

As Introduced

**135th General Assembly
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S. B. No. 330

Senator Gavarone

A BILL

To amend section 109.87 of the Revised Code to make 1
changes to the telemarketing law. 2

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

Section 1. That section 109.87 of the Revised Code be 3
amended to read as follows: 4

Sec. 109.87. (A) (1) Unless otherwise defined in this 5
section, the terms that are used in this section have the same 6
meanings as in the applicable federal act or rule. 7

(2) As used in this section: 8

(a) "Federal act or rule" means the "Telemarketing and 9
Consumer Fraud and Abuse Prevention Act," 108 Stat. 1545 to 10
1551, 15 U.S.C. 6101 to 6108, the "Telephone Consumer Protection 11
Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any amendment or 12
reenactment of either of those acts, any rule adopted or issued 13
pursuant to either of those acts, or any amendment of that rule. 14

(b) ~~"Voice service provider" means any entity originating, 15
carrying, or terminating voice calls through time division 16
multiplexing, voice over internet protocol, including 17
interconnected or one way voice over internet protocol, or 18~~

~~commercial mobile radio service.~~ 19

~~(e)~~ "Voice service" means any service that is 20
interconnected with the public switched telephone network, 21
directly or as an intermediary, and that furnishes voice 22
communications to an end user using resources from the North 23
American numbering plan or any successor to the North American 24
numbering plan adopted by the federal communications commission 25
under the Communications Act of 1934, 47 U.S.C. 251(e) (1), and 26
includes both of the following: 27

(i) A transmission from a telephone facsimile machine, 28
computer, or other device to a telephone facsimile machine. 29

(ii) Without limitation, any service that enables real- 30
time, two-way voice communications, including any service that 31
requires internet protocol-compatible customer premises 32
equipment out-bound calling, whether or not the service is one- 33
way or two-way voice over internet protocol. 34

~~(d) (i) "Text message" means a message consisting of text, 35
images, sounds, or other information that is transmitted to or 36
from a device that is identified as the receiving or 37
transmitting device by means of a ten digit telephone number or 38
N-1-1 service code and includes a short message service and a 39
multimedia message service.~~ 40

~~(ii) "Text message" does not include a real time, two way 41
voice or video communication or a message sent over an internet 42
protocol enabled messaging service to another user of the same 43
messaging service, except a message described in division (A) (2) 44
(d) (i) of this section.~~ 45

~~(e) "Text messaging service" means a service that enables 46
the transmission or receipt of a text message, including a 47~~

~~service provided as part of or in connection with a voice
service.~~ 48
49

(B) (1) No person, entity, merchant, seller, or 50
telemarketer shall engage in any act or practice in violation of 51
any provision of a federal act or rule. 52

(2) (a) No person shall provide substantial assistance or 53
support to any person, entity, merchant, seller, or telemarketer 54
when that person knows or consciously avoids knowing that the 55
other person, entity, merchant, seller, or telemarketer is 56
engaged in any act or practice that violates any provision of a 57
federal act or rule. 58

(b) For purposes of division (B) (2) (a) of this section, 59
"substantial assistance or support" does not include the 60
provision of a voice service to a third party by a ~~voice service~~
~~provider if one or more person operating as any of the following~~
~~is true:~~ 61
62
63

(i) ~~The voice service provider is not designated as a non-~~ 64
~~cooperative An incumbent local exchange carrier by the~~ 65
~~consortium registered with the federal communications commission~~ 66
~~pursuant to 47 C.F.R. 64.1203, as defined in section 4927.01 of~~ 67
~~the Revised Code.~~ 68

(ii) ~~The network of the voice service provider does not~~ 69
~~originate the voice service or text messaging service~~A telephone 70
company or wireless service provider that is certified or 71
registered, as applicable, with the public utilities commission 72
pursuant to section 4927.05 of the Revised Code. 73

(iii) ~~The network of the voice service provider is not the~~ 74
~~first domestic provider handling the voice service or text~~ 75
~~messaging service that originates outside of the United States~~An 76

eligible telecommunications carrier designated by rule by the 77
public utilities commission pursuant to section 4927.04 of the 78
Revised Code. 79

(3) The attorney general, in any proceedings under this 80
section, shall recognize any exemptions recognized by the 81
federal communications commission under the "Telephone Consumer 82
Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any 83
amendment or reenactment of that act, any rule adopted or issued 84
pursuant to that act, or any amendment of that rule. 85

(C) (1) If the attorney general, as a result of complaints 86
or the attorney general's own inquiries, has reason to believe 87
that a person has engaged, is engaging, or is preparing to 88
engage in a violation of this section or any provision of a 89
federal act or rule, the attorney general may investigate the 90
alleged violation. For purposes of an investigation under 91
division (C) (1) of this section, the attorney general may 92
administer oaths, subpoena witnesses, adduce evidence, and 93
require the production of any relevant matter. 94

(2) If the matter to be produced under division (C) (1) of 95
this section is located outside this state, the attorney general 96
may designate any representative, including any official of the 97
state in which the matter is located, to inspect the matter on 98
the behalf of the attorney general. The person subpoenaed may 99
make the matter available to the attorney general at a 100
convenient location within the state or pay the reasonable and 101
necessary expenses for the attorney general or the attorney 102
general's representative to examine the matter at the place 103
where it is located, provided that those expenses shall not be 104
charged to a party that subsequently is not found to have 105
engaged in a violation of this section or any provision of a 106

federal act or rule. 107

(3) A person subpoenaed under division (C)(1) of this 108
section may file a motion to extend the day on which the 109
subpoena is to be returned or to modify or quash the subpoena, 110
for good cause shown, in the court of common pleas of Franklin 111
county or of the county in this state in which the person 112
resides or in which the person's principal place of business is 113
located. The person may file the motion not later than twenty 114
days after the service of the subpoena. 115

(4) A person subpoenaed under division (C)(1) of this 116
section shall comply with the terms of the subpoena unless the 117
parties agree to modify the terms of the subpoena or unless the 118
court has modified or quashed the subpoena, extended the day on 119
which the subpoena is to be returned, or issued any other order 120
with respect to the subpoena prior to the day on which the 121
subpoena is to be returned. If a person fails without lawful 122
excuse to testify or to produce relevant matter pursuant to a 123
subpoena, the attorney general may apply to the court of common 124
pleas of the county in which the person subpoenaed resides or in 125
which the person's principal place of business is located for an 126
order that compels compliance with the subpoena. 127

(5) If an individual subpoenaed under division (C)(1) of 128
this section refuses to testify or to produce relevant matter 129
pursuant to the subpoena on the ground that the testimony or 130
matter may incriminate the individual, the attorney general may 131
request the court to order the individual to provide the 132
testimony or matter. With the exception of a prosecution for 133
perjury or a civil action for damages under division (D)(1) of 134
this section, an individual who complies with a court order to 135
provide testimony or matter, after asserting a privilege against 136

self-incrimination to which the individual is entitled by law, 137
shall not be subjected to a criminal proceeding or a civil 138
penalty or forfeiture on the basis of the testimony or matter 139
required to be disclosed or testimony or matter discovered 140
through that testimony or matter required to be disclosed. 141

(6) In conducting an investigation under this section, the 142
attorney general shall not publicly disclose the identity of 143
persons, entities, merchants, sellers, or telemarketers 144
investigated or the facts developed in the investigation unless 145
this information has become a matter of public record in 146
enforcement proceedings or if those being investigated have 147
consented in writing to public disclosure. 148

(7) In conducting an investigation under this section, the 149
attorney general shall cooperate with state and local officials 150
of other states and officials of the federal government in the 151
administration of comparable laws and regulations. 152

(8) The attorney general may do either of the following: 153

(a) During an investigation under division (C) of this 154
section, afford the person who is the subject of the 155
investigation, in a manner considered appropriate to that 156
person, an opportunity to cease and desist from any suspected 157
violation of this section or any provision of a federal act or 158
rule. The attorney general may suspend the investigation during 159
the period that the attorney general permits the person to cease 160
and desist from that suspected violation. The suspension of the 161
investigation or the affording of an opportunity to cease and 162
desist shall not prejudice or prohibit any further investigation 163
by the attorney general under division (C) of this section. 164

(b) Terminate an investigation under division (C) of this 165

section upon acceptance of a written assurance of voluntary 166
compliance from a person who is suspected of a violation of this 167
section or any provision of a federal act or rule. The 168
acceptance of an assurance under division (C) (8) (b) of this 169
section may be conditioned upon an undertaking to reimburse or 170
to take other appropriate corrective action with respect to 171
identifiable telephone service subscribers who are damaged by an 172
alleged violation of this section or any provision of a federal 173
act or rule. An assurance of compliance given by a person under 174
division (C) (8) (b) of this section is not evidence of a 175
violation of this section or any provision of a federal act or 176
rule. The attorney general, at any time, may reopen an 177
investigation terminated by the acceptance of an assurance of 178
voluntary compliance, if the attorney general believes that 179
further proceedings are in the public interest. Evidence of a 180
violation of an assurance of voluntary compliance is prima-facie 181
evidence of an act or practice in violation of this section or 182
the applicable provision of a federal act or rule if the 183
evidence is presented after the violation in a civil action 184
brought under division (D) (1) of this section. An assurance of 185
voluntary compliance may be filed with the court and if approved 186
by the court, entered as a consent judgment in the action. 187

(9) The procedures that are available to the attorney 188
general under division (C) of this section are cumulative and 189
concurrent, and the exercise of one procedure by the attorney 190
general does not preclude or require the exercise of any other 191
procedure. 192

(D) (1) If, by the attorney general's own inquiries or as a 193
result of complaints or an investigation conducted under 194
division (C) of this section, the attorney general has 195
reasonable cause to believe that a person has engaged or is 196

engaging in a violation of any provision of this section or of a federal act or rule, the attorney general, subject to division (D) (3) or (4) of this section, may bring in the appropriate court of common pleas of this state or in the appropriate district court of the United States, but not in both courts, a civil action against the alleged violator for injunctive relief, damages, and civil penalties pursuant to the federal act or rule, on behalf of the residents of this state who have been subjected to acts or practices in violation of this section. The attorney general may bring the action under this section or under the applicable federal act or rule, but the attorney general shall not plead a violation of both this section and the applicable federal act or rule in the action.

(2) On the motion of the attorney general or on its own motion, a court may impose a civil penalty of five hundred dollars for each violation of the provision of this section or of the federal act or rule that is the subject of the action. If the court finds the defendant willfully or knowingly committed the violation, the court may impose a civil penalty of one thousand five hundred dollars for each violation of the provision of this section or of the federal act or rules that is the subject of the action. An award of damages or civil penalties may be recovered under this section or under the applicable federal act or rule, but an award of damages or civil penalties shall not be recovered under both this section and the applicable federal act or rule.

(3) If a civil action has been instituted by or on behalf of the federal trade commission or the federal communications commission for a violation of any provision of an applicable federal act or rule, the attorney general, during the pendency of that action, shall not institute any civil action under

division (D) (1) of this section against any defendant that is 228
named in the complaint in the civil action that has been 229
instituted by or on behalf of the federal trade commission or 230
the federal communications commission, whichever is applicable, 231
for any violation that is alleged in that complaint. 232

(4) If a civil action that has been instituted by or on 233
behalf of the federal trade commission or the federal 234
communications commission for a violation of any provision of an 235
applicable federal act or rule affecting the residents of this 236
state is litigated to its conclusion and the federal trade 237
commission or the federal communications commission recovers an 238
award of damages or civil penalties or obtains any relief under 239
the applicable federal act or rule, the attorney general shall 240
not institute any civil action under division (D) (1) of this 241
section for any violation within the same time period that is 242
alleged in the civil action that was instituted as described in 243
division (D) (4) of this section and in which the federal trade 244
commission or federal communications commission has recovered 245
the damages or civil penalties or obtained the relief. 246

(5) No action may be brought by the attorney general under 247
this section for damages or a civil penalty more than five years 248
after the occurrence of the violation. 249

(E) Any civil action that the attorney general brings in a 250
federal court under division (D) (1) of this section shall comply 251
with the applicable provisions of the federal act or rule the 252
violation of which is the subject of the action. 253

(F) The attorney general shall deposit any civil penalties 254
that are imposed under division (D) (2) of this section to the 255
credit of the telemarketing fraud enforcement fund created under 256
section 4719.17 of the Revised Code, to be used to pay the costs 257

of the office of the attorney general in investigating any 258
violation of, and in enforcing, any federal act or rule or this 259
section or for any other purpose as set forth under section 260
4719.17 of the Revised Code. 261

(G) A violation of division (B)(1) or (2) of this section 262
that involves a consumer transaction as defined in section 263
1345.01 of the Revised Code shall be considered an unfair or 264
deceptive act or practice in violation of section 1345.02 of the 265
Revised Code. All powers and remedies available to the attorney 266
general to enforce sections 1345.01 to 1345.13 of the Revised 267
Code are available to the attorney general to enforce this 268
section. 269

Section 2. That existing section 109.87 of the Revised 270
Code is hereby repealed. 271