

AN ACT

To enact section 109.87 of the Revised Code to prohibit any seller or telemarketer from engaging in any act or practice in violation of the federal laws dealing with telemarketing acts or practices and to authorize the Attorney General to enforce the state and federal laws dealing with telemarketing acts and practices and to conduct investigations of violations of those laws.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 109.87 of the Revised Code be enacted to read as follows:

Sec. 109.87. (A)(1) As used in this section, "federal act or rule" means the "Telemarketing and Consumer Fraud and Abuse Prevention Act," 108 Stat. 1545 to 1551, 15 U.S.C. 6101 to 6108, the "Telephone Consumer Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any amendment or reenactment of either of those acts, any rule adopted or issued pursuant to either of those acts, or any amendment of that rule.

(2) The terms that are used in this section have the same meanings as in the applicable federal act or rule.

(B)(1) No seller or telemarketer shall engage in any act or practice in violation of any provision of a federal act or rule.

(2) The attorney general, in any proceedings under this section, shall recognize any exemptions recognized by the federal communications commission under the "Telephone Consumer Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any amendment or reenactment of that act, any rule adopted or issued pursuant to that act, or any amendment of that rule.

(C)(1) If the attorney general, as a result of complaints or the attorney general's own inquiries, has reason to believe that a person has engaged, is engaging, or is preparing to engage in a violation of any provision of a federal act or rule, the attorney general may investigate the alleged violation. For purposes of an investigation under division (C)(1) of this section, the attorney general may administer oaths, subpoena witnesses, adduce

evidence, and require the production of any relevant matter.

(2) If the matter to be produced under division (C)(1) of this section is located outside this state, the attorney general may designate any representative, including any official of the state in which the matter is located, to inspect the matter on the behalf of the attorney general. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine the matter at the place where it is located, provided that those expenses shall not be charged to a party that subsequently is not found to have engaged in a violation of any provision of a federal act or rule.

(3) A person subpoenaed under division (C)(1) of this section may file a motion to extend the day on which the subpoena is to be returned or to modify or quash the subpoena, for good cause shown, in the court of common pleas of Franklin county or of the county in this state in which the person resides or in which the person's principal place of business is located. The person may file the motion not later than twenty days after the service of the subpoena.

(4) A person subpoenaed under division (C)(1) of this section shall comply with the terms of the subpoena unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the day on which the subpoena is to be returned, or issued any other order with respect to the subpoena prior to the day on which the subpoena is to be returned. If a person fails without lawful excuse to testify or to produce relevant matter pursuant to a subpoena, the attorney general may apply to the court of common pleas of the county in which the person subpoenaed resides or in which the person's principal place of business is located for an order that compels compliance with the subpoena.

(5) If an individual subpoenaed under division (C)(1) of this section refuses to testify or to produce relevant matter pursuant to the subpoena on the ground that the testimony or matter may incriminate the individual, the attorney general may request the court to order the individual to provide the testimony or matter. With the exception of a prosecution for perjury or a civil action for damages under division (D)(1) of this section, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding or a civil penalty or forfeiture on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter required to be disclosed.

(6) The attorney general may do either of the following:

(a) During an investigation under division (C) of this section, afford the person who is the subject of the investigation, in a manner considered appropriate to that person, an opportunity to cease and desist from any suspected violation of any provision of a federal act or rule. The attorney general may suspend the investigation during the period that the attorney general permits the person to cease and desist from that suspected violation. The suspension of the investigation or the affording of an opportunity to cease and desist shall not prejudice or prohibit any further investigation by the attorney general under division (C) of this section.

(b) Terminate an investigation under division (C) of this section upon acceptance of a written assurance of voluntary compliance from a person who is suspected of a violation of any provision of a federal act or rule. The acceptance of an assurance under division (C)(6)(b) of this section may be conditioned upon an undertaking to reimburse or to take other appropriate corrective action with respect to identifiable telephone service subscribers who are damaged by an alleged violation of any provision of a federal act or rule. An assurance of compliance given by a person under division (C)(6)(b) of this section is not evidence of a violation of any provision of a federal act or rule. The attorney general, at any time, may reopen an investigation terminated by the acceptance of an assurance of voluntary compliance, if the attorney general believes that further proceedings are in the public interest. Evidence of a violation of an assurance of voluntary compliance is prima-facie evidence of an act or practice in violation of the applicable provision of a federal act or rule if the evidence is presented after the violation in a civil action brought under division (D)(1) of this section. An assurance of voluntary compliance may be filed with the court and if approved by the court, entered as a consent judgment in the action.

(7) The procedures that are available to the attorney general under division (C) of this section are cumulative and concurrent, and the exercise of one procedure by the attorney general does not preclude or require the exercise of any other procedure.

(D)(1) If, by the attorney general's own inquiries or as a result of complaints or an investigation conducted under division (C) of this section, the attorney general has reasonable cause to believe that a person has engaged or is engaging in a violation of any provision of this section or of a federal act or rule, the attorney general, subject to division (D)(2) or (3) of this section, may bring in the appropriate court of common pleas of this state or in the appropriate district court of the United States, but not in both courts, a civil action against the alleged violator for injunctive relief or a

civil action against the alleged violator for damages, or both, pursuant to the federal act or rule, on behalf of the residents of this state who have been subjected to telemarketing acts or practices in violation of this section. The attorney general may bring the action under this section or under the applicable federal act or rule, but the attorney general shall not plead a violation of both this section and the applicable federal act or rule in the action. On the motion of the attorney general or on its own motion, a court may impose a civil penalty for a violation of the provision of this section or of the federal act or rule that is the subject of the action. The amount of any award of damages made or civil penalty imposed under division (D)(1) of this section shall not exceed any maximum allowable amount of damages or civil penalty that is specified in the applicable federal act or rule. An award of damages or civil penalties may be recovered under this section or under the applicable federal act or rule, but an award of damages or civil penalties shall not be recovered under both this section and the applicable federal act or rule.

(2) If a civil action has been instituted by or on behalf of the federal trade commission or the federal communications commission for a violation of any provision of an applicable federal act or rule, the attorney general, during the pendency of that action, shall not institute any civil action under division (D)(1) of this section against any defendant that is named in the complaint in the civil action that has been instituted by or on behalf of the federal trade commission or the federal communications commission, whichever is applicable, for any violation that is alleged in that complaint.

(3) If a civil action that has been instituted by or on behalf of the federal trade commission or the federal communications commission for a violation of any provision of an applicable federal act or rule affecting the residents of this state is litigated to its conclusion and the federal trade commission or the federal communications commission recovers an award of damages or civil penalties or obtains any relief under the applicable federal act or rule, the attorney general shall not institute any civil action under division (D)(1) of this section for any violation within the same time period that is alleged in the civil action that was instituted as described in division (D)(3) of this section and in which the federal trade commission or federal communications commission has recovered the damages or civil penalties or obtained the relief.

(E) Any civil action that the attorney general brings in a federal court under division (D)(1) of this section shall comply with the applicable provisions of the federal act or rule the violation of which is the subject of the action.

(F) The attorney general shall deposit any civil penalties that are imposed under division (D)(1) of this section to the credit of the telephone solicitation protection fund, which is hereby created in the state treasury, to be used to pay the costs of the office of the attorney general in investigating any violation of, and in enforcing, any federal act or rule or this section.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 28

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____