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**Senators Spada, Hagan, Blessing, Austria, Miller, Goodman, Brady,
DiDonato, Coughlin, Schuring, Robert Gardner, Armbruster, Fingerhut,
Jacobson, Hottinger, Randy Gardner, Dann, Roberts, Mallory, Fedor,
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A B I L L

To enact sections 4719.25 to 4719.38 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, 4719.37, and 4719.38 of the Revised Code be enacted to read as follows:

Sec. 4719.25. As used in sections 4719.25 to 4719.38 of the Revised Code:

(A) "Affiliate" means a business entity that controls, is controlled by, or is under common control with another business entity.

(B) "Established business relationship" means a relationship between the entity on whose behalf a telephone solicitation is

made and a called party based on any of the following: 18

(1) The called party's purchase, rental, or lease of goods or 19
services from the entity. For purposes of sections 4719.25 to 20
4719.38 of the Revised Code, such relationship shall terminate as 21
specified below: 22

(a) In the case of a purchase, rental, or lease for which the 23
called party does not obtain financing, either eighteen months 24
after the date on which the purchase, rental, or lease agreement 25
is executed or on the date on which the called party is no longer 26
obligated under the agreement, whichever is later. 27

(b) In the case of a purchase, rental, or lease for which the 28
called party obtains financing, either eighteen months after the 29
date on which the finance agreement is executed or on the date on 30
which the called party is no longer obligated under the finance 31
agreement, whichever is later. 32

(2) A financial transaction between the called party and the 33
entity. For purposes of sections 4719.25 to 4719.38 of the Revised 34
Code, such relationship shall terminate eighteen months after the 35
date on which the financial transaction is executed. 36

(3) The called party's inquiry or application regarding a 37
product or service offered by the entity, within the three months 38
immediately preceding the date of the telephone solicitation. 39

(C) "Person" means an individual, group, or unincorporated 40
association, or any limited or general partnership, corporation, 41
or other business entity. 42

(D) "Representative" means an individual who is employed, 43
appointed, or authorized by a telephone solicitor to make 44
telephone solicitations. 45

(E) "Telephone solicitation" means a communication to a 46
person that is initiated by or on behalf of a telephone solicitor 47

or a representative and either represents a price, quality, or 48
availability of goods or services or is used to induce the person 49
to purchase goods or services, including, but not limited to, 50
inducement through the offering of a gift, award, or prize. 51

(F) "Telephone solicitor" means a person that engages in 52
telephone solicitation directly or through one or more 53
representatives either from a location in this state or from a 54
location outside this state to persons in this state. 55

(G) "Unsolicited telephone solicitation" means a telephone 56
solicitation other than one that is made in connection with an 57
established business relationship with the called party, but 58
includes any telephone solicitation made on behalf of an entity to 59
a called party that has, or has requested to have, its telephone 60
number included on a do-not-call list maintained under section 61
4719.27 of the Revised Code for that entity. 62

Sec. 4719.26. (A) No telephone solicitor or representative 63
shall make or cause to be made an unsolicited telephone 64
solicitation to a telephone number more than ninety days after the 65
date that the number appears on the most current version of a 66
do-not-call registry provided for pursuant to division (A) or (B) 67
of section 4719.28 of the Revised Code. This division does not 68
apply to an unsolicited telephone solicitation that is made by or 69
on behalf of an organization that is granted tax-exempt status 70
under section 501(c)(3) or (19) of the "Internal Revenue Code of 71
1986," 26 U.S.C. 501, as amended, and is not an affiliate of an 72
entity that is operated for profit. 73

(B) No telephone solicitor or representative shall make or 74
cause to be made a telephone solicitation to any residential 75
telephone service subscriber in this state other than between 8 76
a.m. and 9 p.m. local time at the subscriber's location. 77

(C) With respect to an outbound telephone solicitation, no 78

telephone solicitor or representative shall abandon the call by 79
failing to connect the call to a live person within two seconds 80
after the completed greeting by the party answering the call, 81
unless the telephone solicitor or representative meets all of the 82
following criteria: 83

(1) The telephone solicitor or representative uses technology 84
that ensures abandonment of not more than five per cent of all 85
answered calls, measured per day per calling campaign. The 86
attorney general, by rule adopted under section 4719.32 of the 87
Revised Code, shall adjust this percentage of answered calls a 88
telephone solicitor or representative may abandon so that the 89
percentage is consistent with any applicable federal regulation. 90

(2) For each call placed, the telephone solicitor or 91
representative allows the telephone to ring for at least fifteen 92
seconds or four rings before disconnecting an unanswered call. 93

(3) If a live person is not available to speak with the party 94
answering the call within two seconds after that party's completed 95
greeting, the telephone solicitor or representative promptly plays 96
a recorded message that states the name and telephone number of 97
the entity on whose behalf the call was placed. The telephone 98
number shall not be a "900" number or any other number for which 99
charges exceed normal local or normal long-distance charges. 100

(4) The telephone solicitor or representative retains records 101
establishing compliance with section 4719.27 of the Revised Code. 102

(D) No telephone solicitor or representative, in connection 103
with a telephone solicitation, shall fail to promptly do all of 104
the following before requesting any financial information or 105
conveying to the party answering the call any substantive 106
information about a prize, good, or service: 107

(1) State the telephone solicitor's or representative's true 108
name, or a fictitious name if the fictitious name is provided to 109

the entity on whose behalf the telephone solicitation is made. The 110
entity shall maintain a record of any fictitious name provided 111
under this division for a period of time the attorney general 112
shall prescribe in rules adopted under section 4719.32 of the 113
Revised Code. 114

(2) State the name of the entity on whose behalf the 115
solicitation is being made; 116

(3) State that the purpose of the call is to effect a sale; 117

(4) Identify any good or service being sold. 118

(E) The entity on whose behalf a telephone solicitation is 119
made is also liable for any violation of division (A), (B), (C), 120
or (D) of this section. 121

Sec. 4719.27. (A)(1) No telephone solicitor or representative 122
shall fail to maintain or cause to be maintained a do-not-call 123
list of the telephone numbers of all residential telephone service 124
subscribers who have requested of the telephone solicitor or 125
representative that they not receive telephone solicitations on 126
behalf of a particular entity for which the telephone solicitor or 127
representative has made telephone solicitations. No telephone 128
solicitor or representative shall fail to record the request and 129
place the telephone number on the list at the time the request is 130
made. 131

(2) For ten years after the date of a request under division 132
(A) of this section, no telephone solicitor or representative 133
shall make or cause to be made a telephone solicitation, to a 134
telephone number on a list required by division (A) of this 135
section, on behalf of the particular entity for which that list is 136
maintained. 137

(3) For any telephone solicitation made using a prerecorded 138
or artificial message player, no telephone solicitor or 139

representative shall fail to include or fail to cause to be 140
included a toll-free telephone number that a called party may call 141
to request that the called party's telephone number be included on 142
the do-not-call list required by this section. 143

(4) Nothing in division (A)(1), (2), or (3) of this section 144
applies with respect to telephone calls made necessary by an 145
emergency affecting public health or safety. 146

(B) Regardless of who maintains the do-not-call list required 147
by division (A)(1) of this section, the entity on whose behalf a 148
telephone solicitation is made is also liable for any violation of 149
division (A)(1), (2), or (3) of this section. 150

Sec. 4719.28. The attorney general shall provide for a 151
do-not-call registry for the benefit of residential telephone 152
service subscribers in this state, by doing either of the 153
following at the attorney general's discretion and with reasonable 154
public notice: 155

(A) In lieu of providing for a registry under division (B) of 156
this section, accepting for the purpose of this section any 157
national do-not-call-type registry established and maintained by a 158
federal agency, including, but not limited to, a registry 159
maintained pursuant to 16 C.F.R. 310. Beginning on the effective 160
date of that acceptance, sections 4719.25 to 4719.38 of the 161
Revised Code, and all the duties, authority, remedies, and 162
penalties provided in those sections, apply with respect to a 163
registry under this division. The registration of telephone 164
numbers and purging of registered telephone numbers shall occur as 165
provided in the applicable federal law. 166

(B) Beginning on January 1, 2004, developing and thereafter 167
operating and maintaining, including by contract awarded pursuant 168
to section 125.11 of the Revised Code, a do-not-call registry in 169
accordance with section 4719.29 of the Revised Code. 170

Sec. 4719.29. (A) The do-not-call registry authorized under 171
division (B) of section 4719.28 of the Revised Code shall be in a 172
secured electronic data base consisting only of residential 173
telephone numbers, including wireline telephone service numbers, 174
facsimile machine numbers, and wireless telephone service numbers. 175
Only the numbers of those residential telephone service 176
subscribers that have requested inclusion on the registry in 177
accordance with procedures prescribed by rules adopted under 178
section 4719.32 of the Revised Code shall be included on it. Those 179
procedures shall provide that a request may be made by mail or 180
through the internet or a toll-free telephone number. The registry 181
also shall be made available in printed form. 182

(B) The registry developed, operated, and maintained under 183
division (B) of section 4719.28 of the Revised Code shall be made 184
available to any person upon request pursuant to procedures 185
prescribed by rules adopted pursuant to section 4719.32 of the 186
Revised Code, which procedures shall require payment of a 187
reasonable distribution fee, specified in the rules, in order to 188
obtain a copy of or access to the registry. The rules also shall 189
provide that a residential telephone service subscriber who 190
requests to have its residential telephone number or numbers 191
included on the registry shall pay no fee or charge for any such 192
listing or subsequent removal. The telephone number shall remain 193
on the registry for such period of time and subject to such 194
procedures for removal as are specified in the rules. 195

(C) All fees authorized under division (B) of this section 196
shall be paid to the attorney general and deposited to the credit 197
of the do-not-call registry fund, which is hereby created in the 198
state treasury, to be used to pay the costs of developing, 199
operating, and maintaining the registry authorized under division 200
(B) of section 4719.28 of the Revised Code, including any costs 201

arising under a contract authorized by that division. 202

(D) The do-not-call registry developed, operated, and 203
maintained pursuant to division (B) of section 4719.28 of the 204
Revised Code, and any information received or maintained for the 205
purpose of the registry by the attorney general or any contractor 206
in connection with a telephone number or subscriber, is not a 207
public record for purposes of section 149.43 of the Revised Code. 208

Sec. 4719.30. (A)(1) No person shall possess, disclose, or 209
use, including for the purpose of selling, renting, or leasing, a 210
do-not-call registry provided for under division (A) or (B) of 211
section 4719.28 of the Revised Code, a do-not-call list under 212
section 4719.27 of the Revised Code, or any information received 213
or maintained in connection with a telephone number on the 214
registry or list or with the associated subscriber, for any 215
purpose other than complying with sections 4719.25 to 4719.38 of 216
the Revised Code and applicable federal law or with a lawful court 217
order or subpoena directing disclosure or use. 218

(2) Notwithstanding division (A)(1) of this section, a 219
telephone solicitor or representative may do either of the 220
following: 221

(a) Disclose or forward to or share with the entity on whose 222
behalf it makes telephone solicitations any information received 223
or maintained in connection with a telephone number on a list it 224
maintains for that entity under section 4719.27 of the Revised 225
Code or with the associated subscriber; 226

(b) Disclose or forward such information to, or share it 227
with, any other entity, provided that the telephone solicitor or 228
representative first obtains the express written or recorded 229
consent of the subscriber. No telephone solicitor or 230
representative shall fail to retain that consent for a minimum of 231
one year after the date the subscriber's information was last 232

shared pursuant to the consent. 233

(B)(1) Division (A) of this section does not apply to the 234
possession, disclosure, or use by the attorney general, or any 235
employee of the office of the attorney general in the course of 236
that employment, of a do-not-call registry provided for under 237
division (A) or (B) of section 4719.28 of the Revised Code, a 238
do-not-call list under section 4719.27 of the Revised Code, or any 239
information received or maintained in connection with a telephone 240
number on the registry or list or with the associated subscriber, 241
if the purpose of such possession, disclosure, or use is to 242
develop, operate, or maintain the registry; enforce sections 243
4719.25 to 4719.38 of the Revised Code; pursue an action under 244
section 4719.34 of the Revised Code; or comply with a lawful court 245
order or subpoena directing disclosure or use. 246

(2) Division (A) of this section does not apply to the 247
possession, disclosure, or use by a contractor under division (B) 248
of section 4719.28 of the Revised Code, or any agent or employee 249
of the contractor in the course of that agency or employment, of a 250
do-not-call registry provided for under division (B) of section 251
4719.28 of the Revised Code or any information received or 252
maintained in connection with a telephone number on the registry 253
or with the associated subscriber, if the purpose of such 254
possession, disclosure, or use is to develop, operate, or maintain 255
the registry; assist the attorney general in the enforcement of 256
sections 4719.25 to 4719.38 of the Revised Code; assist the 257
attorney general in the pursuit of an action under section 4719.34 258
of the Revised Code; or comply with a lawful court order or 259
subpoena directing disclosure or use. 260

(C) Division (A) of this section shall not prevent a person 261
from sharing a do-not-call registry provided for under division 262
(A) or (B) of section 4719.28 of the Revised Code or a do-not-call 263
list provided for under section 4719.27 of the Revised Code with 264

an affiliate for purposes of complying with sections 4719.25 to 265
4719.38 of the Revised Code, provided that the sharing is done in 266
compliance with any applicable federal law. 267

(D) Whoever violates division (A)(1) of this section is 268
guilty of a felony of the fifth degree. 269

Sec. 4719.31. Any company that provides a local telephone 270
directory to a telephone service subscriber in this state shall 271
include in the directory a notice that describes the do-not-call 272
registry in effect pursuant to division (A) or (B) of section 273
4719.28 of the Revised Code and the do-not-call list required 274
under section 4719.27 of the Revised Code and that provides 275
complete information on procedures for a residential telephone 276
subscriber to have its residential telephone number or numbers 277
included on any such registry or list. 278

Sec. 4719.32. The attorney general, in accordance with 279
Chapter 119. of the Revised Code, shall adopt the rules required 280
by section 4719.29 of the Revised Code if the attorney general 281
provides for a registry pursuant to division (B) of section 282
4719.28 of the Revised Code and may adopt any other rules the 283
attorney general considers necessary to carry out sections 4719.25 284
to 4719.38 of the Revised Code. 285

Sec. 4719.33. (A) If the attorney general, as a result of 286
complaints or the attorney general's own inquiries, has reason to 287
believe that a person has engaged, is engaging, or is preparing to 288
engage in a violation of section 4719.30 or any provision of 289
section 4719.26 or 4719.27 or a rule adopted under section 4719.32 290
of the Revised Code, the attorney general may investigate the 291
alleged violation. 292

(B) For purposes of an investigation under division (A) of 293
this section, the attorney general may administer oaths, subpoena 294

witnesses, adduce evidence, and require the production of any 295
book, document, record, or other relevant matter. If the matter to 296
be produced is located outside this state, the attorney general 297
may designate representatives, including officials of the state in 298
which the matter is located, to inspect the matter on the attorney 299
general's behalf. The person subpoenaed may make the matter 300
available to the attorney general at a convenient location within 301
the state or pay the reasonable and necessary expenses for the 302
attorney general or the attorney general's representative to 303
examine the matter at the place where it is located, provided that 304
expenses shall not be charged to a party not subsequently found to 305
have engaged in a violation of section 4719.30 or any provision of 306
section 4719.26 or 4719.27 or a rule adopted under section 4719.32 307
of the Revised Code. The attorney general may respond to similar 308
requests from officials of other states. 309

(C) A person subpoenaed under this section may file a 310
petition to extend the day on which the subpoena is to be returned 311
or to modify or quash the subpoena, for good cause shown, in the 312
court of common pleas of Franklin county or of the county in this 313
state in which the person resides or in which the person's 314
principal place of business is located. The person may file the 315
petition at any time before the day of return specified in the 316
subpoena or within twenty days after the service of the subpoena, 317
whichever is the shorter period. 318

(D) A person subpoenaed under this section shall comply with 319
the terms of the subpoena unless, prior to the date for return 320
specified in the subpoena or as extended, the court orders 321
otherwise. If a person fails without lawful excuse to obey a 322
subpoena or to produce relevant matter, the attorney general may 323
apply to a court of common pleas for an order that does one or 324
more of the following: 325

(1) Adjudges the person in contempt of court; 326

(2) Grants injunctive relief to restrain the person from 327
engaging in conduct that violates section 4719.30 or any provision 328
of section 4719.26 or 4719.27 or a rule adopted under section 329
4719.32 of the Revised Code; 330

(3) Grants injunctive relief to preserve or restore the 331
status quo; 332

(4) Grants other relief that may be required until the person 333
obeys the subpoena. 334

(E) If a person violates an order of a court issued under 335
this section, the court shall treat the violation as a violation 336
of an injunction issued under section 4719.34 of the Revised Code. 337

(F) If an individual refuses to testify or to produce 338
relevant matter on the grounds that the testimony or matter may 339
incriminate the individual, the attorney general may request a 340
court to order the individual to provide the testimony or matter. 341
With the exception of a prosecution for perjury and an action for 342
damages under section 4719.34 or 4719.35 of the Revised Code, an 343
individual who complies with a court order to provide testimony or 344
matter, after asserting a privilege against self-incrimination to 345
which the individual is entitled by law, shall not be subjected to 346
a criminal proceeding on the basis of the testimony or matter 347
required to be disclosed or testimony or matter discovered through 348
that testimony or matter. 349

Sec. 4719.34. (A) If, by the attorney general's own inquiries 350
or as a result of complaints, the attorney general has reasonable 351
cause to believe that a person has engaged or is engaging in a 352
violation of section 4719.30 or any provision of section 4719.26 353
or 4719.27 or a rule adopted under section 4719.32 of the Revised 354
Code, the attorney general may do either of the following: 355

(1) Bring an action to obtain a declaratory judgment, 356

temporary restraining order, or preliminary or permanent 357
injunction. If the attorney general shows by a preponderance of 358
the evidence that the person has violated or is violating section 359
4719.30 or any provision of section 4719.26 or 4719.27 or a rule 360
adopted under section 4719.32 of the Revised Code, the court shall 361
issue a temporary restraining order or preliminary or permanent 362
injunction without bond. On motion of the attorney general, or on 363
its own motion, the court shall impose a civil penalty of not more 364
than five thousand dollars for each day of violation of any such 365
order or injunction. 366

(2) Bring a civil action on behalf of residential telephone 367
service subscribers in this state for damages caused by the 368
violation. However, no such action for recovery of damages shall 369
be brought by the attorney general more than two years after the 370
occurrence of the violation. 371

(B) On motion of the attorney general and without bond, the 372
court may make appropriate orders, including appointment of a 373
receiver, for attachment of assets, to recover actual or statutory 374
damages for residential telephone service subscribers or to grant 375
other appropriate relief including reasonable attorney's fees and 376
costs. If a violation is proven in an action for damages, the 377
court shall award each subscriber the greater amount of actual 378
monetary loss or two hundred dollars, plus court costs and 379
attorney's fees. The court may assess the expenses of the receiver 380
against the violator. 381

(C) In addition to the other remedies provided in this 382
section, the attorney general may request, and the court shall 383
impose, a civil penalty of not less than five hundred dollars nor 384
more than two thousand dollars for each violation of any provision 385
of section 4719.26 or 4719.27 or a rule adopted under section 386
4719.32 of the Revised Code or each violation of section 4719.30 387
of the Revised Code. Each call to each called party in violation 388

of any provision of section 4719.26 or 4719.27, each possession, 389
disclosure, or use in violation of section 4719.30, and each 390
violation of any provision of a rule adopted under section 4719.32 391
of the Revised Code constitutes a separate violation for purposes 392
of the civil penalty calculations. 393

(D) Civil penalties ordered pursuant to division (A)(1) or 394
(C) of this section or division (E) of section 4719.33 of the 395
Revised Code, and any moneys or property recovered by the attorney 396
general in an action under division (A)(2) of this section that 397
cannot with due diligence within five years be restored to 398
subscribers, shall be deposited to the credit of the telephone 399
solicitation protection fund, which is hereby created in the state 400
treasury, to be used to pay the costs of the office of the 401
attorney general in enforcing sections 4719.25 to 4719.38 of the 402
Revised Code. 403

Sec. 4719.35. A violation of section 4719.30 of the Revised 404
Code or of any provision of section 4719.26 or 4719.27 or of a 405
rule adopted under section 4719.32 of the Revised Code by a 406
telephone solicitor or representative that is also a supplier as 407
defined in section 1345.01 of the Revised Code is an unfair or 408
deceptive act or practice in violation of section 1345.02 of the 409
Revised Code. 410

Sec. 4719.36. A person that has received a call in violation 411
of any provision of section 4719.26 or 4719.27 of the Revised Code 412
may bring an action to enjoin that violation or an action to 413
recover damages, or may bring both such actions. If a violation is 414
proven in an action for damages, the court shall award the greater 415
amount of actual monetary loss or two hundred dollars, plus court 416
costs and attorney's fees. No such action for recovery shall be 417
brought more than two years after the occurrence of the violation. 418

Sec. 4719.37. It is an affirmative defense in an action or proceeding brought against an entity on whose behalf a telephone solicitation is made for violating sections 4719.26 or 4719.27 of the Revised Code, that the entity established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of those sections.

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Sec. 4719.38. The powers, remedies, and penalties provided by sections 4719.25 to 4719.38 of the Revised Code are in addition to any other power, remedy, or penalty provided by law.

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