

LSC 125 0411

125th General Assembly
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. B. No.

A BILL

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 in which a called party has made a purchase from or payment or donation to the telephone solicitor or its representative or to the entity on whose behalf a telephone solicitation is made during the eighteen months prior to the telephone solicitation.

(C) "Person" means an individual, group, or unincorporated

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 46
relationship with the called party, unless the called party has 47
communicated a desire to no longer receive a telephone 48
solicitation from the telephone solicitor or its representative or 49
from the entity on whose behalf the solicitation is made. 50

Sec. 4719.26. (A) No telephone solicitor or representative 51

shall make or cause to be made an unsolicited telephone 52
solicitation to a telephone number more than thirty days after the 53
number appears on a do-not-call registry provided for pursuant to 54
division (A) or (B) of section 4719.28 of the Revised Code. 55

(B) No telephone solicitor or representative shall make or 56
cause to be made a telephone solicitation to any residential 57
telephone service subscriber in this state other than between 8 58
a.m. and 9 p.m. local time at the subscriber's location. 59

(C) With respect to an outbound telephone solicitation, no (60)
telephone solicitor or representative shall abandon the call by (61)
failing to connect the call to a live person within two seconds (62)
after the completed greeting by the party answering the call, (63)
unless the telephone solicitor or representative meets all of the (64)
following criteria: 65

(1) The telephone solicitor or representative uses technology (66)
that ensures abandonment of no more than three per cent of all (67)
answered calls, measured per day per calling campaign. 68

(2) For each call placed, the telephone solicitor or (69)
representative allows the telephone to ring for at least fifteen (70)
seconds or four rings before disconnecting an unanswered call. 71

(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 94
shall fail to maintain or cause to be maintained a do-not-call 95
list of the telephone numbers of all residential telephone service 96
subscribers who have requested of the telephone solicitor or 97
representative that they not receive telephone solicitations on 98
behalf of a particular entity for which the telephone solicitor or 99
representative has made telephone solicitations. No telephone 100
solicitor or representative shall fail to record the request and 101
place the telephone number on the list at the time the request is 102
made. 103

(2) For ten years after the date of a request under division 104
(A) of this section, no telephone solicitor or representative 105
shall make or cause to be made a telephone solicitation, to a 106
telephone number on a list required by division (A) of this 107
section, on behalf of the particular entity for which that list is 108
maintained. 109

(3) For any telephone solicitation made using a prerecorded 110
or artificial message player, no telephone solicitor or 111
representative shall fail to include or fail to cause to be 112

included a toll-free telephone number that a called party may call 113
to request that the called party's telephone number be included on 114
the do-not-call list required by this section. 115

(4) Nothing in division (A)(1), (2), or (3) of this section 116
applies with respect to telephone calls made necessary by an 117
emergency affecting public health or safety. 118

(B) Whoever violates division (A)(1), (2), or (3) of this 119
section is guilty of a felony of the fifth degree. Regardless of 120
who maintains the do-not-call list required by division (A)(1) of 121
this section, an entity on whose behalf a telephone solicitation 122
is made is liable for any violation of division (A)(1), (2), or 123
(3) of this section. 124

Sec. 4719.28. The attorney general shall provide for a 125
do-not-call registry for the benefit of residential telephone 126
service subscribers in this state, by doing either of the 127
following at the attorney general's discretion and with reasonable 128
public notice: 129

(A) In lieu of providing for a registry under division (B) of 130
this section, accepting for the purpose of this section any 131
national do-not-call-type registry established and maintained by a 132
federal agency, including, but not limited to, a registry 133
maintained pursuant to 16 C.F.R. 310. Beginning on the effective 134
date of that acceptance, sections 4719.25 to 4719.37 of the 135
Revised Code, and all the duties, authority, remedies, and 136
penalties provided in those sections, apply with respect to a 137
registry under this division. 138

(B) Beginning on January 1, 2004, developing and thereafter 139
operating and maintaining, including by contract awarded pursuant 140
to section 125.11 of the Revised Code, a do-not-call registry in 141
accordance with section 4719.29 of the Revised Code. 142

Sec. 4719.29. (A) The do-not-call registry authorized under 143
division (B) of section 4719.28 of the Revised Code shall be in a 144
secured electronic data base consisting only of residential 145
telephone numbers, including wireline telephone service numbers, 146
facsimile machine numbers, and wireless telephone service numbers. 147
Only the numbers of those residential telephone service 148
subscribers that have requested inclusion on the registry in 149
accordance with procedures prescribed by rules adopted under 150
section 4719.32 of the Revised Code shall be included on it. Those 151
procedures shall provide that a request may be made by mail or 152
through the internet or a toll-free telephone number. The registry 153
also shall be made available in printed form. 154

(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 180
use, including for the purpose of selling, renting, or leasing, a 181
do-not-call registry provided for under division (A) or (B) of 182
section 4719.28 of the Revised Code, a do-not-call list under 183
section 4719.27 of the Revised Code, or any information received 184
or maintained in connection with a telephone number on the 185
registry or list or with the associated subscriber, for any 186
purpose other than complying with sections 4719.25 to 4719.37 of 187
the Revised Code and applicable federal law or with a lawful court 188
order or subpoena directing disclosure or use. 189

(2) Notwithstanding division (A)(1) of this section, a 190
telephone solicitor or representative may do either of the 191
following: 192

(a) Disclose or forward to or share with the entity on whose 193
behalf it makes telephone solicitations any information received 194
or maintained in connection with a telephone number on a list it 195
maintains for that entity under section 4719.27 of the Revised 196
Code or with the associated subscriber; 197

(b) Disclose or forward such information to, or share it 198
with, any other entity provided that the telephone solicitor or 199
representative first obtains the express written or recorded 200
consent of the subscriber. No telephone solicitor or 201
representative shall fail to retain that consent for a minimum of 202
one year after the date the subscriber's information was last 203
shared pursuant to the consent. 204

(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 236
under section 4719.27 of the Revised Code and that provides 237
complete information on procedures for a residential telephone 238
subscriber to have its residential telephone number or numbers 239
included on any such registry or list. 240

Sec. 4719.32. The attorney general, in accordance with 241
Chapter 119. of the Revised Code, shall adopt the rules required 242
by section 4719.29 of the Revised Code if the attorney general 243
provides for a registry pursuant to division (B) of section 244
4719.28 of the Revised Code and may adopt any other rules the 245
attorney general considers necessary to carry out sections 4719.25 246
to 4719.37 of the Revised Code. 247

Sec. 4719.33. (A) If the attorney general, as a result of 248
complaints or the attorney general's own inquiries, has reason to 249
believe that a person has engaged, is engaging, or is preparing to 250
engage in a violation of section 4719.30 or any provision of 251
section 4719.26 or 4719.27 or a rule adopted under section 4719.32 252
of the Revised Code, the attorney general may investigate the 253
alleged violation. 254

(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 281
the terms of the subpoena unless, prior to the date for return 282
specified in the subpoena or as extended, the court orders 283
otherwise. If a person fails without lawful excuse to obey a 284
subpoena or to produce relevant matter, the attorney general may 285
apply to a court of common pleas for an order that does one or 286
more of the following: 287

(1) Adjudges the person in contempt of court; 288

(2) Grants injunctive relief to restrain the person from 289
engaging in conduct that violates section 4719.30 or any provision 290
of section 4719.26 or 4719.27 or a rule adopted under section 291
4719.32 of the Revised Code; 292

(3) Grants injunctive relief to preserve or restore the 293
status quo; 294

(4) Grants other relief that may be required until the person 295
obeys the subpoena. 296

(E) If a person violates an order of a court issued under 297

this section, the court shall treat the violation as a violation 298
of an injunction issued under section 4719.34 of the Revised Code. 299

(F) If an individual refuses to testify or to produce 300
relevant matter on the grounds that the testimony or matter may 301
incriminate the individual, the attorney general may request a 302
court to order the individual to provide the testimony or matter. 303
With the exception of a prosecution for perjury and an action for 304
damages under section 4719.34 or 4719.35 of the Revised Code, an 305
individual who complies with a court order to provide testimony or 306
matter, after asserting a privilege against self-incrimination to 307
which the individual is entitled by law, shall not be subjected to 308
a criminal proceeding on the basis of the testimony or matter 309
required to be disclosed or testimony or matter discovered through 310
that testimony or matter. 311

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 service subscribers in this state for damages caused by the violation. However, no such action for recovery of damages shall be brought by the attorney general more than two years after the occurrence of the violation. 329
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(B) On motion of the attorney general and without bond, the court may make appropriate orders, including appointment of a receiver, for attachment of assets, to recover actual or statutory damages for residential telephone service subscribers or to grant other appropriate relief including reasonable attorney's fees and costs. The court may assess the expenses of the receiver against the violator. 334
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(C) In addition to the other remedies provided in this section, the attorney general may request, and the court may impose, a civil penalty of not less than five hundred dollars nor more than two thousand dollars for each violation of any provision of section 4719.26 or 4719.27 or a rule adopted under section 4719.32 of the Revised Code or each violation of section 4719.30 of the Revised Code. Each call to each called party in violation of any provision of section 4719.26 or 4719.27, each possession, disclosure, or use in violation of section 4719.30, and each violation of any provision of a rule adopted under section 4719.32 of the Revised Code constitutes a separate violation for purposes of the civil penalty calculations. 341
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(D) Civil penalties ordered pursuant to division (A)(1) or (C) of this section or division (E) of section 4719.33 of the Revised Code, and any moneys or property recovered by the attorney general in an action under division (A)(2) of this section that cannot with due diligence within five years be restored to subscribers, shall be deposited to the credit of the telephone solicitation protection fund, which is hereby created in the state treasury, to be used to pay the costs of the office of the 353
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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