



**Senate Judiciary Committee
Dave Yost, Ohio Attorney General
February 23, 2021**

Good Afternoon Chairman Manning, Vice Chair McColley, Ranking Member Thomas and esteemed members of the Senate Judiciary Committee. I am happy to be with you today testifying in support of Senate Bill 54.

The Attorney General's Office worked on revising Senate Bill 145 of the 133rd General Assembly under the leadership of Senator Burke. It is our great pleasure to continue this work with Senator Gavarone. The aim of the legislation is to make the State of Ohio the toughest state in which to conduct a robocalling scheme. My office has taken many steps prior to seeking this legislative change including the establishment of a dedicated Robocall Enforcement Unit, a robocalling tip line and collaborating at the national level with telecommunications providers on robocall traceback efforts to flush out the bad actors. So far, those traceback efforts have been successful. Last year, Ohio joined a suit against a pair of Texas companies which spoofed caller identification information as it robocalled Ohioans over 56 million times. Many of the facts of this case have been informed by the stellar work of our Robocall Enforcement Unit. I'd like to take a couple of minutes to highlight the noteworthy changes we are seeking to make Ohio the toughest state on robocalling.

Dialing in on Robocallers

SB 54 makes a series of changes to ORC 109.87 which was originally enacted to create a state law violation to enable the AG to file enforcement actions in state court for violations of two primary telemarketing "federal acts or rules". The provisions in SB 54 adds a person, entity, or merchant to the current list of entities that are prohibited from engaging in a violation of the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, its Telemarketing Sales Rule (TSR), and the Telephone Consumer Protection Act (TCPA). This change would fully incorporate the existing prohibitions of the two federal statutes into the state statute. The TCPA prohibits a "person" or "entity" from engaging in certain actions. Select provisions of the TSR prohibit a "person" or "merchant" from engaging in certain actions.

Additionally, the changes to ORC 109.87 would prohibit anyone from providing substantial assistance or support to a caller when they know or consciously avoid knowing the caller is violating the TCPA. This same prohibition on third-party assisting or facilitating already exists in the TSR. Since the TCPA covers a broader range of robocalls than the TSR, adding this prohibition

to our state statute would be a crucial step in stopping third parties from knowingly assisting illegal robocalling and telemarketing fraud.

In 2019, in a joint action with the Federal Trade Commission, our Consumer Protection Section filed an action in US District Court in Texas against Educare Centre Services and Globex Telecom, Inc. Educare targeted consumers with millions of illegal robocalls that pitched an interest rate reduction scheme that failed to deliver. The scheme resulted in over 10.3 million dollars in losses to consumers nationwide. Globex Telecom provided VOIP services for Educare while knowing of Educare's deceptive scheme. Adding this same type of prohibition into the state statute for TCPA enforcement would provide the Attorney General's Office with the tools to hold all the knowing participants in these schemes accountable - not just the dialer. In the abstract, this provision may sound strange. In practice, the great majority of telecommunications providers implement practices designed to curtail illegal robocalls, take steps to know their customers before providing their services, and participate in industry efforts to trace the origin of illegal robocalls. However, there is a small segment of voice service providers (VSP) that don't adhere to industry best practice or cooperate with industry traceback efforts on illegal robocalls. Not surprisingly, this small segment, companies like Globex Telecom, are disproportionately responsible for allowing billions of robocalls onto the US telephone network, often from outside the US.

VSPs would not be the only target under this statute. In June 2020, the Consumer Protection Section obtained a judgment in US District Court in Texas against Madera Merchants, a third-party payment processor from Texas that processed the 10.3 million for Educare Center Service using a payment method banned by the TSR. Under this statute, the Attorney General would be able to take action in state court against these third parties when they knowingly participate or willfully turn a blind eye to illegal practices.

Finally, there is an express statute of limitations of 5 years and a civil penalty provision which is consistent with civil penalties currently available in the TCPA. Violations of any part of ORC 109.87 would now also qualify as a violation of Ohio's Consumer Sales Practices Act if the deceptive act occurs within the course of a consumer transaction.

Providing a Safe Harbor for Industry Partners

In the course of our negotiations with the state's major telecommunications networks, the Attorney General's Office crafted a "Safe Harbor" provision mostly guided by the feedback provided by the telecoms. This provision is meant to promote VSP participation in industry-led traceback efforts and encourage all providers to implement industry best practices in anti-robocalling efforts. The "Safe Harbor" applies to the assisting and facilitating change described earlier. A VSP would meet the safe harbor so long as it meets any one of the following criteria: the VSP is not designated as a non-cooperative carrier by the industry-led traceback consortium selected by the Federal

Communications Commission pursuant to the federal TRACED Act, it is not the originating carrier of the illegal robocalls, or it is not the first domestic provider for illegal robocalls originating outside of the United States. This represents a common-sense approach to protecting Ohioans as well as good actors in the VSP industry.

Maintaining Local Control

With respect to the criminal enforcement provisions of the legislation, local control is maintained by requiring the Attorney General to present evidence of telecommunications fraud to a County Prosecutor who then has 45 days to present the case to a grand jury before it reverts back to the Attorney General's jurisdiction. We believe this is a reasonable timetable for local prosecutors to review the facts and determine their bandwidth for cases of this nature.

Unmasking Spoofing

The legislation also targets individuals who knowingly mask their caller identification information. Accordingly, the bill amends ORC 2913.05 to modernize the statute and puts some teeth in it to go after spoofing. First, VoIP services were added to the current list of technological means in which a person can seek to defraud another person. To directly combat spoofing, SB 54 would prohibit any person with the intent to defraud, cause harm, or wrongfully obtain anything of value from knowingly causing a caller identification service to transmit inaccurate or misleading caller identification information. The statute is modeled after the bipartisan Federal Truth in Caller Id Act. Spoofers operate at their best by masking their number to match a number with the same area code as you. I have gone around the state urging people to not pick up if you don't recognize the number. It only gets you on their list of people more likely to pick up and fall victim to whatever scam they are pushing. Protections have been put into place for instances where caller id manipulation may be necessary such as school alerts or emergency systems. Finally, the legislation enhances the penalty to a felony of the fourth degree when the victim is an elderly person, adult with a disability, or an active duty service member or their spouse. In the last General Assembly, this penalty enhancement garnered a significant amount of support from veteran's service organizations and from advocates on behalf of the elderly community.

Conclusion

Chairman Manning, thank you again for allowing me to testify in support of SB 54 in committee today. I look forward to working with this committee on making Ohio the toughest state on robocalling. I would be happy to take any questions at this time.