

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**S. B. No. 28**

**Senators Spada, Blessing, Nein, Austria, Miller, Goodman, Brady, DiDonato,  
Coughlin, Schuring, Robert Gardner, Armbruster, Fingerhut, Jacobson,  
Hottinger, Randy Gardner, Dann**

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**A B I L L**

To enact sections 4719.25 to 4719.37 of the Revised Code to establish certain restrictions regarding telephone solicitations, to require the Attorney General to provide for a do-not-call registry of residential telephone numbers, and to provide certain remedies and penalties for violations.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4719.25, 4719.26, 4719.27, 4719.28, 4719.29, 4719.30, 4719.31, 4719.32, 4719.33, 4719.34, 4719.35, 4719.36, and 4719.37 of the Revised Code be enacted to read as follows:

**Sec. 4719.25.** As used in sections 4719.25 to 4719.37 of the Revised Code:

**(A) "Automatic telephone dialing system" means equipment capable of using a random or sequential number generator to call telephone numbers produced or stored by the equipment.**

(B) "Established business relationship" means a relationship 16  
in which a called party has made a purchase from or payment or 17  
donation to the telephone solicitor or its representative or to 18  
the entity on whose behalf a telephone solicitation is made during 19  
the eighteen months prior to the telephone solicitation. 20

(C) "Person" means an individual, group, or unincorporated 21  
association, or any limited or general partnership, corporation, 22  
or other business entity. 23

(D) "Representative" means an individual who is employed, 24  
appointed, or authorized by a telephone solicitor to make 25  
telephone solicitations. 26

(E) "Telephone solicitation" means a communication to a 27  
person that is initiated by or on behalf of a telephone solicitor 28  
or a representative and either represents a price, quality, or 29  
availability of goods or services or is used to induce the person 30  
to purchase goods or services, including, but not limited to, 31  
inducement through the offering of a gift, award, or prize. 32

(F) "Telephone solicitor" means a person that engages in 33  
telephone solicitation directly or through one or more 34  
representatives either from a location in this state or from a 35  
location outside this state to persons in this state. "Telephone 36  
solicitor" includes, but is not limited to, any such person that 37  
is an owner, operator, officer, or director of, partner in, or 38  
other individual engaged in the management activities of, a 39  
business. 40

(G) "Unsolicited telephone solicitation" means a telephone 41  
solicitation other than one that meets either of the following 42  
conditions: 43

(1) It is made in response to an express written or verbal 44  
request by the called party. 45

(2) It is made in connection with an established business relationship with the called party, unless the called party has communicated a desire to no longer receive a telephone solicitation from the telephone solicitor or its representative or from the entity on whose behalf the solicitation is made. 46  
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**Sec. 4719.26.** (A) No telephone solicitor or representative shall make or cause to be made an unsolicited telephone solicitation to a telephone number more than thirty days after the number appears on a do-not-call registry provided for pursuant to division (A) or (B) of section 4719.28 of the Revised Code. 51  
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(B) No telephone solicitor or representative shall make or cause to be made a telephone solicitation to any residential telephone service subscriber in this state other than between 8 a.m. and 9 p.m. local time at the subscriber's location. 56  
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(C) With respect to an outbound telephone solicitation, no telephone solicitor or representative shall abandon the call by failing to connect the call to a live person within two seconds after the completed greeting by the party answering the call, unless the telephone solicitor or representative meets all of the following criteria: 60  
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(1) The telephone solicitor or representative uses technology that ensures abandonment of no more than three per cent of all answered calls, measured per day per calling campaign. 66  
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(2) For each call placed, the telephone solicitor or representative allows the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call. 69  
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(3) If a live person is not available to speak with the party 72  
answering the call within two seconds after that party's completed 73  
greeting, the telephone solicitor or representative promptly plays 74  
a recorded message that states the name of the entity on whose 75  
behalf the call was placed and a toll-free telephone number that 76  
the party may call to be placed on a do-not-call list for that 77  
entity under section 4719.27 of the Revised Code. 78

(4) The telephone solicitor or representative retains records 79  
establishing compliance with section 4719.27 of the Revised Code. 80

(D) Within the first sixty seconds of a telephone call that 81  
is a telephone solicitation and before requesting any financial 82  
information or conveying to the party answering the call any 83  
substantive information about a prize, good, or service, no 84  
telephone solicitor or representative shall fail to do all of the 85  
following: 86

(1) State the telephone solicitor's or representative's true 87  
name and the name of the entity on whose behalf the solicitation 88  
is being made; 89

(2) State that the purpose of the call is to effect a sale; 90

(3) Identify any good or service being sold. 91

(E) Whoever violates division (A), (B), (C), or (D) of this 92  
section is guilty of a felony of the fifth degree. 93

Sec. 4719.27. (A)(1) No telephone solicitor or representative shall fail to maintain or cause to be maintained a do-not-call list of the telephone numbers of all residential telephone service subscribers who have requested of the telephone solicitor or representative that they not receive telephone solicitations on behalf of a particular entity for which the telephone solicitor or representative has made telephone solicitations. No telephone solicitor or representative shall fail to record the request and place the telephone number on the list at the time the request is made. 94  
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(2) For ten years after the date of a request under division (A) of this section, no telephone solicitor or representative shall make or cause to be made a telephone solicitation, to a telephone number on a list required by division (A) of this section, on behalf of the particular entity for which that list is maintained. 104  
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(3) For any telephone solicitation made using a prerecorded or artificial message player, no telephone solicitor or representative shall fail to include or fail to cause to be included a toll-free telephone number that a called party may call to request that the called party's telephone number be included on the do-not-call list required by this section. 110  
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(4) Nothing in division (A)(1), (2), or (3) of this section applies with respect to telephone calls made necessary by an emergency affecting public health or safety. 116  
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(B) Whoever violates division (A)(1), (2), or (3) of this section is guilty of a felony of the fifth degree. Regardless of who maintains the do-not-call list required by division (A)(1) of this section, an entity on whose behalf a telephone solicitation is made is liable for any violation of division (A)(1), (2), or (3) of this section. 119  
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Sec. 4719.28. The attorney general shall provide for a do-not-call registry for the benefit of residential telephone service subscribers in this state, by doing either of the following at the attorney general's discretion and with reasonable public notice:

(A) In lieu of providing for a registry under division (B) of this section, accepting for the purpose of this section any national do-not-call-type registry established and maintained by a federal agency, including, but not limited to, a registry maintained pursuant to 16 C.F.R. 310. Beginning on the effective date of that acceptance, sections 4719.25 to 4719.37 of the Revised Code, and all the duties, authority, remedies, and penalties provided in those sections, apply with respect to a registry under this division.

(B) Beginning on January 1, 2004, developing and thereafter operating and maintaining, including by contract awarded pursuant to section 125.11 of the Revised Code, a do-not-call registry in accordance with section 4719.29 of the Revised Code.

Sec. 4719.29. (A) The do-not-call registry authorized under division (B) of section 4719.28 of the Revised Code shall be in a secured electronic data base consisting only of residential telephone numbers, including wireline telephone service numbers, facsimile machine numbers, and wireless telephone service numbers. Only the numbers of those residential telephone service subscribers that have requested inclusion on the registry in accordance with procedures prescribed by rules adopted under section 4719.32 of the Revised Code shall be included on it. Those procedures shall provide that a request may be made by mail or through the internet or a toll-free telephone number. The registry also shall be made available in printed form.

(B) The registry developed, operated, and maintained under 155  
division (B) of section 4719.28 of the Revised Code shall be made 156  
available to any person upon request pursuant to procedures 157  
prescribed by rules adopted pursuant to section 4719.32 of the 158  
Revised Code, which procedures shall require payment of a 159  
reasonable distribution fee, specified in the rules, in order to 160  
obtain a copy of or access to the registry. The rules also shall 161  
provide that a residential telephone service subscriber who 162  
requests to have its residential telephone number or numbers 163  
included on the registry shall pay no fee or charge for any such 164  
listing and that the telephone number shall remain on the registry 165  
until removed by request of the subscriber. 166

(C) All fees authorized under division (B) of this section 167  
shall be paid to the attorney general and deposited to the credit 168  
of the do-not-call registry fund, which is hereby created in the 169  
state treasury, to be used to pay the costs of developing, 170  
operating, and maintaining the registry authorized under division 171  
(B) of section 4719.28 of the Revised Code, including any costs 172  
arising under a contract authorized by that division. 173

(D) The do-not-call registry developed, operated, and 174  
maintained pursuant to division (B) of section 4719.28 of the 175  
Revised Code, and any information received or maintained for the 176  
purpose of the registry by the attorney general or any contractor 177  
in connection with a telephone number or subscriber, is not a 178  
public record for purposes of section 149.43 of the Revised Code. 179

Sec. 4719.30. (A)(1) No person shall possess, disclose, or use, including for the purpose of selling, renting, or leasing, a do-not-call registry provided for under division (A) or (B) of section 4719.28 of the Revised Code, a do-not-call list under section 4719.27 of the Revised Code, or any information received or maintained in connection with a telephone number on the registry or list or with the associated subscriber, for any purpose other than complying with sections 4719.25 to 4719.37 of the Revised Code and applicable federal law or with a lawful court order or subpoena directing disclosure or use.

(2) Notwithstanding division (A)(1) of this section, a telephone solicitor or representative may do either of the following:

(a) Disclose or forward to or share with the entity on whose behalf it makes telephone solicitations any information received or maintained in connection with a telephone number on a list it maintains for that entity under section 4719.27 of the Revised Code or with the associated subscriber;

(b) Disclose or forward such information to, or share it with, any other entity provided that the telephone solicitor or representative first obtains the express written or recorded consent of the subscriber. No telephone solicitor or representative shall fail to retain that consent for a minimum of one year after the date the subscriber's information was last shared pursuant to the consent.



(B)(1) Division (A) of this section does not apply to the possession, disclosure, or use by the attorney general, or any employee of the office of the attorney general in the course of that employment, of a do-not-call registry provided for under division (A) or (B) of section 4719.28 of the Revised Code, a do-not-call list under section 4719.27 of the Revised Code, or any information received or maintained in connection with a telephone number on the registry or list or with the associated subscriber, if the purpose of such possession, disclosure, or use is to develop, operate, or maintain the registry; enforce sections 4719.25 to 4719.37 of the Revised Code; pursue an action under section 4719.34 of the Revised Code; or comply with a lawful court order or subpoena directing disclosure or use.

(2) Division (A) of this section does not apply to the possession, disclosure, or use by a contractor under division (B) of section 4719.28 of the Revised Code, or any agent or employee of the contractor in the course or that agency or employment, of a do-not-call registry provided for under division (B) of section 4719.28 of the Revised Code or any information received or maintained in connection with a telephone number on the registry or with the associated subscriber, if the purpose of such possession, disclosure, or use is to develop, operate, or maintain the registry; assist the attorney general in the enforcement of sections 4719.25 to 4719.37 of the Revised Code; assist the attorney general in the pursuit of an action under section 4719.34 of the Revised Code; or comply with a lawful court order or subpoena directing disclosure or use.

Sec. 4719.31. Any company that provides a local telephone directory to a telephone service subscriber in this state shall include in the directory a notice that describes the do-not-call registry in effect pursuant to division (A) or (B) of section 4719.28 of the Revised Code and the do-not-call lists required under section 4719.27 of the Revised Code and that provides complete information on procedures for a residential telephone subscriber to have its residential telephone number or numbers included on any such registry or list.

Sec. 4719.32. The attorney general, in accordance with Chapter 119. of the Revised Code, shall adopt the rules required by section 4719.29 of the Revised Code if the attorney general provides for a registry pursuant to division (B) of section 4719.28 of the Revised Code and may adopt any other rules the attorney general considers necessary to carry out sections 4719.25 to 4719.37 of the Revised Code.

Sec. 4719.33. (A) 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 section 4719.30 or any provision of section 4719.26 or 4719.27 or a rule adopted under section 4719.32 of the Revised Code, the attorney general may investigate the alleged violation.

(B) For purposes of an investigation under division (A) of 255  
this section, the attorney general may administer oaths, subpoena 256  
witnesses, adduce evidence, and require the production of any 257  
book, document, record, or other relevant matter. If the matter to 258  
be produced is located outside this state, the attorney general 259  
may designate representatives, including officials of the state in 260  
which the matter is located, to inspect the matter on the attorney 261  
general's behalf. The person subpoenaed may make the matter 262  
available to the attorney general at a convenient location within 263  
the state or pay the reasonable and necessary expenses for the 264  
attorney general or the attorney general's representative to 265  
examine the matter at the place where it is located, provided that 266  
expenses shall not be charged to a party not subsequently found to 267  
have engaged in a violation of section 4719.30 or any provision of 268  
section 4719.26 or 4719.27 or a rule adopted under section 4719.32 269  
of the Revised Code. The attorney general may respond to similar 270  
requests from officials of other states. 271

(C) A person subpoenaed under this section may file a 272  
petition to extend the day on which the subpoena is to be returned 273  
or to modify or quash the subpoena, for good cause shown, in the 274  
court of common pleas of Franklin county or of the county in this 275  
state in which the person resides or in which the person's 276  
principal place of business is located. The person may file the 277  
petition at any time before the day of return specified in the 278  
subpoena or within twenty days after the service of the subpoena, 279  
whichever is the shorter period. 280

(D) A person subpoenaed under this section shall comply with the terms of the subpoena unless, prior to the date for return specified in the subpoena or as extended, the court orders otherwise. If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to a court of common pleas for an order that does one or more of the following: 281  
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(1) Adjudges the person in contempt of court; 288

(2) Grants injunctive relief to restrain the person from engaging in conduct that violates section 4719.30 or any provision of section 4719.26 or 4719.27 or a rule adopted under section 4719.32 of the Revised Code; 289  
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(3) Grants injunctive relief to preserve or restore the status quo; 293  
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(4) Grants other relief that may be required until the person obeys the subpoena. 295  
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(E) If a person violates an order of a court issued under this section, the court shall treat the violation as a violation of an injunction issued under section 4719.34 of the Revised Code. 297  
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(F) If an individual refuses to testify or to produce relevant matter on the grounds that the testimony or matter may incriminate the individual, the attorney general may request a court to order the individual to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 4719.34 or 4719.35 of the Revised Code, 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 on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter. 300  
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Sec. 4719.34. (A) If, by the attorney general's own inquiries 312  
or as a result of complaints, the attorney general has reasonable 313  
cause to believe that a person has engaged or is engaging in a 314  
violation of section 4719.30 or any provision of section 4719.26 315  
or 4719.27 or a rule adopted under section 4719.32 of the Revised 316  
Code, the attorney general may do either of the following: 317

(1) Bring an action to obtain a declaratory judgment, 318  
temporary restraining order, or preliminary or permanent 319  
injunction. If the attorney general shows by a preponderance of 320  
the evidence that the person has violated or is violating section 321  
4719.30 or any provision of section 4719.26 or 4719.27 or a rule 322  
adopted under section 4719.32 of the Revised Code, the court shall 323  
issue a temporary restraining order or preliminary or permanent 324  
injunction without bond. On motion of the attorney general, or on 325  
its own motion, the court shall impose a civil penalty of not more 326  
than five thousand dollars for each day of violation of any such 327  
order or injunction. 328

(2) Bring a civil action on behalf of residential telephone 329  
service subscribers in this state for damages caused by the 330  
violation. However, no such action for recovery of damages shall 331  
be brought by the attorney general more than two years after the 332  
occurrence of the violation. 333

(B) On motion of the attorney general and without bond, the 334  
court may make appropriate orders, including appointment of a 335  
receiver, for attachment of assets, to recover actual or statutory 336  
damages for residential telephone service subscribers or to grant 337  
other appropriate relief including reasonable attorney's fees and 338  
costs. The court may assess the expenses of the receiver against 339  
the violator. 340

(C) In addition to the other remedies provided in this 341  
section, the attorney general may request, and the court may 342  
impose, a civil penalty of not less than five hundred dollars nor 343  
more than two thousand dollars for each violation of any provision 344  
of section 4719.26 or 4719.27 or a rule adopted under section 345  
4719.32 of the Revised Code or each violation of section 4719.30 346  
of the Revised Code. Each call to each called party in violation 347  
of any provision of section 4719.26 or 4719.27, each possession, 348  
disclosure, or use in violation of section 4719.30, and each 349  
violation of any provision of a rule adopted under section 4719.32 350  
of the Revised Code constitutes a separate violation for purposes 351  
of the civil penalty calculations. 352

(D) Civil penalties ordered pursuant to division (A)(1) or 353  
(C) of this section or division (E) of section 4719.33 of the 354  
Revised Code, and any moneys or property recovered by the attorney 355  
general in an action under division (A)(2) of this section that 356  
cannot with due diligence within five years be restored to 357  
subscribers, shall be deposited to the credit of the telephone 358  
solicitation protection fund, which is hereby created in the state 359  
treasury, to be used to pay the costs of the office of the 360  
attorney general in enforcing sections 4719.25 to 4719.37 of the 361  
Revised Code. 362

**Sec. 4719.35.** A violation of section 4719.30 of the Revised 363  
Code or of any provision of section 4719.26 or 4719.27 or of a 364  
rule adopted under section 4719.32 of the Revised Code by a 365  
telephone solicitor or representative that is also a supplier as 366  
defined in section 1345.01 of the Revised Code is an unfair or 367  
deceptive act or practice in violation of section 1345.02 of the 368  
Revised Code. 369

Sec. 4719.36. A person that has received a call in violation 370  
of any provision of section 4719.26 or 4719.27 of the Revised Code 371  
may bring an action to enjoin that violation, or an action to 372  
recover damages in the greater amount of actual monetary loss or 373  
five hundred dollars, plus court costs and attorney's fees, or may 374  
bring both such actions. No such action for recovery shall be 375  
brought more than two years after the occurrence of the violation. 376

Sec. 4719.37. The powers, remedies, and penalties provided by 377  
sections 4719.25 to 4719.37 of the Revised Code are in addition to 378  
any other power, remedy, or penalty provided by law. 379