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Senator Gavarone

Cosponsors: Senators Manning, Blackshear, Cirino, Craig, DeMora, Hicks-Hudson, Ingram, Johnson, O'Brien, Patton, Reineke, Reynolds, Roegner, Romanchuk, Timken, Weinstein

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

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

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

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

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(2) As used in this section:

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

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(b) ~~"Voice service provider" means any entity originating,
carrying, or terminating voice calls through time-division-
multiplexing, voice over internet protocol, including~~

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~~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~~ 48
~~service.~~ 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~~ 61
~~provider if one or more person that is any of the following is~~ 62
~~true:~~ 63

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

(ii) ~~The network of the voice service provider does not~~ 69
~~originate the voice service or text messaging service~~Operating 70
as a telephone company or wireless service provider that is 71
certified or registered, as applicable, with the public 72
utilities commission pursuant to section 4927.05 of the Revised 73
Code. 74

(iii) ~~The network of the voice service provider is not the~~ 75

~~first domestic provider handling the voice service or text~~ 76
~~messaging service that originates outside of the United~~ 77
~~States~~Operating as an eligible telecommunications carrier 78
designated by rule by the public utilities commission pursuant 79
to section 4927.04 of the Revised Code. 80

(iv) An issuer of a class of securities registered under 81
section 12 of the "Securities Exchange Act of 1934," 15 U.S.C. 82
781, including any subsidiary entity in which the issuer owns, 83
either directly or indirectly through one or more 84
intermediaries, more than seventy-five per cent of the 85
ownership, voting, or similar interests then outstanding. 86

(3) The attorney general, in any proceedings under this 87
section, shall recognize any exemptions recognized by the 88
federal communications commission under the "Telephone Consumer 89
Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any 90
amendment or reenactment of that act, any rule adopted or issued 91
pursuant to that act, or any amendment of that rule. 92

(C) (1) If the attorney general, as a result of complaints 93
or the attorney general's own inquiries, has reason to believe 94
that a person has engaged, is engaging, or is preparing to 95
engage in a violation of this section or any provision of a 96
federal act or rule, the attorney general may investigate the 97
alleged violation. For purposes of an investigation under 98
division (C) (1) of this section, the attorney general may 99
administer oaths, subpoena witnesses, adduce evidence, and 100
require the production of any relevant matter. 101

(2) If the matter to be produced under division (C) (1) of 102
this section is located outside this state, the attorney general 103
may designate any representative, including any official of the 104
state in which the matter is located, to inspect the matter on 105

the behalf of the attorney general. The person subpoenaed may 106
make the matter available to the attorney general at a 107
convenient location within the state or pay the reasonable and 108
necessary expenses for the attorney general or the attorney 109
general's representative to examine the matter at the place 110
where it is located, provided that those expenses shall not be 111
charged to a party that subsequently is not found to have 112
engaged in a violation of this section or any provision of a 113
federal act or rule. 114

(3) A person subpoenaed under division (C)(1) of this 115
section may file a motion to extend the day on which the 116
subpoena is to be returned or to modify or quash the subpoena, 117
for good cause shown, in the court of common pleas of Franklin 118
county or of the county in this state in which the person 119
resides or in which the person's principal place of business is 120
located. The person may file the motion not later than twenty 121
days after the service of the subpoena. 122

(4) A person subpoenaed under division (C)(1) of this 123
section shall comply with the terms of the subpoena unless the 124
parties agree to modify the terms of the subpoena or unless the 125
court has modified or quashed the subpoena, extended the day on 126
which the subpoena is to be returned, or issued any other order 127
with respect to the subpoena prior to the day on which the 128
subpoena is to be returned. If a person fails without lawful 129
excuse to testify or to produce relevant matter pursuant to a 130
subpoena, the attorney general may apply to the court of common 131
pleas of the county in which the person subpoenaed resides or in 132
which the person's principal place of business is located for an 133
order that compels compliance with the subpoena. 134

(5) If an individual subpoenaed under division (C)(1) of 135

this section refuses to testify or to produce relevant matter 136
pursuant to the subpoena on the ground that the testimony or 137
matter may incriminate the individual, the attorney general may 138
request the court to order the individual to provide the 139
testimony or matter. With the exception of a prosecution for 140
perjury or a civil action for damages under division (D) (1) of 141
this section, an individual who complies with a court order to 142
provide testimony or matter, after asserting a privilege against 143
self-incrimination to which the individual is entitled by law, 144
shall not be subjected to a criminal proceeding or a civil 145
penalty or forfeiture on the basis of the testimony or matter 146
required to be disclosed or testimony or matter discovered 147
through that testimony or matter required to be disclosed. 148

(6) In conducting an investigation under this section, the 149
attorney general shall not publicly disclose the identity of 150
persons, entities, merchants, sellers, or telemarketers 151
investigated or the facts developed in the investigation unless 152
this information has become a matter of public record in 153
enforcement proceedings or if those being investigated have 154
consented in writing to public disclosure. 155

(7) In conducting an investigation under this section, the 156
attorney general shall cooperate with state and local officials 157
of other states and officials of the federal government in the 158
administration of comparable laws and regulations. 159

(8) The attorney general may do either of the following: 160

(a) During an investigation under division (C) of this 161
section, afford the person who is the subject of the 162
investigation, in a manner considered appropriate to that 163
person, an opportunity to cease and desist from any suspected 164
violation of this section or any provision of a federal act or 165

rule. The attorney general may suspend the investigation during 166
the period that the attorney general permits the person to cease 167
and desist from that suspected violation. The suspension of the 168
investigation or the affording of an opportunity to cease and 169
desist shall not prejudice or prohibit any further investigation 170
by the attorney general under division (C) of this section. 171

(b) Terminate an investigation under division (C) of this 172
section upon acceptance of a written assurance of voluntary 173
compliance from a person who is suspected of a violation of this 174
section or any provision of a federal act or rule. The 175
acceptance of an assurance under division (C) (8) (b) of this 176
section may be conditioned upon an undertaking to reimburse or 177
to take other appropriate corrective action with respect to 178
identifiable telephone service subscribers who are damaged by an 179
alleged violation of this section or any provision of a federal 180
act or rule. An assurance of compliance given by a person under 181
division (C) (8) (b) of this section is not evidence of a 182
violation of this section or any provision of a federal act or 183
rule. The attorney general, at any time, may reopen an 184
investigation terminated by the acceptance of an assurance of 185
voluntary compliance, if the attorney general believes that 186
further proceedings are in the public interest. Evidence of a 187
violation of an assurance of voluntary compliance is prima-facie 188
evidence of an act or practice in violation of this section or 189
the applicable provision of a federal act or rule if the 190
evidence is presented after the violation in a civil action 191
brought under division (D) (1) of this section. An assurance of 192
voluntary compliance may be filed with the court and if approved 193
by the court, entered as a consent judgment in the action. 194

(9) The procedures that are available to the attorney 195
general under division (C) of this section are cumulative and 196

concurrent, and the exercise of one procedure by the attorney 197
general does not preclude or require the exercise of any other 198
procedure. 199

(D) (1) If, by the attorney general's own inquiries or as a 200
result of complaints or an investigation conducted under 201
division (C) of this section, the attorney general has 202
reasonable cause to believe that a person has engaged or is 203
engaging in a violation of any provision of this section or of a 204
federal act or rule, the attorney general, subject to division 205
(D) (3) or (4) of this section, may bring in the appropriate 206
court of common pleas of this state or in the appropriate 207
district court of the United States, but not in both courts, a 208
civil action against the alleged violator for injunctive relief, 209
damages, and civil penalties pursuant to the federal act or 210
rule, on behalf of the residents of this state who have been 211
subjected to acts or practices in violation of this section. The 212
attorney general may bring the action under this section or 213
under the applicable federal act or rule, but the attorney 214
general shall not plead a violation of both this section and the 215
applicable federal act or rule in the action. 216

(2) On the motion of the attorney general or on its own 217
motion, a court may impose a civil penalty of five hundred 218
dollars for each violation of the provision of this section or 219
of the federal act or rule that is the subject of the action. If 220
the court finds the defendant willfully or knowingly committed 221
the violation, the court may impose a civil penalty of one 222
thousand five hundred dollars for each violation of the 223
provision of this section or of the federal act or rules that is 224
the subject of the action. An award of damages or civil 225
penalties may be recovered under this section or under the 226
applicable federal act or rule, but an award of damages or civil 227

penalties shall not be recovered under both this section and the 228
applicable federal act or rule. 229

(3) If a civil action has been instituted by or on behalf 230
of the federal trade commission or the federal communications 231
commission for a violation of any provision of an applicable 232
federal act or rule, the attorney general, during the pendency 233
of that action, shall not institute any civil action under 234
division (D) (1) of this section against any defendant that is 235
named in the complaint in the civil action that has been 236
instituted by or on behalf of the federal trade commission or 237
the federal communications commission, whichever is applicable, 238
for any violation that is alleged in that complaint. 239

(4) If a civil action that has been instituted by or on 240
behalf of the federal trade commission or the federal 241
communications commission for a violation of any provision of an 242
applicable federal act or rule affecting the residents of this 243
state is litigated to its conclusion and the federal trade 244
commission or the federal communications commission recovers an 245
award of damages or civil penalties or obtains any relief under 246
the applicable federal act or rule, the attorney general shall 247
not institute any civil action under division (D) (1) of this 248
section for any violation within the same time period that is 249
alleged in the civil action that was instituted as described in 250
division (D) (4) of this section and in which the federal trade 251
commission or federal communications commission has recovered 252
the damages or civil penalties or obtained the relief. 253

(5) No action may be brought by the attorney general under 254
this section for damages or a civil penalty more than five years 255
after the occurrence of the violation. 256

(E) Any civil action that the attorney general brings in a 257

federal court under division (D) (1) of this section shall comply 258
with the applicable provisions of the federal act or rule the 259
violation of which is the subject of the action. 260

(F) The attorney general shall deposit any civil penalties 261
that are imposed under division (D) (2) of this section to the 262
credit of the telemarketing fraud enforcement fund created under 263
section 4719.17 of the Revised Code, to be used to pay the costs 264
of the office of the attorney general in investigating any 265
violation of, and in enforcing, any federal act or rule or this 266
section or for any other purpose as set forth under section 267
4719.17 of the Revised Code. 268

(G) A violation of division (B) (1) or (2) of this section 269
that involves a consumer transaction as defined in section 270
1345.01 of the Revised Code shall be considered an unfair or 271
deceptive act or practice in violation of section 1345.02 of the 272
Revised Code. All powers and remedies available to the attorney 273
general to enforce sections 1345.01 to 1345.13 of the Revised 274
Code are available to the attorney general to enforce this 275
section. 276

Section 2. That existing section 109.87 of the Revised 277
Code is hereby repealed. 278