



S.B. 29

125th General Assembly
(As Introduced)

Sens. Hagan, Mallory

BILL SUMMARY

- Requires the Attorney General to contract with a nonprofit organization to develop and maintain a do-not-call list for residential telephone subscribers.
- Requires local telephone directory companies and telephone service providers to include in their directories or billing statements a notice describing the list and procedures for subscribers to have their numbers placed on the list.
- Prohibits a telephone solicitor from (1) making or causing to be made a telephone solicitation call to a telephone number more than 30 days after the number appears on the do-not-call list and (2) providing a return telephone number on a prerecorded message that is a "900" number or any other number for which charges exceed local or long-distance transmission charges.
- Provides for a private cause of action under the Consumer Sales Practices Act for any person injured by a violation of the bill's prohibitions regarding telephone solicitation calls.
- Provides for investigation and enforcement by the Attorney General of the prohibitions regarding telephone solicitations.

CONTENT AND OPERATION

Background

State level

Currently, nothing in Ohio statutes specifically prevents the receipt of unwanted calls by residential telephone subscribers other than a prohibition that applies to transmissions to fax machines in certain instances.¹ To the extent a telephone solicitation is a "consumer transaction" or a "home solicitation," it is subject to the Ohio Consumer Sales Practices Act (R.C. 1345.01 to 1345.13) or the Ohio Home Solicitation Sales Act (R.C. 1345.21 to 1345.28). Both acts specify what constitutes an unfair or deceptive sales practice, provide for private remedies for consumers, and give enforcement authority to the Attorney General. Additionally, certain telephone solicitors are subject to the state's Telemarketing Fraud Law.²

Federal level

There are two federal statutes that regulate telemarketing in some manner. Specifically, the Telemarketing and Consumer Fraud and Abuse Prevention Act, enforced by the Federal Trade Commission (FTC), and the Telephone Consumer Protection Act, enforced by the Federal Communications Commission (FCC).

The Telemarketing and Consumer Fraud and Abuse Prevention Act grants the FTC broad rulemaking authority to prohibit deceptive or abusive telemarketing acts or practices.³ As part of its rulemaking authority, the FTC has enacted the Telemarketing Sales Rule.⁴ The Telemarketing Sales Rule provides for the establishment of a national do-not-call list and prohibits telemarketers, with certain exceptions, from calling any person who is included on the list. Both the FTC and state officials have enforcement authority with respect to the Telemarketing Sales Rule. Funding for the national do-not-call list was recently appropriated through the passage of the Consolidated Appropriations Resolution,

¹ R.C. 4931.55 prohibits a person from transmitting an advertisement to a facsimile device unless that person has the recipient's permission or there exists a pre-existing business relationship between the sender and the recipient.

² R.C. Chapter 4719.

³ 15 U.S.C. §§ 6101-6108.

⁴ 16 C.F.R. § 310.

2003. The FTC expects the national do-not-call list to be fully functional by September.⁵

The Telephone Consumer Protection Act grants the FCC authority to regulate certain telemarketing practices.⁶ Currently, the FCC requires individual telemarketers to maintain their own lists of consumers who do not wish to receive calls. These requests by consumers must be honored for ten years.⁷

Do-not-call list

Development and maintenance

(R.C. 4719.24)

The bill requires the Attorney General to contract with a nonprofit organization that has been in existence for at least ten years to develop and maintain a do-not-call list. If the Attorney General is unable to contract with such a nonprofit organization after making a good faith effort to do so for 90 days, the Attorney General may contract with any nonprofit organization regardless of the number of years it has been in existence. The list is to include the names, addresses, and telephone numbers of all residential telephone subscribers who have requested to be placed on it. A subscriber's name is to remain on the list for a minimum of five years, unless the telephone number is no longer valid for that subscriber.

The nonprofit organization, as the list administrator, is required to update the list on a quarterly basis. The bill requires the list administrator to charge fees for copies of the list in order to cover the list administrator's costs. The Attorney General is to receive a copy of each quarterly list at no charge. The bill also permits the Attorney General to forward the list to any federal agency that maintains a national do-not-call list in order to incorporate the state list into the national list.

The Attorney General must adopt rules to carry out the purposes of the do-not-call list law.

⁵ *Statement of Timothy J. Muris, FTC Chairman, <http://www.ftc.gov/opa/2003/02/dncstatement.htm>.*

⁶ 47 U.S.C. § 227.

⁷ 47 C.F.R. § 64.1200.

Notice to residential telephone subscribers

(R.C. 4719.26)

Under the bill, residential telephone subscribers are to receive notice concerning the list from any company that provides a local telephone directory or telephone service to the subscriber. The notice is to be placed in the telephone directory or in the service provider's billing statement and must include a description of the list, procedures for being placed on the list, and renewal information.

Telephone solicitor to obtain do-not-call list

(R.C. 4719.25)

The bill requires each telephone solicitor making telephone solicitation calls to either obtain the quarterly do-not-call list issued by the list administrator or to utilize a service provider that obtains and uses the list. A telephone solicitor is prohibited from using the list for any purpose other than to prevent subscribers from receiving telephone solicitation calls. A "telephone solicitor" is defined as any person that engages in telephone solicitation directly or through salespersons from inside or outside of the state. A telephone solicitor also includes any owner, operator, officer, director, partner, or other individual engaged in the management activities of a business, or anyone employed, appointed, or authorized by a telephone solicitor to make telephone solicitation calls.

Prohibited acts

Telephone solicitation

(R.C. 4719.22, 4719.23, and 4719.29)

The bill prohibits a telephone solicitor from making a telephone solicitation call to a residential telephone number more than 30 days after the number first appears on the quarterly list issued by the list administrator. A "telephone solicitation" includes any communication to a person initiated by a telephone solicitor representing the price, quality, or availability of goods or services, or used to induce the person to purchase goods or services. However, the bill does not apply if the solicitation falls within one of the following exceptions:

(1) It is made in reference to an existing debt, contract, payment, or performance;

(2) It is made on behalf of an organization granted tax-exempt status under section 501(c)(3), (5), or (8) of the Internal Revenue Code;⁸

(3) It is made on behalf of a veterans organization chartered by the United States or its duly appointed foundation;

(4) It is made on behalf of a political candidate or political party; or

(5) The telephone solicitor has an established business relationship with the subscriber.⁹

The bill provides that it is an affirmative defense in an action brought for violating this prohibition that the telephone solicitor established and implemented written procedures to prevent the alleged violation and trained its personnel in those procedures, that the solicitor maintained a copy of the list, and that any subsequent call was the result of error.

Return telephone numbers

(R.C. 4719.27)

The bill also prohibits telephone solicitors that make telephone solicitation calls using artificial or prerecorded messages transmitted by auto dialers or prerecorded message players from providing a number at which the solicitor may be contacted that is a "900" number or any other number for which charges exceed local or long-distance transmission charges.

Enforcement

(R.C. 4719.28)

Consumer Sales Practices Act

The bill essentially provides that any violation of its requirements will be considered an unfair or deceptive act or practice in violation of the Consumer

⁸ *These organizations include certain religious, charitable, scientific, literary, or educational organizations; labor, agricultural, or horticultural organizations; and certain fraternal beneficiary societies, orders, or associations. 26 U.S.C.A. § 501.*

⁹ *The bill defines an "established business relationship" as any relationship formed or continued within the preceding 12-month period by a voluntary two-way communication, on the basis of an application, purchase, or other transaction by the subscriber, or on the basis of an inquiry by the subscriber if the subscriber consented to the continuance of the relationship.*

Sales Practices Act (CSPA). Any person injured by a violation of or failure to comply with the bill's requirements has a private cause of action and is entitled to the same relief available to a consumer under the CSPA. Such relief includes the ability to rescind the transaction, recover damages, or seek a declaratory judgment or injunction. Additionally, all powers available to the Attorney General to enforce the CSPA are made available to the Attorney General to enforce the bill's requirements. Specifically, the Attorney General may seek a declaratory judgment or injunction, bring a class action for damages, or initiate misdemeanor criminal proceedings.

Percentage of civil penalty to be remitted

The bill provides that the Attorney General must remit 10% of any civil penalty collected pursuant to an action brought by the Attorney General to the person filing the complaint that lead to the penalty. This applies to actions brought under the bill as well as actions brought under the statute that prohibits a telephone solicitor from blocking the telephone number from which a telephone solicitation call is made.¹⁰ The amount of this remittance is not to exceed \$100.

Attorney General's annual report

The bill requires the Attorney General to submit a report to the General Assembly on or before November 30 of each year. The report is to detail investigations and enforcement actions taken under the bill and under the statute prohibiting the blocking of solicitors' numbers. The report must include the number of complaints received, the nature of those complaints, the number of investigations and enforcement actions instituted by the Attorney General, a summary of the results of those investigations and enforcement actions, and the amount of civil penalties collected.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-06-03	p. 103

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¹⁰ R.C. 4719.21, which was enacted by Sub. H.B. 312 of the 124th General Assembly (effective April 9, 2003).