goods or services being sold.

Existing law also prohibits a telephone solicitor or salesperson, before requesting payment if a sale or an agreement to purchase is completed during a telephone call, from failing to inform the purchaser of the rights granted under R.C. 4719.07 and disclosing all of the following information in a clear and conspicuous manner: (1) the street address and telephone number of the telephone solicitor, (2) the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the telephone solicitation, (3) all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the telephone solicitation, (4) all material terms and conditions of the telephone solicitor's policy of making refunds, cancellations, exchanges, or repurchases, and (5) in any prize promotion, a description of the prize; its market value; all material conditions to receive or redeem the prize; the odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds; that no purchase or payment of any kind is required to win a prize or to participate in a prize promotion; and the no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate.

Further, existing law prohibits a telephone solicitor or salesperson from failing to make an oral disclosure required by the provisions described in the two preceding paragraphs in a clear and intelligible manner. (R.C. 4719.06.)

Written confirmation of purchaser

Existing law prohibits a telephone solicitor or salesperson from making or submitting a charge to a purchaser's account, including, but not limited to, a checking, savings, share, credit card, or other account for which the purchaser may be obligated financially, unless the telephone solicitor has received from the purchaser the original copy of a confirmation that is signed by the purchaser and that complies with specified provisions of the Telephone Solicitations Law.

It also prohibits a telephone solicitor that causes a written confirmation to be delivered to a purchaser by a courier from causing the courier to obtain the signed, written confirmation or payment from the purchaser or to transport the signed, written confirmation or payment to the solicitor, and from requesting that the purchaser arrange for the transportation of the signed, written confirmation or

payment to occur, sooner than seven days following delivery of the written confirmation to the purchaser.

Further, it prohibits a telephone solicitor who receives payment in any form from a purchaser without also receiving a signed, written confirmation that complies with specified provisions of the Telephone Solicitations Law from failing to do all of the following within five business days after the receipt of the payment: (1) refunding all payments made, including any down payment made under the agreement, (2) returning any goods traded in to the telephone solicitor on account of or in contemplation of an agreement resulting from the telephone solicitation, in substantially the same condition as when received by the telephone solicitor, and (3) taking any action necessary or appropriate to terminate promptly any security interest created in connection with the agreement. (R.C. 4719.07(C), (D), and (E).)

General prohibitions related to consumer fraud

Existing law prohibits a telephone solicitor from doing any of the following, consumer fraud-related acts (R.C. 4719.08(C), (E), (F), and (G)):

(1) Advertising that one is registered as a telephone solicitor or representing that registration as a telephone solicitor constitutes approval or endorsement by any government or governmental office or agency;

(2) Misrepresenting that a person is registered or that the person has a valid certificate number;

(3) Misrepresenting, directly or by implication, any of the following information: the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a telephone solicitation; a material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a telephone solicitation; a material aspect of the performance, efficacy, nature, or characteristics of goods or services that are the subject of a telephone solicitation; a material aspect of the nature or terms of the telephone solicitor's refund, cancellation, exchange, or repurchase policies; a material aspect of a prize promotion, including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment of any kind is required to win a prize or to participate in a prize promotion; a material aspect of an investment opportunity, including, but not limited to, risk, liquidity, earnings potential, or profitability; or the telephone solicitor's affiliation with, or endorsement by, any government or third-party organization.

(4) Making a false or misleading statement to induce a purchaser to pay for goods or services.

Other general prohibitions

Existing law prohibits a telephone solicitor from doing any of the following acts that are not consumer fraud-related (R.C. 4719.08(A), (B), (D), and (H)):

(1) Obtaining a certificate of registration or registration through any false or fraudulent representation or make any material misrepresentation in any registration or registration renewal application;

(2) Failing to maintain a valid certificate of registration or registration renewal;

(3) Providing inaccurate or incomplete information to the AG when making an application for a certificate or certificate renewal;

(4) Failing to notify the AG within 15 days if, in a court of competent jurisdiction of Ohio or any other state or of the United States, the telephone solicitor is convicted of a felony, engaging in a pattern of corrupt activity, racketeering, a violation of federal or state securities law, or a theft offense.

Influencing purchaser to waive rights

Existing law prohibits a telephone solicitor or salesperson from causing or attempting to cause a purchaser to waive a right granted under specified provisions of the Telephone Solicitations Law. Any waiver by a purchaser of a right granted under the specified provisions is contrary to the fundamental public policy of this state and is void and unenforceable. (R.C. 4719.09.)

Penalties

Existing law specifies that a person who violates any of the above-described prohibitions in the Telephone Solicitations Law is guilty of a felony of the fifth degree. Prior to July 1, 1996, a person who violated any of those prohibitions was guilty of a felony of the fourth degree. (R.C. 4719.99.)

COMMENT

1. Existing R.C. Chapter 1716. contains the Charitable Solicitations Law, which is separate from, and independent of, the Telephone Solicitations Law. The Charitable Solicitations Law regulates charitable organizations in their solicitation, or in the solicitation on their behalf, of contributions, and also regulates charitable organizations in their participation in charitable sales promotions. The Charitable Solicitations Law defines "charitable organization" as any person that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section

501(c)(3) of the Internal Revenue Code; or any person that is or holds itself out to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. "Charitable organization" does not include an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose; or a compensated employee of an employer not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of the employee's employer.

The Charitable Solicitations Law defines "charitable sales promotion" as any advertising or sale conducted by a person who represents that the purchase or use of goods or services offered by the person will benefit, in whole or in part, any charitable organization or charitable purpose. The provision of advertising services to a charitable organization, either for compensation or as a donation, does not of itself constitute a charitable sales promotion. (R.C. 1716.01.)

2. The Telephone Solicitations Law provides that a telephone solicitor is exempt from the provisions of that Law if the telephone solicitor is any of the following (R.C. 4719.01(B)):

(a) A person engaging in a telephone solicitation that is a one-time or infrequent transaction not done in the course of a pattern of repeated transactions of a like nature;

(b) A person engaged in telephone solicitation solely for religious or political purposes; a charitable organization, fund-raising counsel, or professional solicitor in compliance with the registration and reporting requirements of the Charitable Solicitations Law (see **COMMENT 1**); or any person or other entity exempt under a specified provision of the Charitable Solicitations Law from filing a registration statement under that Law;

(c) A person making a telephone solicitation involving a home solicitation sale that makes the sales presentation and completes the sale at a later, face-to-face meeting between the seller and the purchaser rather than during the telephone solicitation (if the person, following the telephone solicitation, causes another person to collect the payment of any money, this exemption does not apply).

(d) A licensed securities, commodities, or investment broker, dealer, investment advisor, or associated person when making a telephone solicitation

within the scope of the person's license (under this provision, "licensed securities, commodities, or investment broker, dealer, investment advisor, or associated person" means a person subject to licensure or registration as such by the securities and exchange commission; the National Association of Securities Dealers or other self-regulatory organization, as defined by 15 U.S.C.A. 78c; by the Division of Securities under R.C. Chapter 1707.; or by an official or agency of any other state of the United States.

(e) A person primarily engaged in soliciting the sale of a newspaper of general circulation.

(f) An issuer, or its subsidiary, that has a class of securities to which all of the following apply: the class of securities is subject to section 12 of the "Securities Exchange Act of 1934," and is registered or is exempt from registration under 15 U.S.C.A. 78l(g)(2)(A), (B), (C), (E), (F), (G), or (H); the class of securities is listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System; and the class of securities is a reported security as defined in 17 C.F.R. 240.11Aa3-1(a)(4). This exemption also applies to an issuer, or its subsidiary, that formerly had a class of securities that met the criteria set forth in the preceding sentence if the issuer, or its subsidiary, has a net worth in excess of \$100,000,000, files or its parent files with the Securities and Exchange Commission an S.E.C. form 10-K, and has continued in substantially the same business since it had a class of securities that met the criteria in the preceding sentence (under this provision, "issuer" and "subsidiary" include the successor to an issuer or subsidiary).

(g) A person soliciting a transaction regulated by the Commodity Futures Trading Commission, if the person is registered or temporarily registered for that activity with the Commission under 7 U.S.C.A. 1 et seq., and the registration or temporary registration has not expired or been suspended or revoked;

(h) A person soliciting the sale of any book, record, audio tape, compact disc, or video, if the person allows the purchaser to review the merchandise for at least seven days and provides a full refund within 30 days to a purchaser who returns the merchandise or if the person solicits the sale on behalf of a membership club operating in compliance with regulations adopted by the Federal Trade Commission in 16 C.F.R. 425;

(i) A supervised financial institution or its subsidiary, which means a bank, trust company, savings and loan association, savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or institution described in section 2(c)(2)(F) of the "Bank Holding Company Act of 1956," supervised by an official or agency of the United States, Ohio, or any other state of the United States; or a licensee or registrant under R.C. 1321.01 to 1321.19, 1321.51 to 1321.60, or 1321.71 to 1321.83.

(j) An insurance company, association, or other organization that is licensed or authorized to conduct business in this state by the Superintendent of Insurance pursuant to R.C. Title XXXIX or Chapter 1751., when soliciting within the scope of its license or authorization. This exemption also applies to a licensed insurance broker, agent, or solicitor when soliciting within the scope of the person's license.

(k) A person soliciting the sale of services provided by a cable television system operating under authority of a governmental franchise or permit;

(l) A person soliciting a business-to-business sale under which any of the following conditions are met: the telephone solicitor has been operating continuously for at least three years under the same business name under which it solicits purchasers, and at least 51 per cent of its gross dollar volume of sales consists of repeat sales to existing customers to whom it has made sales under the same business name; the purchaser business intends to resell the goods purchased; the purchaser business intends to use the goods or services purchased in a recycling, reuse, manufacturing, or remanufacturing process; or the telephone solicitor is a publisher of a periodical or of magazines distributed as controlled circulation publications as defined in R.C. 5739.01(CC) and is soliciting sales of advertising, subscriptions, reprints, lists, information databases, conference participation or sponsorships, trade shows or media products related to the periodical or magazine, or other publishing services provided by the controlled circulation publication.

(m) A person that, not less often than once each year, publishes and delivers to potential purchasers a catalog that complies with both of the following: (i) it includes the business address of the seller, a written description or illustration of each good or service offered for sale, a clear and conspicuous disclosure of the sale price of each good or service; shipping, handling, and other charges; and return policy; and (ii) either the catalog includes at least 24 pages of written material and illustrations, is distributed in more than one state, and has an annual postage-paid mail circulation of not less than 250,000 households; or the catalog includes at least ten pages of written material or an equivalent amount of material in electronic form on the Internet or an on-line computer service, the person does not solicit customers by telephone but solely receives telephone calls made in response to the catalog, and during the calls the person takes orders but does not engage in further solicitation of the purchaser (under this provision, "further solicitation" does not include providing the purchaser with information about, or attempting to sell, any other item in the catalog that prompted the purchaser's call or in a substantially similar catalog issued by the seller).

(n) A political subdivision or instrumentality of the United States, Ohio, or any state of the United States;

(o) A college or university or any other public or private institution of higher education in Ohio;

(p) A public utility that is subject to regulation by the Public Utilities Commission, or its affiliate;

(q) A travel agency or tour promoter that is registered in compliance with R.C. 1333.96 when soliciting within the scope of the agency's or promoter's registration;

(r) A person that solicits sales through a television program or advertisement that is presented in the same market area no fewer than 20 days per month or offers for sale no fewer than ten distinct items of goods or services; and offers to the purchaser an unconditional right to return any good or service purchased within a period of at least seven days and to receive a full refund within 30 days after the purchaser returns the good or cancels the service;

(s) A person that, for at least one year, has been operating a retail business under the same name as that used in connection with telephone solicitation and both of the following occur on a continuing basis: the person either displays goods and offers them for retail sale at the person's business premises or offers services for sale and provides them at the person's business premises; and at least 51 per cent of the person's gross dollar volume of retail sales involves purchases of goods or services at the person's business premises. This exemption also applies to an affiliate of a person that meets the requirements specified in the preceding sentence if the affiliate meets certain specified additional requirements. It also applies to a person that, for a period of less than one year, has been operating a retail business in Ohio under the same name as that used in connection with telephone solicitation, as long as the person either displays goods and offers them for retail sale at the person's business premises or offers services for sale and provides them at the person's business premises, the goods or services that are the subject of telephone solicitation are sold at the person's business premises, and at least 65 per cent of the person's gross dollar volume of retail sales involves purchases of goods or services at the person's business premises, and the person conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rule adopted by the Federal Trade Commission in 16 C.F.R. part 310.

(t) A person who performs telephone solicitation sales services on behalf of other persons and to whom one of the following applies: (i) the person has operated under the same ownership, control, and business name for at least five years, and the person receives at least 75 per cent of its gross revenues from written telephone solicitation contracts with persons who come within one of the specified exemptions from the Telephone Solicitations Law, (ii) the person is an affiliate of one or more exempt persons and makes telephone solicitations on behalf of only the

exempt persons of which it is an affiliate, (iii) the person makes telephone solicitations on behalf of only exempt persons, the person and each exempt person on whose behalf telephone solicitations are made have entered into a written contract that specifies the manner in which the telephone solicitations are to be conducted and that at a minimum requires compliance with the telemarketing sales rule adopted by the Federal Trade Commission in 16 C.F.R. part 310, and the person conducts the telephone solicitations in the manner specified in the written contract, or (iv) the person performs telephone solicitation for religious or political purposes, a charitable organization, a fund-raising council, or a professional solicitor in compliance with the registration and reporting requirements of R.C. Chapter 1716. (see **COMMENT 1**) and meets certain specified additional requirements.

(u) A person that is a licensed real estate salesperson or broker under R.C. Chapter 4735. when soliciting within the scope of the person's license;

(v) A publisher that solicits the sale of the publisher's periodical or magazine of general, paid circulation, or a person that solicits a sale of that nature on behalf of a publisher under a written agreement directly between the publisher and the person, or a publisher that solicits the sale of the publisher's periodical or magazine of general, paid circulation, or a person that solicits a sale of that nature as authorized by a publisher under a written agreement directly with a publisher's clearinghouse provided the person is a resident of Ohio for more than three years and initiates all telephone solicitations from Ohio and the person conducts the solicitation and sale in compliance with 16 C.F.R. part 310, as adopted by the Federal Trade Commission.

(w) A person that solicits the sale of food, as defined in R.C. 3715.01, or the sale of products of horticulture, as defined in R.C. 5739.01, if the person does not intend the solicitation to result in, or the solicitation actually does not result in, a sale that costs the purchaser an amount greater than \$500.

(x) A licensed funeral director when soliciting within the scope of that license, if both of the following apply: the solicitation and sale are conducted in compliance with 16 C.F.R. part 453, as adopted by the Federal Trade Commission, and with R.C. 1107.33 and 1345.21 to 1345.28; and the person provides to the purchaser of any preneed funeral contract a notice that clearly and conspicuously sets forth the cancellation rights specified in R.C. 1107.33(G), and retains a copy of the notice signed by the purchaser.

(y) A person, or affiliate thereof, licensed to sell or issue Ohio instruments designated as travelers checks pursuant to R.C. sections 1315.01 to 1315.11.

(z) A person that solicits sales from its previous purchasers and meets all of the following requirements: the solicitation is made under the same business name

that was previously used to sell goods or services to the purchaser; the person has, for a period of not less than three years, operated a business under the same business name as that used in connection with telephone solicitation; the person does not conduct a prize promotion or offer the sale of an investment opportunity; the person conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the Federal Trade Commission in 16 C.F.R. part 310; neither the person nor any of its principals has been convicted of a felony or a theft offense; and neither the person nor any of its principals has had entered against them an injunction or a final judgment or order, including an agreed judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt practices, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice.

(aa) An institution defined as a home health agency, that conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the Federal Trade Commission in 16 C.F.R. part 310, and engages in telephone solicitation only within the scope of the institution's certification, accreditation, contract with the Department of Aging, or status as a home health agency; and that meets certain additional specified requirements;

(bb) A person licensed to provide a hospice care program by the Department of Health when conducting telephone solicitations within the scope of the person's license and according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the Federal Trade Commission in 16 C.F.R. part 310.

3. Existing law specifies that an application for a certificate of registration or registration renewal as a telephone solicitor must contain all of the following information (R.C. 4719.02(B)):

(a) The true name, date of birth, driver's license number, social security number or tax identification number, business address, and home address of the applicant, including each name under which the applicant intends to engage in telephone solicitations;

(b) Each business or occupation engaged in by the applicant during the three years immediately preceding the date of the application, and the location of each such business or occupation;

(c) The previous experience of the applicant as a telephone solicitor or salesperson;

(d) Whether in any jurisdiction the applicant has been arrested for, convicted of, or pleaded guilty to, has entered a plea of no contest for, or is being prosecuted by indictment or information for a felony and, if so, the nature of the felony;

(e) Whether, in a court of competent jurisdiction in Ohio or any other state or the United States, the applicant has been convicted of or is being prosecuted by indictment or information for engaging in a pattern of corrupt activity, racketeering, a violation of federal or state securities law, or a theft offense;

(f) Whether there has ever been a judicial or administrative finding that the applicant has acted as a salesperson without a license, or whether such a license has been refused, revoked, or suspended in any jurisdiction;

(g) Whether the applicant has worked for or been affiliated with a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including an agreed judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice;

(h) Whether in any jurisdiction there has been entered against the applicant an injunction, a temporary restraining order, or a final judgment or order, including an agreed judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt activity, racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice; and whether there is any litigation or proceeding pending against the applicant;

(i) Whether the applicant, at any time during the previous seven years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(j) The name of any parent, affiliate, or other related entity to which either of the following applies: the entity may engage in a business transaction with a purchaser relating to any telephone solicitation by the applicant; or the entity accepts responsibility or is otherwise held out by the applicant as being responsible for any statement or act of the applicant relating to any telephone solicitation by the applicant.

(k) The complete street address of each location, designating the principal location, from which the applicant will be doing business, including each location at

which mail will be received by or on behalf of the applicant, and identifying any such location that is a post office box or mail drop;

(l) A list of all telephone numbers to be used by the applicant, with the street address where each telephone using these numbers will be located;

(m) The true name, current home address, date of birth, social security number, and all other names by which known, or previously known, of each of the following: each principal officer, director, trustee, shareholder, owner, or partner of the applicant, and each other person participating in or responsible for the management of the applicant's business; each office manager or other person principally responsible for each location from which the applicant will do business; and each salesperson or other person to be employed by the applicant.

(n) The name and street address of the statutory agent required by law;

(o) For any application containing answers in the affirmative to any information required by paragraph (3)(d) to (h), above: the name of the court or administrative agency rendering the conviction, judgment, or order against the person or in which the litigation or proceeding is pending; and the docket number of the matter; the date of the conviction, judgment, or order or the date the pending litigation or proceeding was initiated; and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, order, or pending litigation or proceeding.

(p) If the applicant is other than an individual or if any parent, affiliate, or other related entity is identified pursuant to paragraph (3)(j), above: the applicant's place of organization and the place of organization of any such parent, affiliate, or other related entity; in the case of a partnership on the part of the applicant or such parent, affiliate, or other related entity, a copy of any written partnership agreement; and in the case of a corporation, a copy of the articles of incorporation and bylaws of the applicant and such parent, affiliate, or other related entity.

(q) The identity of any person, identified pursuant to paragraph (3)(m), above, that in any jurisdiction: has been convicted of or is being prosecuted by indictment or information for a felony, engaging in a pattern of corrupt activity, racketeering, a violation of federal or state securities law, or a theft offense; is involved in pending litigation or proceedings or has had entered against itself an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt activity, racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice; is or

has been subject to any litigation, injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt activity, racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice; at any time during the previous seven years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency; or has been a principal, director, officer, or trustee of or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed for bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within one year after the person held that position.

(r) For any application containing answers in the affirmative to any information required by paragraph (3)(i), above, and for any person described in the fourth clause of paragraph (3)(q), above: the name of the court or administrative agency rendering the conviction, judgment, or order against the person or in which the litigation is pending; and the docket number of the matter; the date of the conviction, judgment, or order or the date the pending litigation was initiated; and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, order or pending litigation.

(s) The name and address of any person identified under the fifth clause of paragraph (3)(q), above; the date of the action; the name of court that exercised jurisdiction; and the docket number of the matter;

(t) The name, address, and account number of each institution where banking or similar monetary transactions are done by the applicant;

(u) A copy of any script, outline, or presentation the applicant will require or suggest be used by a salesperson when soliciting or, if no such document is to be used, a notarized statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation;

(v) Any other information required at any time by the AG.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-23-99	p. 665



S0159-I.123/bc

