

As Reported by the Senate Public Utilities Committee

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Sub. S. B. No. 28

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

A BILL

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:

(1) The called party's purchase, rental, or lease of goods or services from the entity. For purposes of sections 4719.25 to 4719.38 of the Revised Code, such relationship shall terminate as specified below: 19
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(a) In the case of a purchase, rental, or lease for which the called party does not obtain financing, either eighteen months after the date on which the purchase, rental, or lease agreement is executed or on the date on which the called party is no longer obligated under the agreement, whichever is later. 23
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(b) In the case of a purchase, rental, or lease for which the called party obtains financing, either eighteen months after the date on which the finance agreement is executed or on the date on which the called party is no longer obligated under the finance agreement, whichever is later. 28
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(2) A financial transaction between the called party and the entity. For purposes of sections 4719.25 to 4719.38 of the Revised Code, such relationship shall terminate eighteen months after the date on which the financial transaction is executed. 33
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(2) A financial transaction between the called party and the entity within the eighteen months immediately preceding the date of the telephone solicitation; 37
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(3) The called party's inquiry or application regarding a product or service offered by the entity, within the three months immediately preceding the date of the telephone solicitation. 40
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(C) "Person" means an individual, group, or unincorporated association, or any limited or general partnership, corporation, or other business entity. 43
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(D) "Representative" means an individual who is employed, appointed, or authorized by a telephone solicitor to make telephone solicitations. 46
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(E) "Telephone solicitation" means a communication to a person that is initiated by or on behalf of a telephone solicitor or a representative and either represents a price, 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.

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

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

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 ninety days after the date that the number appears on the most current version of a do-not-call registry provided for pursuant to division (A) or (B) of section 4719.28 of the Revised Code. This division does not apply to an unsolicited telephone solicitation that is made by or on behalf of an organization that is granted tax-exempt status under section 501(c)(3) or (19) of the "Internal Revenue Code of 1986," 26 U.S.C. 501, as amended, and is not an affiliate of an entity that is operated for profit.

(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. 80

(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: 81
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(1) The telephone solicitor or representative uses technology that ensures abandonment of not more than five per cent of all answered calls, measured per day per calling campaign. The attorney general, by rule adopted under section 4719.32 of the Revised Code, shall adjust this percentage of answered calls a telephone solicitor or representative may abandon so that the percentage is consistent with any applicable federal regulation. 87
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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. 94
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(3) If a live person is not available to speak with the party answering the call within two seconds after that party's completed greeting, the telephone solicitor or representative promptly plays a recorded message that states the name and telephone number of the entity on whose behalf the call was placed. The telephone number shall not be a "900" number or any other number for which charges exceed normal local or normal long-distance charges. 97
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(4) The telephone solicitor or representative retains records establishing compliance with section 4719.27 of the Revised Code. 104
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(D) No telephone solicitor or representative, in connection with a telephone solicitation, shall fail to promptly do all of the following before requesting any financial information or conveying to the party answering the call any substantive information about a prize, good, or service: 106
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(1) State the telephone solicitor's or representative's true name, or a fictitious name if the fictitious name is provided to the entity on whose behalf the telephone solicitation is made. The entity shall maintain a record of any fictitious name provided under this division for a period of time the attorney general shall prescribe in rules adopted under section 4719.32 of the Revised Code. 111
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(2) State the name of the entity on whose behalf the solicitation is being made; 118
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(3) State that the purpose of the call is to effect a sale; 120

(4) Identify any good or service being sold. 121

(E) The entity on whose behalf a telephone solicitation is made is also liable for any violation of division (A), (B), (C), or (D) of this section. 122
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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. 125
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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. 135
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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. 141
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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. 147
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(B) Regardless of who maintains the do-not-call list required by division (A)(1) of this section, the entity on whose behalf a telephone solicitation is made is also liable for any violation of division (A)(1), (2), or (3) of this section. 150
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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: 154
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(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 4719.38 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. The registration of telephone numbers and purging of registered telephone numbers shall occur as provided in the applicable federal law. 159
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(B) Beginning on January 1, 2004, developing and thereafter 170

operating and maintaining, including by contract awarded pursuant 171
to section 125.11 of the Revised Code, a do-not-call registry in 172
accordance with section 4719.29 of the Revised Code. 173

Sec. 4719.29. (A) The do-not-call registry authorized under 174
division (B) of section 4719.28 of the Revised Code shall be in a 175
secured electronic data base consisting only of residential 176
telephone numbers, including wireline telephone service numbers, 177
facsimile machine numbers, and wireless telephone service numbers. 178
Only the numbers of those residential telephone service 179
subscribers that have requested inclusion on the registry in 180
accordance with procedures prescribed by rules adopted under 181
section 4719.32 of the Revised Code shall be included on it. Those 182
procedures shall provide that a request may be made by mail or 183
through the internet or a toll-free telephone number. The registry 184
also shall be made available in printed form. 185

(B) The registry developed, operated, and maintained under 186
division (B) of section 4719.28 of the Revised Code shall be made 187
available to any person upon request pursuant to procedures 188
prescribed by rules adopted pursuant to section 4719.32 of the 189
Revised Code, which procedures shall require payment of a 190
reasonable distribution fee, specified in the rules, in order to 191
obtain a copy of or access to the registry. The rules also shall 192
provide that a residential telephone service subscriber who 193
requests to have its residential telephone number or numbers 194
included on the registry shall pay no fee or charge for any such 195
listing or subsequent removal. The telephone number shall remain 196
on the registry for such period of time and subject to such 197
procedures for removal as are specified in the rules. 198

(C) All fees authorized under division (B) of this section 199
shall be paid to the attorney general and deposited to the credit 200
of the do-not-call registry fund, which is hereby created in the 201

state treasury, to be used to pay the costs of developing, 202
operating, and maintaining the registry authorized under division 203
(B) of section 4719.28 of the Revised Code, including any costs 204
arising under a contract authorized by that division. 205

(D) The do-not-call registry developed, operated, and 206
maintained pursuant to division (B) of section 4719.28 of the 207
Revised Code, and any information received or maintained for the 208
purpose of the registry by the attorney general or any contractor 209
in connection with a telephone number or subscriber, is not a 210
public record for purposes of section 149.43 of the Revised Code. 211

Sec. 4719.30. (A)(1) No person shall possess, disclose, or 212
use, including for the purpose of selling, renting, or leasing, a 213
do-not-call registry provided for under division (A) or (B) of 214
section 4719.28 of the Revised Code, a do-not-call list under 215
section 4719.27 of the Revised Code, or any information received 216
or maintained in connection with a telephone number on the 217
registry or list or with the associated subscriber, for any 218
purpose other than complying with sections 4719.25 to 4719.38 of 219
the Revised Code and applicable federal law or with a lawful court 220
order or subpoena directing disclosure or use. 221

(2) Notwithstanding division (A)(1) of this section, a 222
telephone solicitor or representative may do either of the 223
following: 224

(a) Disclose or forward to or share with the entity on whose 225
behalf it makes telephone solicitations any information received 226
or maintained in connection with a telephone number on a list it 227
maintains for that entity under section 4719.27 of the Revised 228
Code or with the associated subscriber; 229

(b) Disclose or forward such information to, or share it 230
with, any other entity, provided that the telephone solicitor or 231

representative first obtains the express written or recorded 232
consent of the subscriber. No telephone solicitor or 233
representative shall fail to retain that consent for a minimum of 234
one year after the date the subscriber's information was last 235
shared pursuant to the consent. 236

(B)(1) Division (A) of this section does not apply to the 237
possession, disclosure, or use by the attorney general, or any 238
employee of the office of the attorney general in the course of 239
that employment, of a do-not-call registry provided for under 240
division (A) or (B) of section 4719.28 of the Revised Code, a 241
do-not-call list under section 4719.27 of the Revised Code, or any 242
information received or maintained in connection with a telephone 243
number on the registry or list or with the associated subscriber, 244
if the purpose of such possession, disclosure, or use is to 245
develop, operate, or maintain the registry; enforce sections 246
4719.25 to 4719.38 of the Revised Code; pursue an action under 247
section 4719.34 of the Revised Code; or comply with a lawful court 248
order or subpoena directing disclosure or use. 249

(2) Division (A) of this section does not apply to the 250
possession, disclosure, or use by a contractor under division (B) 251
of section 4719.28 of the Revised Code, or any agent or employee 252
of the contractor in the course of that agency or employment, of a 253
do-not-call registry provided for under division (B) of section 254
4719.28 of the Revised Code or any information received or 255
maintained in connection with a telephone number on the registry 256
or with the associated subscriber, if the purpose of such 257
possession, disclosure, or use is to develop, operate, or maintain 258
the registry; assist the attorney general in the enforcement of 259
sections 4719.25 to 4719.38 of the Revised Code; assist the 260
attorney general in the pursuit of an action under section 4719.34 261
of the Revised Code; or comply with a lawful court order or 262
subpoena directing disclosure or use. 263

(C) Division (A) of this section shall not prevent a person 264
from sharing a do-not-call registry provided for under division 265
(A) or (B) of section 4719.28 of the Revised Code or a do-not-call 266
list provided for under section 4719.27 of the Revised Code with 267
an affiliate for purposes of complying with sections 4719.25 to 268
4719.38 of the Revised Code, provided that the sharing is done in 269
compliance with any applicable federal law. 270

(D) Whoever violates division (A)(1) of this section is 271
guilty of a felony of the fifth degree. 272

Sec. 4719.31. Any company that provides a local telephone 273
directory to a telephone service subscriber in this state shall 274
include in the directory a notice that describes the do-not-call 275
registry in effect pursuant to division (A) or (B) of section 276
4719.28 of the Revised Code and the do-not-call list required 277
under section 4719.27 of the Revised Code and that provides 278
complete information on procedures for a residential telephone 279
subscriber to have its residential telephone number or numbers 280
included on any such registry or list. 281

Sec. 4719.32. The attorney general, in accordance with 282
Chapter 119. of the Revised Code, shall adopt the rules required 283
by section 4719.29 of the Revised Code if the attorney general 284
provides for a registry pursuant to division (B) of section 285
4719.28 of the Revised Code and may adopt any other rules the 286
attorney general considers necessary to carry out sections 4719.25 287
to 4719.38 of the Revised Code. 288

Sec. 4719.33. (A) If the attorney general, as a result of 289
complaints or the attorney general's own inquiries, has reason to 290
believe that a person has engaged, is engaging, or is preparing to 291
engage in a violation of section 4719.30 or any provision of 292
section 4719.26 or 4719.27 or a rule adopted under section 4719.32 293

of the Revised Code, the attorney general may investigate the 294
alleged violation. 295

(B) For purposes of an investigation under division (A) of 296
this section, the attorney general may administer oaths, subpoena 297
witnesses, adduce evidence, and require the production of any 298
book, document, record, or other relevant matter. If the matter to 299
be produced is located outside this state, the attorney general 300
may designate representatives, including officials of the state in 301
which the matter is located, to inspect the matter on the attorney 302
general's behalf. The person subpoenaed may make the matter 303
available to the attorney general at a convenient location within 304
the state or pay the reasonable and necessary expenses for the 305
attorney general or the attorney general's representative to 306
examine the matter at the place where it is located, provided that 307
expenses shall not be charged to a party not subsequently found to 308
have engaged in a violation of section 4719.30 or any provision of 309
section 4719.26 or 4719.27 or a rule adopted under section 4719.32 310
of the Revised Code. The attorney general may respond to similar 311
requests from officials of other states. 312

(C) A person subpoenaed under this section may file a 313
petition to extend the day on which the subpoena is to be returned 314
or to modify or quash the subpoena, for good cause shown, in the 315
court of common pleas of Franklin county or of the county in this 316
state in which the person resides or in which the person's 317
principal place of business is located. The person may file the 318
petition at any time before the day of return specified in the 319
subpoena or within twenty days after the service of the subpoena, 320
whichever is the shorter period. 321

(D) A person subpoenaed under this section shall comply with 322
the terms of the subpoena unless, prior to the date for return 323
specified in the subpoena or as extended, the court orders 324

otherwise. If a person fails without lawful excuse to obey a 325
subpoena or to produce relevant matter, the attorney general may 326
apply to a court of common pleas for an order that does one or 327
more of the following: 328

(1) Adjudges the person in contempt of court; 329

(2) Grants injunctive relief to restrain the person from 330
engaging in conduct that violates section 4719.30 or any provision 331
of section 4719.26 or 4719.27 or a rule adopted under section 332
4719.32 of the Revised Code; 333

(3) Grants injunctive relief to preserve or restore the 334
status quo; 335

(4) Grants other relief that may be required until the person 336
obeys the subpoena. 337

(E) If a person violates an order of a court issued under 338
this section, the court shall treat the violation as a violation 339
of an injunction issued under section 4719.34 of the Revised Code. 340

(F) If an individual refuses to testify or to produce 341
relevant matter on the grounds that the testimony or matter may 342
incriminate the individual, the attorney general may request a 343
court to order the individual to provide the testimony or matter. 344
With the exception of a prosecution for perjury and an action for 345
damages under section 4719.34 or 4719.35 of the Revised Code, an 346
individual who complies with a court order to provide testimony or 347
matter, after asserting a privilege against self-incrimination to 348
which the individual is entitled by law, shall not be subjected to 349
a criminal proceeding on the basis of the testimony or matter 350
required to be disclosed or testimony or matter discovered through 351
that testimony or matter. 352

Sec. 4719.34. (A) If, by the attorney general's own inquiries 353
or as a result of complaints, the attorney general has reasonable 354

cause to believe that a person has engaged or is engaging in a 355
violation of section 4719.30 or any provision of section 4719.26 356
or 4719.27 or a rule adopted under section 4719.32 of the Revised 357
Code, the attorney general may do either of the following: 358

(1) Bring an action to obtain a declaratory judgment, 359
temporary restraining order, or preliminary or permanent 360
injunction. If the attorney general shows by a preponderance of 361
the evidence that the person has violated or is violating section 362
4719.30 or any provision of section 4719.26 or 4719.27 or a rule 363
adopted under section 4719.32 of the Revised Code, the court shall 364
issue a temporary restraining order or preliminary or permanent 365
injunction without bond. On motion of the attorney general, or on 366
its own motion, the court shall impose a civil penalty of not more 367
than five thousand dollars for each day of violation of any such 368
order or injunction. 369

(2) Bring a civil action on behalf of residential telephone 370
service subscribers in this state for damages caused by the 371
violation. However, no such action for recovery of damages shall 372
be brought by the attorney general more than two years after the 373
occurrence of the violation. 374

(B) On motion of the attorney general and without bond, the 375
court may make appropriate orders, including appointment of a 376
receiver, for attachment of assets, to recover actual or statutory 377
damages for residential telephone service subscribers or to grant 378
other appropriate relief including reasonable attorney's fees and 379
costs. If a violation is proven in an action for damages, the 380
court shall award each subscriber the greater amount of actual 381
monetary loss or two hundred dollars, plus court costs and 382
attorney's fees. The court may assess the expenses of the receiver 383
against the violator. 384

(C) In addition to the other remedies provided in this 385

section, the attorney general may request, and the court shall 386
impose, a civil penalty of not less than five hundred dollars nor 387
more than two thousand dollars for each violation of any provision 388
of section 4719.26 or 4719.27 or a rule adopted under section 389
4719.32 of the Revised Code or each violation of section 4719.30 390
of the Revised Code. Each call to each called party in violation 391
of any provision of section 4719.26 or 4719.27, each possession, 392
disclosure, or use in violation of section 4719.30, and each 393
violation of any provision of a rule adopted under section 4719.32 394
of the Revised Code constitutes a separate violation for purposes 395
of the civil penalty calculations. 396

(D) Civil penalties ordered pursuant to division (A)(1) or 397
(C) of this section or division (E) of section 4719.33 of the 398
Revised Code, and any moneys or property recovered by the attorney 399
general in an action under division (A)(2) of this section that 400
cannot with due diligence within five years be restored to 401
subscribers, shall be deposited to the credit of the telephone 402
solicitation protection fund, which is hereby created in the state 403
treasury, to be used to pay the costs of the office of the 404
attorney general in enforcing sections 4719.25 to 4719.38 of the 405
Revised Code. 406

Sec. 4719.35. A violation of section 4719.30 of the Revised 407
Code or of any provision of section 4719.26 or 4719.27 or of a 408
rule adopted under section 4719.32 of the Revised Code by a 409
telephone solicitor or representative that is also a supplier as 410
defined in section 1345.01 of the Revised Code is an unfair or 411
deceptive act or practice in violation of section 1345.02 of the 412
Revised Code. 413

Sec. 4719.36. A person that has received a call in violation 414
of any provision of section 4719.26 or 4719.27 of the Revised Code 415

may bring an action to enjoin that violation or an action to 416
recover damages, or may bring both such actions. If a violation is 417
proven in an action for damages, the court shall award the greater 418
amount of actual monetary loss or two hundred dollars, plus court 419
costs and attorney's fees. No such action for recovery shall be 420
brought more than two years after the occurrence of the violation. 421

Sec. 4719.37. It is an affirmative defense in an action or 422
proceeding brought against an entity on whose behalf a telephone 423
solicitation is made for violating sections 4719.26 or 4719.27 of 424
the Revised Code, that the entity established and implemented, 425
with due care, reasonable practices and procedures to effectively 426
prevent telephone solicitations in violation of those sections. 427

Sec. 4719.38. The powers, remedies, and penalties provided by 428
sections 4719.25 to 4719.38 of the Revised Code are in addition to 429
any other power, remedy, or penalty provided by law. 430