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Bill Analysis
Legislative Service Commission

H.B. 14

125th General Assembly
(As Introduced)

Reps. Miller, Ujvagi, Domenick, Allen, DeBose, Sferra, Seaver, S. Smith, Jerse, Skindell, Cirelli, Harwood

BILL SUMMARY

- Requires the Attorney General to provide for the development, operation, and maintenance of a "no telephone solicitation registry" for telephone service subscribers and to adopt rules relative to the registry and fees collected.
- Creates the No Telephone Solicitation Registry Fund in the State Treasury for the deposit of fees collected relative to the registry.
- Generally prohibits the public disclosure of information in connection with the registry.
- Requires a local telephone directory provider to include in the directory a notice describing the registry and procedures for subscribers to have their numbers listed on the registry.
- Prohibits a telephone solicitor or salesperson from making or causing to be made an unsolicited telephone solicitation to a telephone number more than 30 days after the number appears on the registry.
- Provides for enforcement by the Attorney General of the prohibition against unsolicited calling to a registry number.
- Creates a Telephone Solicitation Protection Fund in the State Treasury for the deposit of a portion of any civil penalties imposed in the enforcement of that prohibition.

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.

No Telephone Solicitation Registry

Development, operation, and maintenance

The bill requires the Attorney General to provide for the development, operation, and maintenance of a secured electronic database constituting the "no telephone solicitation registry" (hereafter, "registry"). The registry also must be made available in printed form. The registry must be updated not less than quarterly and must consist only of telephone numbers. Only the numbers of those telephone service subscribers that have requested inclusion on the registry in accordance with procedures prescribed by rules adopted by the Attorney General pursuant to the bill must be included on the registry. (R.C. 4719.27(A)(1).)

The Attorney General may contract with any entity for the development, operation, and maintenance of the registry. The contract must be awarded to the lowest responsive and responsible bidder and must require timely remittance to the Attorney General of any distribution fee collected as prescribed by rule adopted pursuant to the bill. (R.C. 4719.27(A)(2).)

The registry must be made available to any "telephone solicitor" or "qualified trade association" (see Definitions," below) upon request pursuant to procedures prescribed by rule adopted pursuant to the bill. These procedures must include payment of a distribution fee. (R.C. 4719.27(A)(3).)

Adoption of rules; fees

The bill requires the Attorney General to adopt rules relative to the registry, including rules specifying: (1) a reasonable listing fee to be paid by a subscriber to have a telephone number initially included on the registry or to renew that registration and (2) a reasonable amount to be paid by a telephone solicitor or qualified trade association as a distribution fee to obtain a copy of or access to the registry. The rules must allow a qualified trade association to make that copy or

access available to its members exclusively on any terms the association may impose. (R.C. 4719.27(B).)

The bill provides that all fees required under the rules adopted by the Attorney General must be paid or remitted to the Attorney General and deposited into the No Telephone Solicitation Registry Fund, which the bill creates in the State Treasury. The moneys in the Fund are to be used for the exclusive purpose of paying the costs of developing, operating, and maintaining the registry, including any costs arising under a contract authorized by the bill for the development, operation, and maintenance of the registry. (R.C. 4719.27(C).)

Confidentiality of registry; prohibition against unlawful disclosure

The bill provides that the registry or any information received or maintained by the Attorney General or any contractor in connection with a telephone number or subscriber for the purpose of developing, operating, and maintaining the registry is not a public record for purposes of the Public Records Law (R.C. 4719.28(A)).

The bill prohibits any person from disclosing or using the information described in the preceding paragraph for any purpose other than the purpose of: (1) developing, operating, or maintaining the registry, (2) enforcing the bill's prohibition as described below in "**Unsolicited calling to a registry number**," (3) as necessary, pursuing an action under the bill to enforce that prohibition, or (4) as necessary, complying with a lawful court order or subpoena directing disclosure of the registry or other information. Whoever violates this prohibition is guilty of a misdemeanor of the fourth degree for a first offense or a felony of the fifth degree for each subsequent offense. The bill provides that the exemption granted to certain types of telephone solicitors listed in R.C. 4719.01(B) from the penalty provisions of R.C. 4719.99 with respect to the provisions of the Telephone Solicitors Registration Law (R.C. 4719.02 to 4719.18) does not apply to a violation of the prohibition in the bill. In effect, the exempted telephone solicitors would be subject to the bill's prohibition and penalty. (R.C. 4719.28(B) and 4719.99(B).)

Notice to telephone service subscriber

The bill requires any company that provides a local telephone directory to a telephone service subscriber in Ohio to include in the directory a notice describing the no telephone solicitation registry and providing complete information on the procedures that the subscriber should follow to have its telephone number listed on the registry (R.C. 4719.29).

Unsolicited calling to a registry number

Prohibition

The bill prohibits a telephone solicitor or "salesperson" from making or causing to be made an "unsolicited telephone solicitation" to a telephone number more than 30 days after the number appears on the no telephone solicitation registry provided for under the bill (R.C. 4719.26). (See "**Definitions**," below.)

Enforcement

Civil action or class action. If, by the Attorney General's own inquiries or as a result of complaints, the Attorney General has reasonable cause to believe that a person has been or is engaged in an act or practice that violates the bill's prohibition, the Attorney General may do either of the following (R.C. 4719.30(A)):

(1) Bring an action to obtain a declaratory judgment, temporary restraining order, or preliminary or permanent injunction. If the Attorney General shows by a preponderance of the evidence that the person has violated or is violating the prohibition, the court may issue a temporary restraining order or a preliminary or permanent injunction without bond. 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 that order or injunction.

(2) Bring a class action on behalf of subscribers for damages caused by the violation.

No action for recovery as described in (1) or (2), above, may be brought by the Attorney General more than two years after the occurrence of a violation (R.C. 4719.30(B)).

The bill provides that it is an affirmative defense in an action brought as described above that the defendant established and implemented, with due care, reasonable practices and procedures to prevent the alleged violation. If the court holds that the defendant purposely or knowingly violated the bill's prohibition, the court may increase the amount of any award by up to three times. (R.C. 4719.31.)

Court orders. The bill authorizes the court, on motion of the Attorney General and without bond, to make appropriate orders, including appointment of a referee or receiver, for sequestration of assets, to reimburse subscribers found to have been damaged, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the violator. Any money or property recovered by the Attorney General in a class action brought as described in paragraph (2), above, that cannot with due diligence within five years be restored

to subscribers become unclaimed funds subject to the Unclaimed Funds Law. (R.C. 4719.30(C).)

Civil penalties. In addition to the above described remedies, the bill authorizes the Attorney General to request, and authorizes the court to impose, a civil penalty of not more than \$2,000 for each violation of the bill's prohibition against the unsolicited calling to a registry number (R.C. 4719.30(D)).

All of the civil penalties ordered under the bill, as described in the preceding paragraph and in paragraph (1) in "**Civil action or class action,**" above, must be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought, and three-fourths of the amount to the Telephone Solicitation Protection Fund, which the bill creates in the state treasury, to be used exclusively to pay the costs of the Office of the Attorney General in enforcing the bill. (R.C. 4719.30(E).)

Other remedies. The bill states that the powers, remedies, and penalties in the bill to enforce the bill's prohibition against unsolicited calling to a registry number are in addition to any other power, remedy, or penalty provided by law (R.C. 4719.32).

Definitions

The bill defines the following terms as used in the bill (R.C. 4719.25):

(1) "Qualified trade association" means an organization with at least both of the following characteristics: (a) written bylaws or governing documents including a code of conduct for its members and (b) criteria and procedures for expelling or suspending members that violate the association's bylaws or governing documents.

(2) "Salesperson" means an individual who is employed, appointed, or authorized by a telephone solicitor to make telephone solicitations.

(3) "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 such person that is an owner, operator, officer, or director of, partner in, or other individual engaged in the management activities of, a business. (R.C. 4719.25(C) and R.C. 4719.01(A)(8)--not in the bill.)

(4) "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. 4719.25(C) and 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).

(5) "Unsolicited telephone solicitation" means a telephone solicitation *other than* a solicitation that is made under any of the following circumstances: (a) in response to an express written or verbal request of the person called, (b) in connection with an established business relationship that has not been terminated by either party, (c) to an existing customer, unless the customer has stated to the telephone solicitor or salesperson that the customer no longer wishes to receive telephone solicitations from the telephone solicitor or salesperson, or (d) in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telephone solicitor or salesperson or a meeting between the customer and the telephone solicitor or salesperson (R.C. 4719.25(D)).

COMMENT

The Federal Communications Commission has adopted rules restricting telephone solicitations. The rules prohibit a person or entity from initiating an unsolicited telephone solicitation to a residential telephone subscriber unless the person or entity has initiated procedures for maintaining a do-not-call list of subscribers who do not wish to receive telephone solicitations made by or on behalf of that person or entity. A subscriber's name and telephone number must be placed on this list if the subscriber requests it. A do-not-call request must be honored for ten years from the request. (47 C.F.R. 64.1200(e).)

A person who has received more than one telephone call within a 12-month period by or on behalf of the same person in violation of the federal do-not-call rules may, if otherwise permitted by the laws or rules of court of a state, bring an action in a state court to enjoin the violation, an action to recover the greater of the actual monetary loss or \$500 in damages, or both types of actions. If a court finds

that the defendant willfully or knowingly violated the rules, the court may increase the award by not more than three times. A state attorney general or an official designated by a state also may bring those types of actions on behalf of the state's residents. (47 U.S.C.A. 227(c)(5) and (f).)

H.R. 395 of the 108th Congress, which was introduced in the United States House of Representatives on January 28, 2003, authorizes the Federal Trade Commission to promulgate regulations to establish and collect fees for the implementation and enforcement of the provisions relating to the "do-not-call" registry of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)). That Rule was recently amended to establish a national "do-not-call" registry maintained by the Commission (2003 WL 179638 (F.R.), 16 C.F.R. 310.4(b)(1)(iii)(B)). The Commission anticipates that full compliance with the "do-not-call" provision will be required approximately seven months from the date a contract is awarded to create the national registry.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-03	p. 76

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