

**As Reported by the House Civil and Commercial Law Committee**

**125th General Assembly**

**Regular Session**

**2003-2004**

**Sub. S. B. No. 28**

**Senators Spada, Hagan, Blessing, Austria, Miller, Goodman, Brady,  
DiDonato, Coughlin, Schuring, Robert Gardner, Armbruster, Fingerhut,  
Jacobson, Hottinger, Randy Gardner, Dann, Roberts, Mallory, Fedor,  
Amstutz, Carnes, Herington, Prentiss  
Representatives Widener, Seitz, Core, Willamowski**

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**A B I L L**

To enact section 109.87 of the Revised Code to 1  
prohibit any seller or telemarketer from engaging 2  
in any act or practice in violation of the federal 3  
laws dealing with telemarketing acts or practices 4  
and to authorize the Attorney General to enforce 5  
the state and federal laws dealing with 6  
telemarketing acts and practices and to conduct 7  
investigations of violations of those laws. 8

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

**Section 1.** That section 109.87 of the Revised Code be enacted 9  
to read as follows: 10

**Sec. 109.87.** (A)(1) As used in this section, "federal act or 11  
rule" means the "Telemarketing and Consumer Fraud and Abuse 12  
Prevention Act," 108 Stat. 1545 to 1551, 15 U.S.C. 6101 to 6108, 13  
the "Telephone Consumer Protection Act of 1991," 105 Stat. 2395, 14  
47 U.S.C. 227, any amendment or reenactment of either of those 15  
acts, any rule adopted or issued pursuant to either of those acts, 16  
or any amendment of that rule. 17

(2) The terms that are used in this section have the same 18  
meanings as in the applicable federal act or rule. 19

(B)(1) No seller or telemarketer shall engage in any act or 20  
practice in violation of any provision of a federal act or rule. 21

(2) The attorney general, in any proceedings under this 22  
section, shall recognize any exemptions recognized by the federal 23  
communications commission under the "Telephone Consumer Protection 24  
Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any amendment or 25  
reenactment of that act, any rule adopted or issued pursuant to 26  
that act, or any amendment of that rule. 27

(C)(1) If the attorney general, as a result of complaints or 28  
the attorney general's own inquiries, has reason to believe that a 29  
person has engaged, is engaging, or is preparing to engage in a 30  
violation of any provision of a federal act or rule, the attorney 31  
general may investigate the alleged violation. For purposes of an 32  
investigation under division (C)(1) of this section, the attorney 33  
general may administer oaths, subpoena witnesses, adduce evidence, 34  
and require the production of any relevant matter. 35

(2) If the matter to be produced under division (C)(1) of 36  
this section is located outside this state, the attorney general 37  
may designate any representative, including any official of the 38  
state in which the matter is located, to inspect the matter on the 39  
behalf of the attorney general. The person subpoenaed may make the 40  
matter available to the attorney general at a convenient location 41  
within the state or pay the reasonable and necessary expenses for 42  
the attorney general or the attorney general's representative to 43  
examine the matter at the place where it is located, provided that 44  
those expenses shall not be charged to a party that subsequently 45  
is not found to have engaged in a violation of any provision of a 46  
federal act or rule. 47

(3) A person subpoenaed under division (C)(1) of this section 48

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.

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(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.

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(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

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be disclosed. 81

(6) The attorney general may do either of the following: 82

(a) During an investigation under division (C) of this 83  
section, afford the person who is the subject of the 84  
investigation, in a manner considered appropriate to that person, 85  
an opportunity to cease and desist from any suspected violation of 86  
any provision of a federal act or rule. The attorney general may 87  
suspend the investigation during the period that the attorney 88  
general permits the person to cease and desist from that suspected 89  
violation. The suspension of the investigation or the affording of 90  
an opportunity to cease and desist shall not prejudice or prohibit 91  
any further investigation by the attorney general under division 92  
(C) of this section. 93

(b) Terminate an investigation under division (C) of this 94  
section upon acceptance of a written assurance of voluntary 95  
compliance from a person who is suspected of a violation of any 96  
provision of a federal act or rule. The acceptance of an assurance 97  
under division (C)(6)(b) of this section may be conditioned upon 98  
an undertaking to reimburse or to take other appropriate 99  
corrective action with respect to identifiable telephone service 100  
subscribers who are damaged by an alleged violation of any 101  
provision of a federal act or rule. An assurance of compliance 102  
given by a person under division (C)(6)(b) of this section is not 103  
evidence of a violation of any provision of a federal act or rule. 104  
The attorney general, at any time, may reopen an investigation 105  
terminated by the acceptance of an assurance of voluntary 106  
compliance, if the attorney general believes that further 107  
proceedings are in the public interest. Evidence of a violation of 108  
an assurance of voluntary compliance is prima-facie evidence of an 109  
act or practice in violation of the applicable provision of a 110  
federal act or rule if the evidence is presented after the 111  
violation in a civil action brought under division (D)(1) of this 112

section. An assurance of voluntary compliance may be filed with 113  
the court and if approved by the court, entered as a consent 114  
judgment in the action. 115

(7) The procedures that are available to the attorney general 116  
under division (C) of this section are cumulative and concurrent, 117  
and the exercise of one procedure by the attorney general does not 118  
preclude or require the exercise of any other procedure. 119

(D)(1) If, by the attorney general's own inquiries or as a 120  
result of complaints or an investigation conducted under division 121  
(C) of this section, the attorney general has reasonable cause to 122  
believe that a person has engaged or is engaging in a violation of 123  
any provision of this section or of a federal act or rule, the 124  
attorney general, subject to division (D)(2) or (3) of this 125  
section, may bring in the appropriate court of common pleas of 126  
this state or in the appropriate district court of the United 127  
States, but not in both courts, a civil action against the alleged 128  
violation for injunctive relief or a civil action against the 129  
alleged violator for damages, or both, pursuant to the federal act 130  
or rule, on behalf of the residents of this state who have been 131  
subjected to telemarketing acts or practices in violation of this 132  
section. The attorney general may bring the action under this 133  
section or under the applicable federal act or rule, but the 134  
attorney general shall not plead a violation of both this section 135  
and the applicable federal act or rule in the action. On the 136  
motion of the attorney general or on its own motion, a court may 137  
impose a civil penalty for a violation of the provision of this 138  
section or of the federal act or rule that is the subject of the 139  
action. The amount of any award of damages made or civil penalty 140  
imposed under division (D)(1) of this section shall not exceed any 141  
maximum allowable amount of damages or civil penalty that is 142  
specified in the applicable federal act or rule. An award of 143  
damages or civil penalties may be recovered under this section or 144

under the applicable federal act or rule, but an award of damages 145  
or civil penalties shall not be recovered under both this section 146  
and the applicable federal act or rule. 147

(2) If a civil action has been instituted by or on behalf of 148  
the federal trade commission or the federal communications 149  
commission for a violation of any provision of an applicable 150  
federal act or rule, the attorney general, during the pendency of 151  
that action, shall not institute any civil action under division 152  
(D)(1) of this section against any defendant that is named in the 153  
complaint in the civil action that has been instituted by or on 154  
behalf of the federal trade commission or the federal 155  
communications commission, whichever is applicable, for any 156  
violation that is alleged in that complaint. 157

(3) If a civil action that has been instituted by or on 158  
behalf of the federal trade commission or the federal 159  
communications commission for a violation of any provision of an 160  
applicable federal act or rule affecting the residents of this 161  
state is litigated to its conclusion and the federal trade 162  
commission or the federal communications commission recovers an 163  
award of damages or civil penalties or obtains any relief under 164  
the applicable federal act or rule, the attorney general shall not 165  
institute any civil action under division (D)(1) of this section 166  
for any violation within the same time period that is alleged in 167  
the civil action that was instituted as described in division 168  
(D)(3) of this section and in which the federal trade commission 169  
or federal communications commission has recovered the damages or 170  
civil penalties or obtained the relief. 171

(E) Any civil action that the attorney general brings in a 172  
federal court under division (D)(1) of this section shall comply 173  
with the applicable provisions of the federal act or rule the 174  
violation of which is the subject of the action. 175

(F) The attorney general shall deposit any civil penalties 176  
that are imposed under division (D)(1) of this section to the 177  
credit of the telephone solicitation protection fund, which is 178  
hereby created in the state treasury, to be used to pay the costs 179  
of the office of the attorney general in investigating any 180  
violation of, and in enforcing, any federal act or rule or this 181  
section. 182