



S.B. 254

126th General Assembly
(As Introduced)

Sens. Goodman, Jacobson, Padgett, Armbruster, Schuring, Zurz, Dann

BILL SUMMARY

- Includes in both general telemarketing law and in the narrower telemarketing fraud law a prohibition against a telephone solicitor or salesperson failing to disclose locational information regarding where a telephone solicitation call is originated or where a call to the solicitor or salesperson by a previously called party is received.

CONTENT AND OPERATION

Background

Current law contains two statutes directly concerning telephone solicitations:¹ the telemarketing fraud law of R.C. 4719.01 to 4719.18 and 4719.99, and the general telemarketing law of R.C. 4719.21. The general telemarketing law applies to *all* telephone solicitors.² The fraud law, on the other hand, has a narrower scope and provides the Attorney General an additional enforcement tool against perpetrators of fraud: on the assumption that legitimate businesses do not engage in fraud, the fraud law exempts 27 specified types of

¹ A "telephone solicitation" is 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); and 4719.21(A), referencing 4719.01(A)(7)).

² A "telephone solicitor" is 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. 4719.01(A)(8); and 4719.21(A), referencing 4719.01(A)(8)).

persons from its scope. A few examples of such exempted persons are supervised financial institutions, charitable organizations, persons primarily engaged in soliciting the sale of a newspaper of general circulation, certain issuers of securities, licensed insurance agents, and certain persons soliciting business-to-business sales. These persons are not considered telephone solicitors under the fraud law. (R.C. 4719.01(B), not in the bill.)

Required disclosure during a telephone solicitation

Prohibitions

Continuing general telemarketing law and fraud law both prohibit a telephone solicitor from intentionally blocking or intentionally authorizing or causing to be blocked the disclosure of the telephone number from which a telephone solicitation is made (R.C. 4719.21(B); and 4719.08(I), not in the bill).

The bill provides an additional disclosure provision under both the general telemarketing and fraud laws: specifically, the bill prohibits a telephone solicitor or its salesperson (see **COMMENT**) from failing to disclose, at the called party's request during a telephone solicitation, the city, state or similar geographic designation, and country in which the call is *originated*. Further, it prohibits the failure to disclose, at the calling party's request during any in-bound call to the solicitor or salesperson subsequently arising from a telephone solicitation, the city, state or similar geographic designation, and country in which that call is *received*. (R.C. 4719.06(C) and 4719.22(B).)

Penalties and other remedies

Under general telemarketing law, a violation of the blocking prohibition is punishable as an unfair or deceptive act or practice under the Consumer Sales Practices Act (CSPA) of R.C. 1345.01 to 1345.13 (R.C. 4719.21(C), not in the bill). A violation of the bill's locational disclosure provision is similarly punishable (R.C. 4719.22(C)). The Attorney General enforces the CSPA and has the authority to investigate violations and to seek civil penalties and remedies (R.C. 1345.06 and 1345.07, not in the bill). The CSPA also authorizes an injured party to pursue a private action to rescind the transaction or recover damages. In certain circumstances, the consumer may recover three times the amount of actual damages or \$200, whichever is greater, or may recover damages or other appropriate relief in a class action. Current law under the CSPA also permits a consumer to seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that constitutes a violation. (R.C. 1345.09, not in the bill.)

A violation of the bill's locational disclosure provision under the telemarketing fraud law is punishable and enforced in the same manner as a violation of the fraud law's blocking prohibition. That is, a violation is punishable under the CSPA (R.C. 4719.14, not in the bill) and also through authority of the Attorney General to investigate alleged violations and bring an action to enjoin an alleged violation. The court may impose a maximum \$5,000 penalty for each day of a violation of any ordered injunction and may also order other appropriate relief including reimbursement to the injured party and costs, expenses, and attorney's fees to the Attorney General. Further, current law allows the court to impose a civil penalty between \$1,000 and \$25,000 for each violation. Additionally, the Attorney General may initiate criminal proceedings for a fifth degree felony. (R.C. 4719.11, 4719.12, 4719.13, 4719.14, and 4719.99, not in the bill.) In addition to the right of private action conferred by the CSPA, the fraud statute also allows an injured party to pursue a private action for damages, an injunction, attorney's fees, and court costs, and punitive damages if the violation was knowingly committed (R.C. 4719.14 (implicitly referencing R.C. 1345.09); and also 4719.15, not in the bill).

COMMENT

The bill's definition of "salesperson" in R.C. 4719.22 apparently should be modified so that it will conform to the scope of the general telemarketing law. R.C. 4719.22(A) of the bill currently cross-references the definition in R.C. 4719.01(A)(6), which *excludes* salespersons of exempted persons or who themselves are exempted persons under the fraud law. "Salesperson" would be more consistently defined for the purpose of R.C. 4719.22 if it used only the *first part* of R.C. 4719.01(A)(6)'s definition (not in the bill), that is, simply, "any individual who is employed, appointed, or authorized by a telephone solicitor to make telephone solicitations."

(For purposes of R.C. 4719.06 of the bill, "salesperson" is appropriately defined by the *entire* definition of R.C. 4719.01(A)(6), which, as noted above, excludes salespersons of exempted persons or who themselves are exempted persons under the fraud law.)

HISTORY

ACTION	DATE
Introduced	01-17-06

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