



## Occupational Licensing Review

### Board Questionnaire

Board Name Consumer Protection Section of the Ohio Attorney General's Office

Point of Contact Michael Rodgers

Describe the board's primary purpose, goals and objectives, and licenses issued.

The Telephone Solicitation Sales Act (TSSA), RC 4719.01 et seq., requires registration of non-exempt persons that engage in telephone solicitation directly or through one or more salespersons either from a location in this state, or from a location outside this state to persons in this state. "Telephone solicitor" includes, but is not limited to, any such person that is an owner, operator, officer, or director of, partner in, or other individual engaged in the management activities of, a business that solicit. Further, the TSSA requires solicitors maintain a \$50,000 surety bond, provide specific verbal disclosures and evidence transactions with specific written disclosures and cancellation rights. The TSSA provides remedies for a violation which include a private civil cause of action, private and AGO civil remedies under the Consumer Sales Practices Act, RC 1345.01, AGO criminal investigative authority and criminal penalties of fourth or fifth degree felonies.

Describe the board's annual workload. How many staff are employed?

On average, the Consumer Protection Section receives approximately 11 new applications annually. To date, 14 applications have been received so far for 2021. The Section has two staff members that review all TSSA applications and surety bonds for completeness and compliance with the statute, conduct a basic review/investigation of applicants, communicate with applicants regarding any application deficiencies, issue initial registrations and renewals, and send renewal notices to registrants. As required by the statute, staff maintains a file of the surety bonds submitted with applications for a minimum of two years after a telephone solicitor ceases solicitations in Ohio. Staff review any consumer complaints filed with the Consumer Protection Section regarding registered telephone solicitors and provide copies to respective surety companies for the registrants. Staff also review consumer complaints that involve telephone solicitations to determine if the TSSA may apply and if so, may notify the solicitors or companies involved of the requirements of the state law. Staff also respond to inquiries from the public about the requirements of the TSSA.

How many new licenses does the board issue annually? How many renewed licenses are issued annually? How much does a new license cost? How much does a renewal cost?

On average, the Consumer Protection Section receives approximately 14-17 applications per year, of which 11 new registrations and 7 renewals are issued. The initial registration fee is \$250 and is good for one year from the date of issuance of registration (the fee has not changed since the statute's enactment in 1997). Subsequently renewals are also \$250 each.

In the past 5 years, has there been any consideration to lower the licensure cost?

No; the fee has not changed since the statute's enactment in 1997.

How much revenue is procured from the licensure fees? What does this revenue fund?

On average, the fees for initial applications and renewals yield approximately \$4,500 each year, based on fees collected from 2015 to present. All registration fees are deposited into the Telemarketing Fraud Enforcement Fund and are used to pay the expenses reasonably related to the administration of the TSSA, including the registration unit functions, the investigation and enforcement actions associated with TSSA violations, and to fund telemarketing-related education and outreach.

Are there any federal regulations, or regulations required to be met outside of the existing licensure requirements that have to be complied with? Does federal law require the board to be renewed in some form?

There are two specific federal telemarketing statutes and regulations enforced by the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC). The FCC enforces the Telephone Consumer Protection Act 47 US 227 and its rules, 47 CFR 64.1200 and 47 CFR 64.1600 et seq. The FTC enforces the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101 and its rule, 16 CFR 310. The federal laws do not require the state to regulate telephone solicitors and specifically preempt conflicting laws. Application materials are generally reviewed for consistency with federal regulations.

Does the board issue an examination prior to licensure? Does the board issues continuing education courses? If so, how often is continuing education necessary? If the examination or continuing education requirements are done outside the board then what determines the selection of an outside organization to host it?

There are no examination or CLE requirements. There are no significant attributes or prerequisites to registration. The application largely requires only disclosures about the applicant, business organization, product/service offered, solicitation practices, and copies of solicitation and transactional materials used to sell or given to purchasers.

How many other states regulate the occupation or occupations under the board's jurisdiction? Is a license required to engage in that occupation or those occupations in other states?

Approximately 33 states have similar telephone solicitor registration and regulation statutes. We believe the regulation portion of Ohio's statute falls in the moderate to strong range of regulation compared to other states. Ohio's statute is strong in the area of required verbal disclosures, written disclosures required to evidence transactions and fair cancellation rights.



Has the operation of the board inhibited economic growth, reduced efficiency, or increased the cost of government?

The operation of the TSSA registration has not inhibited economic growth, reduced efficiency, or increased the cost of government.

Are there any licenses that are no longer issued by the board?

There is only one type of registration that has ever been required under the statute and the nature of it has not changed since the passage of the statute in 1997.

If a telephone solicitor meets any of the twenty-seven exemptions to the statute, they do not need to register.

Some telephone solicitors do not renew their licenses. However, if the telephone solicitor is still operating in Ohio and does not meet any of the exemptions to the statute, the AGO may take enforcement action for failure to comply with the statute.

Is there anything that the board would like to see changed or implemented in regards to occupational licensing within the scope of this legislative review?

There are no changes recommended at this time.

Has the board recommended statutory changes to the general assembly that would benefit the public as opposed to the persons regulated by the board, if any, and have those recommendations and other policies been adopted and implemented?

There have been no statutory changes recommended to ORC 4719.01, et seq.

Is the preservation of the board and the board's licenses necessary to protect the public's health, safety, or welfare?

The TSSA was enacted to protect purchasers from telephone solicitors and salespersons that commit unfair, unlawful, deceptive, or unconscionable acts or practices and to encourage the development of reasonable and fair telephone solicitation sales practices.

It is difficult to measure the harm prevented by the TSSA registration. However, the AG regularly takes enforcement actions for failure to comply with the requirements of the TSSA. The AG regularly uses the investigative and enforcement authority provided by the TSSA which includes subpoena authority and a range of remedies to enjoin violations and recover restitution, civil penalties and costs. The AG's office has historically been very active in the area of telemarketing regulation, in both fraud-related and do-not-call enforcement case. The TSSA is an effective tool for both types of cases and is frequently enforced as a companion action to do-not-call actions. The AG announced the formation of a Robocall Enforcement Unit in March of 2020 which focuses specifically on robocall and telemarketing enforcement efforts which will likely result in even more reliance on this valuable statute.

Could the public be protected or served in an alternate or less restrictive manner? If applicable, please identify any licenses or functions of the board that could be eliminated or consolidated.

There is not a less restrictive manner to accomplish TSSA registration. There are no significant attributes or prerequisites to registration. The application largely requires only disclosures about the applicant, business organization, product/service offered, solicitation practices, and copies of solicitation and transactional materials used to sell or given to purchasers.

Any additional notes or comments the board believes the committee should be aware of?

The AG is required to issue a certificate to any applicant that submits application with complete information required by the statute, R.C. 4719.02 and pays the fee.

The AG may deny, suspend or revoke a certificate of registration after an adjudication conducted in accordance with Chapter 119, if the AG finds by a preponderance of the evidence that any of the following conditions apply:

(1) the applicant or registrant obtained a certificate of registration through any false or fraudulent representation or made any material misrepresentation in any application;

(2) the applicant or registrant made false promises through advertising or other means or engaged in a continued course of misrepresentations.

(3) The applicant or registrant violated any provision of Consumer Sales Practices Act, RC. 1345.01 et or the TSSA, RC 4719.01 to 4719.18 or a rule adopted under that chapter or those sections;

(4) In a court of competent jurisdiction of this state or any other state or of the United States, the applicant or registrant was convicted of, pleaded guilty to, or entered a plea of no contest for a felony, engaging in a pattern of corrupt activity, racketeering, a violation of federal or state securities law, or a theft offense as defined R.C. 2913. or in a similar law of any other state or of the United States, or failed to notify the attorney general of any conviction of that type as required under division (H) of R.C. 4719.08; or

(5) The applicant or registrant engaged in conduct that constituted improper, fraudulent, or dishonest dealings.

The AG has not denied, suspended or revoked a certificate of registration since the enactment of the statute. Historically, applicants who apply but do not obtain a certificate of registration fail to submit complete application information or after further review of the application and statute discover that an exemption applies and they revoke or abandon their application.