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Bill Analysis
Legislative Service Commission

H.B. 312

124th General Assembly
(As Introduced)

Reps. Goodman, Seitz, Jolivette, Jones, Hagan, Metzger, Kearns, Collier, Hollister, Lendrum, Setzer, Webster, Damschroder, Carmichael, Gilb, Husted, Carano, Beatty, Metelsky, Patton, Distel, S. Smith, Coates, Perry

BILL SUMMARY

- Prohibits a telephone solicitor from knowingly blocking or authorizing or causing to be blocked the disclosure of the telephone number from which a telephone solicitation is made.
- Makes a violation of the prohibition an unfair or deceptive act or practice in violation of the Consumer Sales Practices Law, grants the person injured by the violation the same relief otherwise available to a consumer for violations of existing provisions of that Law, and grants the Attorney General the same powers and remedies to enforce the bill's provisions as are otherwise available in the enforcement of the existing provisions of that Law.

CONTENT AND OPERATION

Background law

The Telephone Solicitors Registration 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. R.C. 4719.01 to 4719.18 and 4719.99 prescribe the requirements and procedures for the registration of telephone solicitors, regulate the telephone solicitation practices of telephone solicitors, specify certain prohibitions and penalties, and provide for the enforcement of the prohibitions by the Attorney General.

Operation of the bill

New prohibition

The bill prohibits any "telephone solicitor," by means of any elective blocking option available to subscribers of the calling party's telephone company or by any other means, from knowingly blocking or authorizing or causing to be blocked the disclosure of the telephone number from which a "telephone solicitation" is made (R.C. 4719.21(B)). (See "Definitions," below.)

Remedies for violation of new prohibition

The bill provides that a violation of the above prohibition is an unfair or deceptive act or practice in violation of R.C. 1345.02 in the Consumer Sales Practices Law (see **COMMENT 1**). A person injured by a violation of the prohibition has a cause of action and is entitled to the same relief available to a consumer under that Law (see **COMMENT 2**). All powers and remedies available to the Attorney General to enforce the Consumer Sales Practices Law are available to the Attorney General to enforce the bill's prohibition (see **COMMENT 3**). (R.C. 4719.21(C).)

Definitions

The bill defines the following terms as used in the bill (R.C. 4719.21(A)):

"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, an owner, operator, officer, or director of, partner in, or other individual engaged in the management activities of, a business. (R.C. 4719.01(A)(8)--not in the bill.)

"Telephone solicitation" means a communication to a person that meets both of the following criteria: (a) the communication is initiated by or on behalf of a telephone solicitor or by a salesperson and (b) the communication either represents a price or the quality or availability of goods or services or is used to induce the person to purchase "goods or services," including, but not limited to, inducement through the offering of a "gift, award, or prize" (R.C. 4719.01(A)(7)--not in the bill). "Goods or services" means any real property or tangible or intangible personal property, or services of any kind provided or offered to a person, including, but not limited to, advertising, labor performed for the benefit of a person, personal property intended to be attached to or installed in any real property, regardless of whether it is so attached or installed, timeshare estates or licenses, and extended service contracts (R.C. 4719.01(A)(4)--not in the bill).

"Gift, award, or prize" means anything of value that is offered or purportedly offered, or given or purportedly given by chance, at no cost to the receiver and with no obligation to purchase goods or services; "chance" includes a situation in which a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telephone solicitor does not identify the specific item that the person will receive (R.C. 4719.01(A)(3)--not in the bill).

COMMENT

1. The general prohibition in R.C. 1345.02 prohibits any supplier from committing an unfair or deceptive act or practice in connection with a consumer transaction. Without limiting the scope of that general prohibition, an act or practice of a supplier in representing any of the matters specified in R.C. 1345.02(B) is deceptive. (R.C. 1345.02(A) and (B)--not in the bill.)

2. If a violation is an act prohibited by R.C. 1345.02, the consumer may, in an individual action, rescind the transaction or recover the consumer's damages. Any consumer also may seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates the Consumer Sales Practices Law. The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply: (a) the consumer complaining of the act or practice has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith or (b) the supplier has knowingly committed an act or practice that violates that Law. (R.C. 1345.09(A), (D), and (F)--not in the bill.)

3. The Attorney General has the power to conduct an investigation if, by the Attorney General's own inquiries or as a result of a complaint, the Attorney General has reasonable cause to believe that a person has engaged or is engaging in an act or practice that violates the Consumer Sales Practices Law. For this purpose, the Attorney General may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter. During an investigation, the Attorney General may afford a supplier an opportunity to cease and desist from any suspected violation, and suspend the investigation. The Attorney General may terminate an investigation upon acceptance of a written assurance of voluntary compliance from a supplier who is suspected of the violation. (R.C. 1345.06(A), (B), and (F)--not in the bill.)

If the Attorney General, by the Attorney General's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates the Consumer Sales Practices Law, and that the action would be in the public interest, the Attorney General may bring any of the following: (a) an action to obtain a declaratory judgment that the act or

practice violates R.C. 1345.02 or (b) an action, with notice as required by Civil Rule 65, to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. On motion of the Attorney General, or on its own motion, the court may impose a civil penalty of not more than \$5,000 for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction, if the supplier received notice of the action. On motion of the Attorney General and without bond, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse consumers found to have been damaged or to grant other appropriate relief. The remedies available to the Attorney General are cumulative and concurrent, and the exercise of one remedy by the Attorney General does not preclude or require the exercise of any other remedy. (R.C. 1345.07(A)(1) and (2), (B), and (H)--not in the bill.)

HISTORY

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Introduced	06-26-01	p. 709

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