United States District Court
Southern District of Texas
ENTERED
March 06, 2023
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STATE OF TEXAS, et al.; Plaintiffs, vs. RISING EAGLE CAPITAL GROUP, LLC, et al.; Defendants.	Case No. 4:20-cv-02021 **STIPULATED ORDER FOR PERMANENT INJUNCTION AND MONETARY JUDGMENT AGAINST JAKOB A. MEARS**

PREAMBLE

Plaintiffs, the Attorneys General of the States of Arkansas, Indiana, Michigan, Missouri, North Carolina, North Dakota, Ohio, and Texas (collectively "Plaintiffs"), filed their Second Amended Complaint ("Complaint") in this matter against Rising Eagle Capital Group LLC ("Rising Eagle"), JSquared Telecom LLC ("JSquared"), Rising Eagle Capital Group-Cayman ("Rising Cayman"), John C. Spiller, II, individually ("Spiller"), and Jakob A. Mears, individually ("Mears"; together with Rising Eagle, JSquared, Rising Cayman, and Spiller, the "Rising Eagle Defendants"), and others. The Complaint sought a permanent injunction, damages, civil penalties, and other equitable relief in this matter

pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227(g)(1)-(2), Section 4 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6103, and respective telemarketing and deceptive acts and practices laws of the Plaintiffs' states.

Unless otherwise provided, this Stipulated Order shall apply to Defendant Mears and his agents, employees, officers, members, directors, affiliates, subsidiaries, representatives, trustees, attorneys, successors, heirs, and assignees, and any other person acting under his direction and control, including through any corporation, trust, or other device, and it shall constitute a continuing obligation.

Plaintiffs and Defendant Mears stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment Defendant Mears ("Order") to resolve all matters in dispute in this action between Plaintiffs and Defendant Mears.

THEREFORE, IT IS ORDERED as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and has authority to issue this Order pursuant to the TCPA, 47 U.S.C § 227(g)(2), the TSR, 15 U.S.C. § 1603, the respective telemarketing and deceptive acts and practices laws of the Plaintiffs' states, and Federal Rule of Civil Procedure 65.

2. The Complaint charges that Defendant Mears and others initiated millions of Robocalls to residential and/or cellular telephone numbers of residents located within the jurisdiction of the Plaintiffs and other states throughout the United States without the prior express consent of the called parties in violation of multiple sections of the TCPA

and its implementing rules, 47 C.F.R. § 64.1200(c)(2), 47 U.S.C. § 227(c), 47 C.F.R. § 64.1200(a)(3), 47 U.S.C. § 227(b)(l)(B), 47 C.F.R. § 64.1200(a)(1)(iii), 47 U.S.C. § 227(b)(1)(A)(iii), 47 C.F.R. § 64.1200(a)(2), 47 C.F.R. § 64.1200(b)(1), 47 U.S.C. § 227(d)(3)(A), 47 C.F.R. § 64.1604(a), and 47 U.S.C. § 227(e)(1), multiple sections of the Telemarketing Sales Rule ("TSR"), 15 U.S.C. § 6102(c), 16 C.F.R. § 310.3(a)(2)(iii) (or 16 C.F.R. § 310.3(b) in the alternative), 16 C.F.R. § 310.3(a)(4) (or 16 C.F.R. § 310.3(b) in the alternative), 16 C.F.R. § 310.4(d)(1) (or 16 C.F.R. § 310.3(b) in the alternative), 16 C.F.R. § 310.4(b)(1)(ii) (or 16 C.F.R. § 310.3(b) in the alternative), 16 C.F.R. § 310.4(b)(1)(iii)(B) (or 16 C.F.R. § 310.3(b) in the alternative), 16 C.F.R. § 310.4(b)(1)(v) (or 16 C.F.R. § 310.3(b) in the alternative), and the state statutes listed below.

STATE STATUTES ALLEGEDLY VIOLATED BY DEFENDANT MEARS	
Arkansas	Ark. Code Ann. § 4-88-107(a)(10); Ark. Code Ann. § 4-99-104; Ark. Code Ann. § 4-99-201(a)(1); and Ark. Code Ann. § 4-99-405(1).
Indiana	Ind. Code 24-4.7-4; Ind. Code 24-5-14; Ind. Code § 24-5-12-10; and Ind. Code § 23-0.5-5-2.
Michigan	MCL 445.111a(1), (5); MCL 445.111b(1); MCL 445.111c(1)(f); and MCL 445.903(1)(gg).
Missouri	MO. REV. STAT. §§ 407.1070; 407.1095, *et seq.*
North Carolina	N.C. GEN. STAT. §§ 75-1.1; 75-100, et seq.
North Dakota	N.D.C.C. §§ 10-32.1-74, 51-15-02, 51-28-02, 51-28-06, and 51-28-07.
Ohio	O.R.C 1345.01, et seq. and O.R.C. 4719.01 et seq.
Texas	TEX. BUS. & COM. CODE § 304.052

3. Defendant Mears neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of resolving this action, Defendant Mears admits facts necessary to establish jurisdiction.

4. Defendant Mears waives all rights to appeal or otherwise challenge or contest the validity of this Order.

5. The Court approves and hereby adopts this Order.

6. Entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. The parties incorporate the definitions set forth in the Preamble and Findings for the following terms: **"Complaint"**, **"Defendants"**, **"JSquared"**, **"Mears"**, **"Order"**, **"Plaintiffs"**, **"Rising Cayman"**, **"Rising Eagle"**, **"Rising Eagle Defendants"**, **"Spiller"**, **"TCPA"**, **"Telemarketing Act"**, and **"TSR."**

B. **"Assisting and Facilitating"** means providing substantial assistance or support, including, among other conduct, providing consulting services, Lead Generation, or Telephony Services.

C. **"Communication"** means any contact, whether formal or informal, between two or more Persons, at any time or place, and under any circumstances whatsoever, whereby information of any kind or nature was transmitted, transferred, disclosed, exchanged, or recorded. It includes, without limitation, any oral, written, and Electronically Stored Information that is opened or unopened, active, or deleted.

D. **"Contribution"** means any donation, gift of money, or any other payment,

consideration, or thing of value.

E. **"Corporate Defendants"** means JSquared, Rising Cayman, and Rising Eagle.

F. **"Customer"** means any Person for whom or for which Defendant Mears provides or provided Telephony Services.

G. **"DNC Registry"** means the National Do Not Call Registry maintained by the Federal Trade Commission, which allows end user consumers to register telephone numbers to avoid telemarketing telephone calls.

H. **"Electronically Stored Information"** means electronically stored information created, communicated, stored and utilized in digital form requiring the use of computer hardware and software, including, without limitation, computer or electronic files stored on file servers, e-mail servers, work stations, desktops, hard drives, solid-state drives, cloud storage, personal digital assistants, smartphones (e.g., Blackberrys, iPhones, Droids), tablets (e.g., iPads) and other mobile electronic devices, or other electronic social or industrial/business web-based media (e.g., Facebook®, Twitter®, LinkedIn®, Skype®, WhatsApp®, etc.), records, data, reports, and queries derived from or residing in applications and databases, computer printouts, contracts, cost sheets, data compilations from which information can be obtained, derived, or can be translated through detection devices or converted or translated into reasonably usable form, magnetic discs, magnetic strips, magnetic tape, recognition characters, microfiche, microfilm, optical characters, punched cards, punched paper tapes, audio tapes or recordings, or video tapes or recordings.

I. **"High Risk Customer"** means any Customer that:

1. engages in Telemarketing and/or generates or initiates Robocalls;

2. is a Person domiciled outside of the United States;

3. pays for Telephony Services via stored-value cards (e.g. gift cards), cryptocurrency, or money-transfer businesses (e.g. Venmo®, Zelle®, Cash App®, Paypal®, Western Union®, etc.); or,

4. is blocked from another voice service provider's network after being determined to be a "bad-actor upstream voice service provider" pursuant to a notice to the Federal Communications Commission in a process more formally described in Paragraphs 35-45 of the Federal Communication Commission's Third Report and Order, Order On Reconsideration, and Fourth Further Notice of Proposed Rulemaking in CG Docket No. 17-59 and adopted July 16, 2020.

J. **"Industry Traceback Group"** means the Industry Traceback Group, a consortium conducting private-led efforts to trace back and identify the origin of suspected unlawful Robocalls, or any successor consortium registered with the Federal Communications Commission pursuant to Section 13 of the TRACED Act and 47 C.F.R. 64.1203.

K. **"International Premium Rate Number"** means any number that is invalid under the NANP that has an additional interconnection fee, similar to "900" or "976" numbers in North America, which always incur a recipient-defined charge in excess of regular telephone call charges.

L. **"Invalid Number"** means any caller ID number which is invalid under the

NANP, or any telephone number that is invalid under the International Telecommunication Union's Recommendation ITU-T E.164, "the international public telecommunication numbering plan" or any successor recommendation, including, for example, any number that does not contain the requisite number of digits.

M. **"Lead Generation"** means the assignment, creation, sourcing, sale, subscription, leasing, renting, distribution, provisioning, purchase, wholesaling, or transfer of any list or compilation of telephone numbers utilized or intended to be utilized for the purpose of generating or initiating Outbound Telephone Calls and/or Telemarketing.

N. **"Manually Dialed Call"** means a telephone call that is dialed by an individual who manually selects the telephone number to be called without the assistance of an automated dialer or similar device and without the use of any prerecorded message.

O. "**Mears' Companies**" means any entities formed, owned, or controlled by Defendant Mears, in whole or in part.

P. **"NANP"** means the North American Numbering Plan.

Q. **"Outbound Telephone Call"** means a telephone call initiated to:

1. Induce the purchase of goods or services;

2. Solicit a Contribution;

3. Advertise or offer a loan or extension of credit; or

4. Obtain information, including, without limitation, through the arrangement of a meeting, that may be used to induce the purchase of goods or services, solicit a Contribution, or solicit a loan or extension of credit.

R. **"Person"** means any individual, group, organization, unincorporated association, limited or general partnership, corporation, subsidiary, affiliate, or other legal entity.

S. **"Prior Express Written Authorization"** means, prior to the origination, termination, routing, or transmission of any telephone call, including a Robocall, to any Person, the caller has received an express, written authorization from the call recipient whereby the call recipient has expressly agreed to receive such telephone calls in a written Communication created by that call recipient and directly addressed and sent to the caller; for the avoidance of doubt, any such authorization derived from an internet search, from an online consent form, from any form of Lead Generation, or from any third party is not sufficient to qualify as a Prior Express Written Authorization under this Order.

T. **"Robocall(s)"** means a telephone call that delivers artificial or prerecorded voice messages, in whole or in part, including, without limitation, telephone calls utilizing soundboard technology and ringless voicemail messages, whether acting directly or through an intermediary.

U. **"STIR/SHAKEN Authentication Framework"** means the Secure Telephone Identity Revisited and Signature-based Handling of Asserted Information Using Tokens standards. *See* 47 U.S.C. § 227b.

V. **"Telemarketing"** means any plan, program, or campaign that is conducted to generate or initiate Outbound Telephone Calls by use of a telephone or VoIP-related technology and which involves a telephone call.

W. **"Telephony Services"** means wireline or wireless telecommunications services, including, without limitation:

1. the dialing, origination, termination, routing, or transmission of any telephone calls made over a public switched telephone network;
2. VoIP Services;
3. electronic messaging services;
4. ringless voicemail messages; or
5. any other common carriage, telecommunications, or information services.

X. **"Traceback Request"** means any request to determine the source of a Robocall and/or the voice service providers that dialed, originated, transmitted, or routed a Robocall, which request was made by:

1. A telecommunications carrier or voice service provider;
2. The Industry Traceback Group;
3. A law enforcement agency; or
4. Any other industry organization comprised of telecommunications carriers and/or voice service providers that seek to combat and reduce unlawful Robocalls.

Y. **"Unassigned Number"** means any caller ID number for which the administrator of NANP has never opened: (1) the NPA area code for carrier number assignments or (2) the NPA-NXX central office code for carrier number assignments.

Z. **"VoIP"** means Voice over Internet Protocol.

AA. **"VoIP Services"** means (1) one-way or interconnected VoIP telephony services, including, without limitation, the origination, termination, routing, or transmission of telephone calls made over a public switched telephone network and which requires VoIP-related technology and (2) the resale, assignment, licensing, or provisioning of telephone numbers, including, without limitation, telephone numbers associated with direct inward dialing.

ORDER

I. PERMANENT BAN ON ROBOCALLS

IT IS ORDERED that Defendant Mears, Mears' Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, or Assisting and Facilitating others to engage in:

A. Initiating, causing others to initiate, or Assisting or Facilitating others in initiating, any Outbound Telephone Call that plays or delivers a Robocall, unless Defendant Mears proves that such prerecorded message was delivered for the purpose of compliance with 16 C.F.R. § 310.4(b)(4)(iii), as amended;

B. Controlling, holding a managerial post in, consulting for, serving as an officer of, having any revenue sharing agreement with, or holding any ownership interest, share, or stock in any company or Person that engages in conduct prohibited in Section I.A above; ***provided, however***, that it is not a violation of this Order to own a non-controlling interest in a publicly traded company that engages in such conduct.

II. PERMANENT BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Defendant Mears, Mears' Companies its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, or Assisting and Facilitating others to engage in, Telemarketing, whether acting directly or through an intermediary, including by consulting, brokering, planning, investing, or advising; ***provided***, ***however***, that this Section does not prohibit Defendant Mears, individually (including as an employee of another Person) or through any Person or company he owns or operates, from:

A. Owning a non-controlling stock interest in a publicly traded company that engages in conduct banned in this Section II;

B. Initiating any Manually Dialed Call when such a call is: (1) is not part of a plan, program, or campaign to induce the sale of a good or service or solicit a Contribution through a telephone call, (2) is solely a call made in return to a Person inquiring about business offered by Mears through nontelephonic means (e.g. offered via internet or print advertising), and (3) is only incidental to the business;

C. Initiating any Manually Dialed Call that is a business-to-business call when such call is exempt from the TSR; or,

D. Initiating a Manually Dialed Call to persons having an established business relationship with a person or entity on whose behalf the call is made by Defendant Mears, as those terms are defined in the TCPA, 47 C.F.R. 64.1200(f)(5) and the TSR, 16 C.F.R. 310.2(q), and as amended.

III. PROHIBITION ON VIOLATING THE TCPA, TSR, AND STATE LAWS

IT IS FURTHER ORDERED that Defendant Mears, Mears' Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, causing others to engage in, or Assisting and Facilitating others engaging in violating the TCPA, 47 U.S.C. § 227, its implementing rules, 47 C.F.R. §§ 64.1200 and 64.1604, the TSR, 16 C.F.R. Part 310, and the state statutes listed below, each as amended and also attached as Appendix A.

STATE STATUTES	
Arkansas	Ark. Code Ann. §§ 4-88-101, et seq.; Ark. Code Ann. §§ 4-99-101, et seq.
Indiana	Ind. Code § 23-0.5-5-2; Ind. Code 24-4.7-4; Ind. Code 24-5-0.5; Ind. Code 24-5-12; Ind. Code 24-5-14; and Ind. Code 24-5-14.5.
Michigan	MCL 445.111, et seq.; MCL 445.901, et seq.
Missouri	MO. REV. STAT. §§ 407.1070; 407.1095, et seq.
North Carolina	N.C. GEN. STAT. §§ 75-1.1; 75-100, et seq.
North Dakota	N.D.C.C. §§ 10-32.1-01, et seq; 51-15-01, et seq.; 51-28-01, et seq.
Ohio	O.R.C 1345.01, et seq.; O.R.C. 4719.01, et seq.
Texas	TEX. BUS. & COM. CODE § 304.052

IV. PERMANENT BAN ON CERTAIN TELEPHONE CALLS

IT IS FURTHER ORDERED that Defendant Mears and his Mears' Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, or Assisting and Facilitating others to engage in:

A. Initiating, causing the initiation of, or transmitting any telephone calls placed to telephone numbers on the DNC Registry or any state equivalent thereof; or,

B. Initiating, causing the initiation of, or transmitting any telephone call displaying a caller ID number that the calling party does not have legal authority to use.

V. PERMANENT BAN ON CERTAIN TELEPHONY SERVICES

IT IS FURTHER ORDERED that Defendant Mears, Mears' Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, or Assisting and Facilitating others to engage in, providing Telephony Services without having ongoing automated procedures in place to block telephone calls that:

A. Display as the caller ID number "911," "1911," "0911," or "10911," any Unassigned Number, any Invalid Number, or any International Premium Rate Number;

B. Are not authenticated through the STIR/SHAKEN Authentication Framework, or a successor authentication framework if subsequently mandated by applicable federal law or regulation; for the avoidance of doubt, Defendant Mears and Mears' Companies must also fully implement the STIR/SHAKEN Authentication

Framework, or a successor authentication framework if subsequently mandated by applicable federal law or regulation;

C. Are Robocalls and include language related to or purportedly related to insurance, warranties, extended coverage, or any other service related contract or agreement for vehicles, either in whole or in part, expressly or indirectly;

D. Are identified as illegal Robocalls or consistent with patterns therewith pursuant to Section VII; or,

E. Last less than six (6) seconds and account for at least ten percent (10%) of one Customer's total telephone calls originating from or terminated onto a Defendant Mears' or any of Mears' Companies' network(s) in one (1) day.

VI. PERMANENT BAN ON PROVISIONING

IT IS FURTHER ORDERED that Defendant Mears, Mears' Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, or Assisting and Facilitating others to engage in:

A. Providing, leasing, provisioning, or assigning telephone numbers, including those related to direct inward dialing;

B. Lead Generation;

C. Transferring a Robocall made to a call recipient to a live operator or any other individual or Person;

D. Providing or offering to provide Telephony Services to Customers designed to avoid detection or reduce the effectiveness of any call blocking or call labeling

analytics services or applications, including, but not limited to, the automated rotation of telephone numbers or direct inward dialing numbers used for caller ID transmission; or

E. Causing any Customer to route its call traffic to another provider of Telephony Services, such that Defendant Mears or Mears' Companies, through arrangements with such provider of Telephony Services, would then receive all or part of said call traffic, in order to avoid the requirements of this Order.

VII. NETWORK MONITORING

IT IS FURTHER ORDERED that Defendant Mears, Mears Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, must, in connection with the provision of Telephony Services, implement and maintain constant, up-to-date written policies, practices, and procedures monitoring, reviewing, and analyzing call traffic to identify, mitigate, and block illegal Robocalls or patterns consistent therewith, including, without limitation, the consideration of call duration, call volume, calls per second, the source or legality of caller ID numbers, the location of the calls' origination or U.S. point of entry, etc.

Defendant Mears and Mears' Companies agree to provide any such policies, practices, and procedures, including all documentation in support thereof, to any state or federal law enforcement agency, including the Plaintiffs, or the Industry Traceback Group within a reasonable time upon receiving but not longer than fourteen (14) business days of such a request. Plaintiffs may raise objections to the sufficiency of such policies, practices, and procedures to effectively identify, mitigate, and/or block illegal Robocalls

or patterns consistent therewith. If such objections are raised by the Plaintiffs, Defendant Mears and or Mears' Companies shall, within a reasonable period of time but not longer than fourteen (14) business days of receiving notice of the Plaintiffs' objections as stated herein, either: (1) provide examples illustrating how the existing policies, practices, and procedures sufficiently address the issue(s) raised in each of Plaintiffs' objections; or, (2) provide proposed modifications to the existing policies, practices, and procedures that would sufficiently address the issue(s) raised in each of Plaintiffs' objections.. If Defendant Mears fails to provide illustrative responses or proposed modifications within a reasonable time but not longer than fourteen (14) business days of receiving notice of the Plaintiffs' objections, Defendant Mears and his companies (including any subsidiaries or affiliates) agree that such failure to cure the objection is a violation of this Order.

VIII. SCREENING OF CURRENT AND PROSPECTIVE CUSTOMERS

IT IS FURTHER ORDERED that Defendant Mears, Mears' Companies, its officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, or Assisting and Facilitating others to engage in, providing Telephony Services to any Customer, or new or prospective Customer, without first engaging in a reasonable screening of that Customer. For new or prospective Customers, such reasonable screening must occur and be completed before beginning to provide services to the new Customer. For existing High Risk Customers, such screening must be completed within forty-five (45) days of the entry of this Order. For all other

Customers, such reasonable screening must occur and be completed within ninety (90) days of the entry of this Order. For all Customers, such reasonable screening must recur annually. All Customers must provide updates to any information provided in a prior reasonable screening within thirty (30) days of any changes to such information. Such reasonable screening must include, but not be limited to:

A. Obtaining from each prospective or current Customer (including the principal(s) and controlling Person(s) of the Customer, any Person(s) with a majority ownership interest in the entity, and any alter egos, corporate DBA names, trade name, fictitious name or aliases under which such Person(s) conduct or have conducted the business) the following information:

1. The name, physical and mailing addresses, contact telephone number(s), and email address of the principal(s) and controlling Person(s) of the entity, and any Person(s) with a majority ownership interest in the Customer;

2. The name, physical and mailing addresses, contact telephone number(s), and email address of the Customer's employee responsible for compliance with the TCPA, TSR, and other federal and state laws governing Telemarketing and automated dialing;

3. A list of all business and trade names, fictitious names, DBAs, and websites and social media pages under or through which the Customer has transacted or advertised business;

4. A description of the nature of the Customer's business, including a description of the nature of the goods and services sold, methods of sale, and

whether they are involved in Telemarketing;

a. For Customers who engage in Telemarketing, obtaining the prospective Customer's Subscription Account Number for accessing the DNC Registry, and asking the Customer whether it uses Robocalls; and

b. For Customers who describe their business as involving Telephony Services, obtaining the Customer's Universal Service Fund registration number and a copy of the Customer's FCC Form 499, and 214 International Authority (if applicable), and/or any state equivalent thereof.

5. A list of each physical address at which the Customer has transacted business or will conduct the business(es) identified pursuant to subsection (1) of this Section VIII.A;

6. The billing address and email address associated with the Customer's means and source of payment for any of Defendant Mears's services, as well as the name, physical and mailing addresses, contact telephone number(s), and email address of the Person or entity paying for the Defendant Mears's services;

7. For U.S.-domiciled companies, the Customer's federal taxpayer identification number;

8. The IP address(s) for every computer device used by the Customer's employees, consultants, contractors, or subcontractors to conduct its business;

9. The Customer's state or country of incorporation or organization;

10. For High Risk Customers and any Customer using credit cards or any form of payment other than a bank wire transfer or ACH to make payments, the names of at least two trade or bank references;

11. Copies of the Customer's written policies, practices, and procedures documenting or describing its compliance with, and employee training related thereto, the Telemarketing Sales Rule (16 C.F.R. § 310, *et seq.*, as amended), the Telephone Consumer Protection Act and its rules (47 U.S.C. § 227, as amended, 47 C.F.R. Part 64, Subparts L (§ 64.1200) and P (§§ 64.1600 to 64.1604), as amended), and all other state and federal laws that regulate any of the following: telemarketing, autodialed calls, telephone calls to numbers on the DNC Registry, telephone calls delivering Robocalls, and telephone calls using spoofed caller ID numbers;

12. If the Customer engages in Telephony Services, copies of the Customer's written policies, practices, and procedures documenting or describing its initiation of, and compliance with, Traceback Requests;

13. If the Customer engages in Telephony Services, copies of all Traceback Requests received by the Customer in the preceding eighteen (18) months and the corresponding responses the Customer provided to each such Traceback Request;

14. If the Customer engages in Telephony Services, copies of the Customer's written policies, practices, and procedures monitoring, reviewing, and analyzing call traffic to identify and block illegal Robocalls or patterns consistent therewith;

15. If the Customer engages in Telephony Services, copies of the Customer's written policies, practices, and procedures documenting its methods to segregate auto-dialed traffic from manually dialed traffic and to further screen and monitor both types of traffic;

16. If the Customer engages in Telemarketing and utilizes Robocalls, sample recordings or written transcripts of each prerecorded message initiated or generated within the prior six (6) months; provided, however, this subsection shall constitute an ongoing and perpetual affirmative obligation for the Customer to provide such Robocalls to Defendant Mears or Mears' Companies at least seven (7) days prior to the initiation or generation of any Robocall;

17. If the Customer engages in Telemarketing, a list of all telephone numbers that appeared as a call recipient's caller ID number and all callback numbers the Customer used within the last six (6) months, substantiated by actual proof that the Customer had legal authority to use each such telephone number; provided, however, this subsection shall constitute an ongoing and perpetual affirmative obligation for the Customer to provide such telephone numbers and actual proof to Defendant Mears or Mears' Companies at least seven (7) days prior to the use of those telephone numbers;

18. If the Customer engages in Telemarketing and utilizes any Robocalls, copies of the Customer's written policies, practices, and procedures documenting and describing its method to obtain Prior Express Written Authorizations from all Robocall recipients;

19. If the Customer engages in Telemarketing and utilizes any Robocalls, a list of all telephone numbers the Customer called within the prior six (6) months, including actual proof that the Customer had Prior Express Written Authorizations to call each such call recipient and/or telephone number; provided, however, this subsection shall constitute an ongoing and perpetual affirmative obligation for the Customer to provide such telephone numbers and Prior Express Written Authorizations to Defendant Mears or his companies at least seven (7) days prior to the use of those telephone numbers; and,

20. Whether the Customer (including the principal(s), controlling Person(s) of the entity, and any Person(s) with a majority ownership interest in the entity) has ever been the subject of a lawsuit alleging claims under the TSR, the TCPA, or any other lawsuit regarding illegal Robocalls, illegal automated dialing, calls to the DNC Registry or any state do not call registry, spoofed caller ID numbers, or otherwise illegal telemarketing or solicitations.

B. Reviewing whether Defendant Mears received any formal written requests from a law enforcement agency, subpoenas, civil investigative demands, search warrants, or other complaints about the Customer, its principal(s), controlling Person(s), any Person(s) with a majority ownership interest in the entity, and any alter egos, corporate

DBA names, trade name, fictitious name or aliases under which such Customer or Person(s) conduct or have conducted business; and,

C. Taking reasonable steps to review and assess the accuracy and consistency of the information provided pursuant to Section VIII.A of this Order, and retaining all documentation to be able to verify the review undertaken with respect to each Customer if requested by a state or federal law enforcement agency, including but not limited to:

1. reviewing the internet websites and social media page(s) used by the Customer to confirm, for instance, that they have more than placeholder or template content;

2. reviewing free, publicly accessible databases and/or websites hosted by state, federal, and/or foreign governments that contain information about the incorporation, registration, or licensing of business entities;

3. checking the Federal Communications Commission's website(s) and/or databases that publish Universal Service Fund registration numbers, FCC Forms 499, or 214 International Authorization, and any state equivalents thereof;

4. reviewing the physical location of the Customer to ensure that one exists, and verifying that the address provided is a physical address and not a U.S. post office box, a business services center, or any other location for which no physical presence is required to maintain an address at that location;

5. verifying that the billing address(es) and email address(es) associated with the Customer's means and source of payment for any of Defendant Mears's services match or correspond to the physical and mailing addresses,

contact telephone number(s), and email address of the Person or entity paying for Defendant Mears's services;

6. reviewing the domain name for all contact email addresses provided to ensure they correspond with the Customer's business and are not readily available to any end user not associated with the Customer's business (e.g., the email provided does not end in @gmail, @hotmail, @outlook, @protonmail, etc.);

7. manually calling all contact telephone numbers provided to ensure that responsible parties are reachable;

8. geolocating and confirming the location of the IP address(es) provided by the Customer; *provided*, *however*, that a Customer's virtual private network ("VPN") is insufficient;

9. searching the Federal Trade Commission's website to determine if the Customer or its control Persons have been the subject of Federal Trade Commission enforcement actions;

10. reviewing all transcripts and sample recordings of prerecorded messages previously utilized or to be utilized by prospective or current Customers to determine whether the prerecorded message complies with 47 C.F.R. 64.1200(b), and 16 C.F.R. 310.4(b)(1)(v);

11. reviewing all formal written inquiries, subpoenas, civil investigative demands, search warrants, Traceback Requests, and complaints about the Customer or calls dialed, originated, routed, or transmitted by the Customer, sent to or shared with Defendant Mears to (a) determine whether the call was spoofed,

(b) review and listen to prerecorded messages that are identified in or are the subject of such requests, (c) determine whether copies of such prerecorded messages are found in the request itself or in public databases that compile recordings of such messages, and (d) determine if the Customer is sending, routing, transmitting, dialing, originating, or terminating calls that deliver a message that misrepresents that the call is from a government agency or law enforcement; and,

12. performing internet searches about the Customer and Persons with a controlling interest.

IX. CUSTOMER REVIEW AND TERMINATION

IT IS FURTHER ORDERED that Defendant Mears and his Mears' Companies, officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly:

A. Must immediately terminate, or refrain from entering into, any business relationship with a Customer if a review under Section VIII reveals that the Customer:

1. Engages in Telemarketing but does not have a Subscription Account Number for accessing the DNC Registry and/or does not remove telephone numbers listed on the DNC Registry from its Lead Generation lists or compilations;

2. Engages in Telephony Services, without a current, valid Universal Service Fund registration number or recently filed FCC Form 499, FCC 214 International Authorization (if necessary) or any state equivalent thereof;

3. States it does not have a taxpayer identification number if it is a U.S.- domiciled company;

4. Maintains no verifiable presence via free, publicly accessible databases and/or websites hosted by state, federal, and/or foreign governments that contain information about the incorporation, registration, or licensing of business entities;

5. Does not have a verifiable physical location and/or the address provided is a U.S. post office box, a business services center, or any other location for which no physical presence is required to maintain an address at that location;

6. Does not have billing address(es) and email address(es) associated with the Customer's means and source of payment for any of Defendant Mears's services that match or correspond to the physical and mailing addresses, contact telephone number(s), and email address of the Person or entity paying for Defendant Mears's services;

7. Does not have IP address geolocations located in an area at or near to the address(es) provided to Defendant Mears;

8. Provides false, inaccurate, inconsistent, or misleading information in response to Defendant Mears's screening process pursuant to Section VIII and declined to correct that information upon request;

9. Refuses to provide any of the information described in Section VIII;

10. Does not have a website providing public information about its business, has only placeholder or template content on its website, or the contact

information and location information is inconsistent with that provided to Defendant Mears;

11. Does not regularly correspond using email address at the same domain name as its website;

12. Pays for services by any means other than: (a) a bank transfer from a financial institution domiciled in the United States, (b) a credit card, or (c) a bank or financial institution provided during the screenings under Section VIII.A;

13. Has been the subject of, or any telephone calls that were dialed, originated, transmitted, or routed by the Customer have been the subject of, a total of three (3) or more formal written requests from law enforcement agencies, subpoenas, search warrants, or civil investigative demands issued to Defendant Mears or otherwise shared with Defendant Mears;

14. Has been the subject of, or any telephone calls that were dialed, originated, transmitted, or routed by the Customer have been the subject of a total of three (3) or more Traceback Requests or upstream or downstream line carrier complaints sent to or shared with Defendant Mears during any one (1) year period;

15. Dials, originates, routes, or transmits illegal Robocalls, including, without limitation, any Robocall (for the avoidance of doubt, including the content thereof) that fails to comply with 47 C.F.R. 64.1200(b) and 16 C.F.R. 310.4(b)(1)(v) or violates any federal or state law governing unfair and deceptive acts or practices; or,

16. Has any calls blocked pursuant to Sections V or VII.

B. Must also immediately terminate, or refrain from entering into, any business relationship with a Customer if Defendant Mears or Mears' Companies, officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly, become aware of or obtain any information indicating that the Customer is likely engaging in conduct prohibited in Sections I, III, IV, V, VI, or VII of this Order.

X. COOPERATION

IT IS FURTHER ORDERED that Defendant Mears must cooperate with representatives of the Plaintiffs in this case, in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, or in any investigation related to or associated with the use of the Rising Eagle Defendants or Defendant Mears's telecommunications or VoIP networks. Defendant Mears must provide truthful and complete information, evidence (including any and all non-privileged documents and other records), and testimony. If Defendant Mears is claiming that a document or record is privileged, Defendant must expressly claim and also describe the nature of the documents, communications, or tangible elements without revealing information which is privileged or protected.

Defendant Mears must appear for interviews, discovery, hearings, trials, and any other proceedings that a Plaintiff's representative may reasonably request upon five (5) days written notice, or other reasonable notice, at such places and times as a Plaintiff's representative may designate, without the service of a subpoena.

Further, to assist the Plaintiffs with any investigation related to or associated with

the transactions or the occurrences that are the subject of the Complaint, and with monitoring of Defendant Mears's compliance with this order, Defendant Mears consents, for purposes of the Electronic Communications Privacy Act, to the disclosure, by electronic communications service providers and remote computing service providers of the contents of or Communications regarding any auto-dialed, telemarketing or prerecorded telephone calls or Communications with Customers regarding services provided by Defendant Mears. Defendant Mears further agrees to execute, within five (5) days of a request from a Plaintiff, any forms or other documentation evidencing consent that may be required by such electronic communications service providers or remote computing service providers.

XI. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of $122,339,320 (One Hundred and Twenty-Two Million, Three Hundred and Thirty-Nine Thousand, Three Hundred and Twenty Dollars) is entered in favor of Plaintiffs against Defendant Mears as monetary judgment to be split in equal amounts of $15,292,415 to each Plaintiff State as follows:

- Arkansas –$15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA and $7,646,207.50 in civil pursuant to the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-113(a)(3).)
- Indiana – $15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA and $7,646,207.50 in civil penalties pursuant to Ind. Code

§ 24-4.7-5-2 of Indiana's Telephone Solicitation of Consumers Act.)

- Michigan – $15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA and $7,646,207.50 in civil penalties pursuant to section 5(1) of the Michigan Consumer Protection Act, MCL 445.905(1).)
- Missouri – $15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA and $7,646,207.50 in civil penalties pursuant to section 407.1107 of the Missouri Merchandising Practices Act)
- North Carolina – $15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA and in civil penalties and attorneys' fees and costs pursuant to the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-105)
- North Dakota – $15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA and $7,646,207.50 in civil penalties pursuant to N.D.C.C. §§ 51-15-11 and 51-28-17 of the North Dakota Unlawful Sales or Advertising Practices Act and Telephone Solicitations Law))
- Ohio – $15,292,415 ($7,646,207.50 in statutory damages pursuant to section 227(g) of the TCPA, $3,823,103.75 in civil penalties pursuant to O.R.C. section 1345.07 of Ohio's Consumer Sales Practices Act, and $3,823,103.75 in civil penalties pursuant to O.R.C. section 4719.12 of Ohio's Telephone Solicitation Sales Act.)
- Texas –$15,292,415 ($7,646,207.50 in statutory damages pursuant to section

227(g) of the TCPA and $7,646,207.50 in civil penalties pursuant to section 304.252(1) of the Texas Telemarketing Disclosure and Privacy Act.)

B. Defendant Mears is ordered to pay Plaintiff States the amount of Ten Thousand Dollars ($10,000.00) in civil penalties on or before March 31, 2023, of which $1,000 shall be due fourteen (14) days following the Court's entry of this Order. Such payments shall be made to the Plaintiff State of North Dakota and shall be in the form of a check or money order payable to **Office of Attorney General – North Dakota** for further equal distribution to the remaining Plaintiffs. Upon such payments, the remainder of the judgment amount specified in Subsection A above is suspended due to inability to pay, subject to the remaining Subsections of Section XI set forth below.

C. The Plaintiff States' agreement to both the suspension of the judgment set forth in Subsection A and to the payment amount set forth in Subsection B above is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Mears' sworn financial statement signed and dated on May 18, 2021, including its attachments and his 2020 and 2021 federal income tax returns (collectively, "financial representations") submitted to the Plaintiff States.

D. The suspension of the judgment will be lifted if, upon motion by any Plaintiff State, the Court finds that Defendant Mears violated this Order, failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amounts specified in Subsection A above, plus interest computed at the maximum allowable rate pursuant to 28 U.S.C. § 1961 from the date of entry of this Order.

F. Defendant Mears relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. Defendant Mears acknowledges that his Taxpayer Identification Numbers (Social Security Number and any applicable Employer Identification Number), which he previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order.

XII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Mears obtain acknowledgments of receipt of this Order:

A. Defendant Mears, within seven (7) days of entry of this Order, must submit to Plaintiff State of Texas an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For fifteen (15) years after entry of this Order, Defendant Mears, for any business that he, individually or collectively with any other defendant named in this Complaint, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives with managerial responsibilities for conduct

related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in Section XIII, titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. For fifteen (15) years after entry of this Order, Defendant Mears must deliver a copy of this Order to new Customers prior to executing an agreement to provide services or similar contract or prior to providing any services, whichever is earlier.

D. Existing Customers of Defendant Mears and his Mears' Companies must receive a copy of this Order within fourteen (14) days of the entry of this Order.

E. From each individual or entity to which Defendant Mears delivered a copy of this Order, Defendant Mears must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

XIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Mears make timely submissions to each Plaintiff:

A. One hundred twenty days (120) days after entry of this Order, Defendant Mears must submit a compliance report, sworn under penalty of perjury, with the following:

1. Defendant Mears must: (a) identify his primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Plaintiffs may use to communicate with him; (b) identify all of his employers, business associations for which he performs services as an

independent contractor or business associations for which he is an owner, operator or manager, to include all of the business names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including, without limitation, Telephony Services, and if applicable, the involvement of any other Rising Eagle Defendant or other defendant named in the Complaint (which Defendant Mears must describe if he knows or should know due to his own involvement); (d) if any such business provides Telephony Services, provide a list of Customers terminated pursuant to Section IX, the reasons for such termination, and the underlying documentation reviewed; (e) describe in detail whether and how each of the Rising Eagle Defendants are in compliance with each Section of this Order (which Defendant Mears must describe if he knows or should know due to his own involvement); and (f) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Plaintiffs.

2. Additionally, Defendant Mears must: (a) identify all telephone numbers and all physical, postal, email and internet addresses, including all residences; (b) identify all business activities, including any business for which Rising Eagle Defendants perform services whether as an employee or otherwise (which Defendant Mears must describe if he knows or should know due to his own involvement), and any entity in which Defendant Mears has any ownership interest; and (c) describe in detail Defendant Mears's involvement in each such business, including title, role, responsibilities, participation, authority, control, and

any ownership.

B. For fifteen (15) years after entry of this Order, Defendant Mears must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant Mears performs services, whether as an employee or otherwise, and any entity in which Defendant Mears has any ownership interest, and identify the name, physical address, and any internet address of the business or entity.

C. Defendant Mears must submit to the Plaintiffs notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him, or any filing for voluntary dissolution, within fourteen (14) days of its filing.

D. Any submission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Plaintiffs' representative in writing, all submissions to the Plaintiffs pursuant to this Order must be emailed or sent by overnight courier (not the U.S. Postal Service) to:

AMANDA WENTZ
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Email: Amanda.Wentz@ArkansasAG.gov; Consumer@ArkansasAG.gov

JOSEPH D. YEOMAN
Deputy Attorney General – Data Privacy & Identity Theft Unit
Office of Indiana Attorney General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, Indiana 46204
Email: Joseph.Yoeman@atg.in.gov

JASON EVANS
Division Chief
Corporate Oversight Division
Michigan Dept. of Attorney General
525 W. Ottawa St., 5th Floor
Lansing, Michigan 48933

NO CALL DEPARTMENT
Missouri Attorney General's Office
815 Olive Street, Suite 200
St. Louis, Missouri 63101
Email: No.Call@ago.mo.gov

TRACY NAYER
Special Deputy Attorney General
North Carolina Department of Justice
Consumer Protection Division
P.O. Box 629
Raleigh, North Carolina 27602
Email: tnayer@ncdoj.gov

BRIAN M. CARD
Assistant Attorney General
North Dakota Attorney General
Consumer Protection & Antitrust Division
1720 Burlington Drive, Suite C
Bismarck, North Dakota 58504-7736

ERIN LEAHY
Assistant Attorney General
Ohio Attorney General's Office
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
Email: Erin.Leahy@OhioAGO.gov

WADE JOHNSON
Assistant Attorney General
Office of the Attorney General of Texas
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548

The subject line of all correspondence must begin: *State of Texas, et al. v. Rising Eagle Capital Group, LLC, et al.*, Case No. 4:20-cv-02021.

F. Defendant Mears expressly consents to the sharing of any and all documents submitted as part of his compliance reporting by any Plaintiff with all other Plaintiffs.

XIV. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Mears and any company in which he has ownership interest or management level control must create the following records for ten (10) years after entry of the Order, and retain each such record for five (5) years; for the avoidance of doubt, this includes any and all records currently in his possession that related to this case, including, without limitation, contracts, call detail records, invoices, and Communications, must be retained for five (5) years. For any business that Defendant Mears, individually or collectively with any other defendant named in the Complaint, is a majority owner or controls directly or indirectly, including, without

limitation, Corporate Defendants, any subsidiaries or affiliates thereof, including, without limitation, Great Choice Telecom LLC, a Texas limited liability company, Defendant Mears must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold, Lead Generation, Telemarketing, or Telephony Services;

B. Records of all contracts, service agreements, invoices, and sales agreements with each Customer, client, supplier, or vendor, including, without limitation, any Communications related thereto;

C. Personnel records showing, for each individual providing services, whether as an employee or otherwise, that individual's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

D. Records of all consumer complaints concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;

E. Records of reviews of Customers, terminations of Customers, and denials of service to prospective Customers, including documentation of the review process, procedures, implementation, status, and outcome, as described in the Section IX of this Order, entitled "Customer Review and Termination";

F. All formal written requests from law enforcement agencies, subpoenas, civil investigative demands, search warrants, Traceback Requests and related records, and other complaints about unwanted, fraudulent, or abusive Telemarketing or autodialed telephone calls, and all responses thereto;

G. All call detail records for any Customer engaged in Telemarketing and/or initiating or generating Robocalls and all such call detail records must be retained for at least four (4) years;

H. Records of all provisioning and/or assigning of telephone numbers, including the dates provisioned or assigned to any customer, including any Rising Eagle Defendants and/or their companies and the dates such party provisioned or assigned to third parties (which Defendant Mears must describe if he knows or should know due to his own involvement);

I. All records related to Section VII, including, without limitation, any Communications related thereto; or

J. All records reasonably necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Plaintiffs.

All such records must be voluntarily provided to a state or federal law enforcement agency, including, without limitation, the Plaintiffs, if any such agency requests it.

XV. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Mears compliance with this Order, and any failure to transfer any assets as required by this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of any Plaintiff, Defendant Mears must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. Each

Plaintiff is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69. Nothing in this Order limits any Plaintiff's lawful demand for documents or other evidence pursuant to applicable law.

B. For matters concerning this Order, each Plaintiff may communicate directly with Defendant Mears and his Mears' Companies, officers, agents, and employees, and all other Persons in active concert or participation with him, whether acting directly or indirectly.

C. Any Plaintiff may use all other lawful means, including posing, through its representatives as consumers, donors, suppliers, or other individuals or entities, to communicate with Defendant Mears, without the necessity of identification or prior notice. Nothing in this Order limits State Plaintiffs' lawful use of relevant state laws governing pre-suit investigation and discovery.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 6th **day of** March**, 2023.**

George C. Hanks Jr.
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

_____, 2023 _____ 1/9/2023
Jakob A. Mears, Pro Se Defendant

FOR PLAINTIFFS:

FOR THE STATE OF ARKANSAS:

LESLIE RUTLEDGE
Attorney General for the State of Arkansas

_____
AMANDA J. WENTZ
Ark. Bar No. 2021066
Amanda.Wentz@ArkansasAG.gov
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-1178

Counsel for Plaintiff
STATE OF ARKANSAS

FOR THE STATE OF INDIANA:

TODD ROKITA
Attorney General for the State of Indiana

Joe Yeoman 2-2-2023

DOUGLAS S. SWETNAM
Indiana Bar No. 15860-49
douglas.swetnam@atg.in.gov
JOSEPH D. YEOMAN
Indiana Bar No. 35668-29
Joseph.Yeoman@atg.in.gov
Deputy Attorneys General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, IN 46204
(317) 232-6294 (Swetnam)
(317) 234-1912 (Yeoman)
(317) 232-7979 (Fax)

Counsel for Plaintiff
STATE OF INDIANA

FOR THE STATE OF MICHIGAN:

DANA NESSEL
Attorney General for the State of Michigan

KATHY P. FITZGERALD
Michigan Bar No. P31454
fitzgeraldk@michigan.gov
SCOTT MERTENS
Michigan Bar No. 60069
mertenss@michigan.gov
Assistant Attorneys General
Corporate Oversight Division
Michigan Department of Attorney General
P.O. Box 30736
Lansing, MI 48909
Telephone: (517) 335-7632
Facsimile: (517) 335-6755

Counsel for Plaintiff
STATE OF MICHIGAN

FOR THE STATE OF MISSOURI:

ANDREW BAILEY
Attorney General for the State of Missouri

MICHELLE L. HINKL
Missouri State Bar No. 64494
Michelle.Hinkl@ago.mo.gov
Assistant Attorney General
P.O. Box 861
St. Louis, MO 63188
Telephone: (314) 340-7961
Fax: (314) 340-7981

Counsel for Plaintiff
STATE OF MISSOURI

FOR THE STATE OF NORTH CAROLINA:

JOSHUA H. STEIN
Attorney General for the State of North Carolina

TRACY NAYER
North Carolina State Bar No. 36964
tnayer@ncdoj.gov
Special Deputy Attorney General
North Carolina Department of Justice
Consumer Protection Division
P.O. Box 629
Raleigh, N.C. 27602
Telephone: (919) 716-6000
Facsimile: (919) 716-6050

Counsel for Plaintiff
STATE OF NORTH CAROLINA

FOR THE STATE OF NORTH DAKOTA:

DREW H. WRIGLEY
Attorney General for the State of North Dakota

Parrell D. Grossman
[North Dakota State Bar No. 04684]
Brian M. Card
[North Dakota State Bar No. 07917]
Office of Attorney General of North Dakota
Consumer Protection & Antitrust Division
1720 Burlington Drive
Ste. C
Bismarck, ND 58504
Email: pgrossman@nd.gov
Email: bmcard@nd.gov
Telephone: (701) 328-5570

Counsel for Plaintiff
STATE OF NORTH DAKOTA

FOR THE STATE OF OHIO:

DAVE YOST
Attorney General for the State of Ohio

ERIN B. LEAHY
Ohio Bar No. 69509
W. TRAVIS GARRISON
Ohio Bar No. 76757
Assistant Attorneys General
Ohio Attorney General's Office
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 752-4730 (Leahy)
(614) 728-1172 (Garrison)
Erin.Leahy@OhioAGO.gov
Travis.Garrison@OhioAGO.gov

Counsel for Plaintiff
STATE OF OHIO

FOR THE STATE OF TEXAS:

KEN PAXTON
Attorney General for the State of Texas

WADE A. JOHNSON
Fed. Bar No: 105556
Texas Bar No. 24062197
Wade.johnson@oag.texas.gov
C. BRAD SCHUELKE
Texas Bar No. 24008000
Brad.schuelke@oag.texas.gov
DAVID SHATTO
Fed. Bar No: 3725697
Texas Bar No: 24104114
Assistant Attorneys General
Office of the Attorney General
P.O. Box 12548 (MC-010)
Austin, Texas 78711
Telephone: (512) 463-2100
Facsimile: (512) 473-8301

Counsel for Plaintiff
STATE OF TEXAS

APPENDIX A

APPENDIX: State and Federal Statutes and Rules

Telephone Consumer Protection Act (TCPA) ..... Appendix pp. 1–17

TCPA Rules ..... Appendix pp. 18–30

Telemarketing Sales Rule (TSR) ..... Appendix pp. 31–51

Arkansas ..... Appendix pp. 52–61

Indiana ..... Appendix pp. 62–84

Michigan ..... Appendix pp. 85–106

Missouri ..... Appendix pp. 107–121

North Carolina ..... Appendix pp. 122–129

North Dakota ..... Appendix pp. 130–140

Ohio ..... Appendix pp. 141–168

Texas ..... Appendix pp. 169–172

47 U.S.C.
United States Code, 2018 Edition
Title 47 - TELECOMMUNICATIONS
CHAPTER 5 - WIRE OR RADIO COMMUNICATION
SUBCHAPTER II - COMMON CARRIERS
Part I - Common Carrier Regulation
Sec. 227 - Restrictions on use of telephone equipment
From the U.S. Government Publishing Office, www.gpo.gov

§227. Restrictions on use of telephone equipment

(a) Definitions

As used in this section—

(1) The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term "established business relationship", for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)).[1]

(3) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States, or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through—

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution,

except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005, if the sender possessed the facsimile machine number of the recipient before July 9, 2005; and

(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) Regulations; exemptions and other provisions

The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not

charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect;

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d);

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only—

(i) by regulation issued after public notice and opportunity for public comment; and

(ii) if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements;

(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) determine whether the existence of the exception under paragraph (1)(C) relating to an

established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on July 9, 2005; and

(H) may restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.

(3) Private right of action

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(c) Protection of subscriber privacy rights

(1) Rulemaking proceeding required

Within 120 days after December 20, 1991, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific "do not call" systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section,

and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

(2) Regulations

Not later than 9 months after December 20, 1991, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

(3) Use of database permitted

The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall—

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making

telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) Considerations required for use of database method

If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) Private right of action

A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(6) Relation to subsection (b)

The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

(d) Technical and procedural standards

(1) Prohibition

It shall be unlawful for any person within the United States—

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is

sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) Telephone facsimile machines

The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after December 20, 1991, clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

(3) Artificial or prerecorded voice systems

The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(e) Prohibition on provision of inaccurate caller identification information

(1) In general

It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

(2) Protection for blocking caller identification information

Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

(3) Regulations

(A) In general

Not later than 6 months after December 22, 2010, the Commission shall prescribe regulations to implement this subsection.

(B) Content of regulations

(i) In general

The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines is appropriate.

(ii) Specific exemption for law enforcement agencies or court orders

The regulations required under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with—

(I) any authorized activity of a law enforcement agency; or

(II) a court order that specifically authorizes the use of caller identification manipulation.

(4) Repealed. Pub. L. 115–141, div. P, title IV, §402(i)(3), Mar. 23, 2018, 132 Stat. 1089

(5) Penalties

(A) Civil forfeiture

(i) In general

Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b) of this title, to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this chapter. The amount of the forfeiture penalty determined under this paragraph shall not exceed $10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.

(ii) Recovery

Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a) of this title.

(iii) Procedure

No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) of this title or section 503(b)(4) of this title.

(iv) 2-year statute of limitations

No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred more than 2 years prior to the date of issuance of the required notice or notice or apparent liability.

(B) Criminal fine

Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than $10,000 for each violation, or 3 times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 of this title for such a violation. This subparagraph does not supersede the provisions of section 501 of this title relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

(6) Enforcement by States

(A) In general

The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the chief legal officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

(B) Notice

The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(C) Authority to intervene

Upon receiving the notice required by subparagraph (B), the Commission shall have the right—

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and
(iii) to file petitions for appeal.

(D) Construction

For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(E) Venue; service or process

(i) Venue

An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(ii) Service of process

In an action brought under subparagraph (A)—

(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(II) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(7) Effect on other laws

This subsection does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(8) Definitions

For purposes of this subsection:

(A) Caller identification information

The term "caller identification information" means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service.

(B) Caller identification service

The term "caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service. Such term includes automatic number identification services.

(C) IP-enabled voice service

The term "IP-enabled voice service" has the meaning given that term by section 9.3 of the Commission's regulations (47 C.F.R. 9.3), as those regulations may be amended by the Commission from time to time.

(9) Limitation

Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.

(f) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which

prohibits—

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

(2) State use of databases

If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

(g) Actions by States

(1) Authority of States

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) Exclusive jurisdiction of Federal courts

The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Rights of Commission

The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) Venue; service of process

Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

(5) Investigatory powers

For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of

witnesses or the production of documentary and other evidence.

(6) Effect on State court proceedings

Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(7) Limitation

Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) "Attorney general" defined

As used in this subsection, the term "attorney general" means the chief legal officer of a State.

(h) Junk fax enforcement report

The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

(1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

(2) the number of citations issued by the Commission pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(4) for each notice referred to in paragraph (3)—

(A) the amount of the proposed forfeiture penalty involved;

(B) the person to whom the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding;

(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(6) for each forfeiture order referred to in paragraph (5)—

(A) the amount of the penalty imposed by the order;

(B) the person to whom the order was issued;

(C) whether the forfeiture penalty has been paid; and

(D) the amount paid;

(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(8) for each case in which the Commission referred such an order for recovery—

(A) the number of days from the date the Commission issued such order to the date of such referral;

(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

(June 19, 1934, ch. 652, title II, §227, as added Pub. L. 102–243, §3(a), Dec. 20, 1991, 105 Stat. 2395; amended Pub. L. 102–556, title IV, §402, Oct. 28, 1992, 106 Stat. 4194; Pub. L. 103–414, title III, §303(a)(11), (12), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 108–187, §12, Dec. 16, 2003, 117 Stat. 2717; Pub. L. 109–21, §§2(a)–(g), 3, July 9, 2005, 119 Stat. 359–362; Pub. L. 111–331, §2, Dec. 22, 2010, 124 Stat. 3572; Pub. L. 114–74, title III, §301(a), Nov. 2, 2015, 129 Stat. 588; Pub. L. 115–141, div. P, title IV, §402(i)(3), title V, §503(a)(1)–(4)(A), Mar. 23, 2018, 132 Stat. 1089, 1091, 1092.)

AMENDMENT OF SUBSECTION (E)

Pub. L. 115–141, div. P, title V, §503(a)(1)–(4)(A), (5), Mar. 23, 2018, 132 Stat. 1091, 1092, provided that, effective on the date that is 6 months after the date on which the Federal Communications Commission prescribes regulations under paragraph (4) (set out as a Regulations note under this section), subsection (e) of this section is amended, and after such effective date, subsection (e) of this section will read as follows:

(e) Prohibition on provision of misleading or inaccurate caller identification information

(1) In general

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

(2) Protection for blocking caller identification information

Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

(3) Regulations

(A) In general

The Commission shall prescribe regulations to implement this subsection.

(B) Content of regulations

(i) In general

The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines is appropriate.

(ii) Specific exemption for law enforcement agencies or court orders

The regulations required under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with—

(I) any authorized activity of a law enforcement agency; or

(II) a court order that specifically authorizes the use of caller identification manipulation.

(4) Repealed. Pub. L. 115–141, div. P, title IV, §402(i)(3), Mar. 23, 2018, 132 Stat. 1089

(5) Penalties

(A) Civil forfeiture

(i) In general

Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b) of this title, to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition

to any other penalty provided for by this chapter. The amount of the forfeiture penalty determined under this paragraph shall not exceed $10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.

(ii) Recovery

Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a) of this title.

(iii) Procedure

No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) of this title or section 503(b)(4) of this title.

(iv) 2-year statute of limitations

No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred more than 2 years prior to the date of issuance of the required notice or notice or apparent liability.

(B) Criminal fine

Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than $10,000 for each violation, or 3 times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 of this title for such a violation. This subparagraph does not supersede the provisions of section 501 of this title relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

(6) Enforcement by States

(A) In general

The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the chief legal officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

(B) Notice

The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(C) Authority to intervene

Upon receiving the notice required by subparagraph (B), the Commission shall have the right—

(i) to intervene in the action;
(ii) upon so intervening, to be heard on all matters arising therein; and
(iii) to file petitions for appeal.

(D) Construction

For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or

affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(E) Venue; service or process

(i) Venue

An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(ii) Service of process

In an action brought under subparagraph (A)—

(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(II) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(7) Effect on other laws

This subsection does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(8) Definitions

For purposes of this subsection:

(A) Caller identification information

The term "caller identification information" means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a voice service or a text message sent using a text messaging service.

(B) Caller identification service

The term "caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a voice service or a text message sent using a text messaging service. Such term includes automatic number identification services.

(C) Text message

The term "text message"—

(i) means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code;

(ii) includes a short message service (commonly referred to as "SMS") message and a multimedia message service (commonly referred to as "MMS") message; and

(iii) does not include—

(I) a real-time, two-way voice or video communication; or

(II) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (ii).

(D) Text messaging service

The term "text messaging service" means a service that enables the transmission or receipt of a text message, including a service provided as part of or in connection with a voice service.

(E) Voice service

The term "voice service"—

(i) means any service that is interconnected with the public switched telephone network

and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1) of this title; and

(ii) includes transmissions from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.

(9) Limitation

Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.

See 2018 Amendment notes below.

References in Text

This chapter, referred to in subsec. (e)(5)(A)(i), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Amendments

2018—Subsec. (e). Pub. L. 115–141, §503(a)(3), inserted "misleading or" before "inaccurate" in heading.

Subsec. (e)(1). Pub. L. 115–141, §503(a)(1), substituted "or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging service" for "in connection with any telecommunications service".

Subsec. (e)(3)(A). Pub. L. 115–141, §503(a)(4)(A), substituted "The Commission" for "Not later than 6 months after December 22, 2010, the Commission".

Subsec. (e)(4). Pub. L. 115–141, §402(i)(3), struck out par. (4). Text read as follows: "Not later than 6 months after December 22, 2010, the Commission shall report to Congress whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications service or IP-enabled voice service."

Subsec. (e)(8)(A), (B). Pub. L. 115–141, §503(a)(2)(A), (B), substituted "voice service or a text message sent using a text messaging service" for "telecommunications service or IP-enabled voice service".

Subsec. (e)(8)(C) to (E). Pub. L. 115–141, §503(a)(2)(C), added subpars. (C) to (E) and struck out former subpar. (C) which defined IP-enabled voice service.

2015—Subsec. (b)(1)(A)(iii). Pub. L. 114–74, §301(a)(1)(A), inserted ", unless such call is made solely to collect a debt owed to or guaranteed by the United States" after "charged for the call".

Subsec. (b)(1)(B). Pub. L. 114–74, §301(a)(1)(B), inserted ", is made solely pursuant to the collection of a debt owed to or guaranteed by the United States," after "emergency purposes".

Subsec. (b)(2)(H). Pub. L. 114–74, §301(a)(2), added subpar. (H).

2010—Subsecs. (e) to (h). Pub. L. 111–331 added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively.

2005—Subsec. (a)(2) to (4). Pub. L. 109–21, §2(b), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109–21, §2(b)(1), (g), redesignated par. (4) as (5) and inserted ", in writing or otherwise" before period at end.

Subsec. (b)(1)(C). Pub. L. 109–21, §2(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or".

Subsec. (b)(2)(D) to (G). Pub. L. 109–21, §2(c)–(f), added subpars. (D) to (G).

Subsec. (g). Pub. L. 109–21, §3, added subsec. (g).

2003—Subsec. (b)(1). Pub. L. 108–187 inserted ", or any person outside the United States if the recipient is within the United States" after "United States" in introductory provisions.

1994—Subsec. (b)(2)(C). Pub. L. 103–414, §303(a)(11), substituted "paragraph" for "paragraphs".

Subsec. (e)(2). Pub. L. 103–414, §303(a)(12), substituted "national database" for "national datebase" after "such single".

1992—Subsec. (b)(2)(C). Pub. L. 102–556 added subpar. (C).

Effective Date of 2018 Amendment

Pub. L. 115–141, div. P, title V, §503(a)(5), Mar. 23, 2018, 132 Stat. 1092, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date that is 6 months after the date on which the Commission [Federal Communications Commission] prescribes regulations under paragraph (4) [set out as a note under this section]."

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–187 effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as an Effective Date note under section 7701 of Title 15, Commerce and Trade.

Effective Date; Deadline for Regulations

Pub. L. 102–243, §3(c), Dec. 20, 1991, 105 Stat. 2402, as amended by Pub. L. 102–556, title I, §102, Oct. 28, 1992, 106 Stat. 4186, provided that:

"(1) Regulations.—The Federal Communications Commission shall prescribe regulations to implement the amendments made by this section [enacting this section and amending section 152 of this title] not later than 9 months after the date of enactment of this Act [Dec. 20, 1991].

"(2) Effective date.—The requirements of section 227 of the Communications Act of 1934 [this section] (as added by this section), other than the authority to prescribe regulations, shall take effect one year after the date of enactment of this Act [Dec. 20, 1991]."

Regulations

Pub. L. 115–141, div. P, title V, §503(a)(4)(B), Mar. 23, 2018, 132 Stat. 1092, provided that: "The Commission [Federal Communications Commission] shall prescribe regulations to implement the amendments made by this subsection [amending this section] not later than 18 months after the date of enactment of this Act [Mar. 23, 2018]."

Pub. L. 114–74, title III, §301(b), Nov. 2, 2015, 129 Stat. 588, provided that: "Not later than 9 months after the date of enactment of this Act [Nov. 2, 2015], the Federal Communications Commission, in consultation with the Department of the Treasury, shall prescribe regulations to implement the amendments made by this section [amending this secton]."

Pub. L. 109–21, §2(h), July 9, 2005, 119 Stat. 362, provided that: "Except as provided in section 227(b)(2)(G)(ii) of the Communications Act of 1934 [47 U.S.C. 227(b)(2)(G)(ii)] (as added by subsection (f)), not later than 270 days after the date of enactment of this Act [July 9, 2005], the Federal Communications Commission shall issue regulations to implement the amendments made by this section."

Construction

Pub. L. 115–141, div. P, title V, §503(d), Mar. 23, 2018, 132 Stat. 1094, provided that: "Nothing in this section [enacting section 227a of this title, amending this section, and enacting provisions set out as notes under this section], or the amendments made by this section, shall be construed to modify, limit, or otherwise affect any rule or order adopted by the Commission [Federal Communications Commission] in connection with—

"(1) the Telephone Consumer Protection Act of 1991 (Public Law 102–243; 105 Stat. 2394) [see Short Title of 1991 Amendment note set out under section 609 of this title] or the amendments made by that Act; or

"(2) the CAN–SPAM Act of 2003 (15 U.S.C. 7701 et seq.)."

Congressional Statement of Findings

Pub. L. 102–243, §2, Dec. 20, 1991, 105 Stat. 2394, provided that: "The Congress finds that:

"(1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.

"(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.

"(3) More than 300,000 solicitors call more than 18,000,000 Americans every day.

"(4) Total United States sales generated through telemarketing amounted to $435,000,000,000 in 1990, a more than four-fold increase since 1984.

"(5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

"(6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes

from telemarketers.

"(7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.

"(8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.

"(9) Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

"(10) Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

"(11) Technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.

"(12) Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

"(13) While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.

"(14) Businesses also have complained to the Congress and the Federal Communications Commission that automated or prerecorded telephone calls are a nuisance, are an invasion of privacy, and interfere with interstate commerce.

"(15) The Federal Communications Commission should consider adopting reasonable restrictions on automated or prerecorded calls to businesses as well as to the home, consistent with the constitutional protections of free speech."

[1] *So in original. Second closing parenthesis probably should not appear.*

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 19, 2020

Title 47 → Chapter I → Subchapter B → Part 64 → Subpart L → §64.1200

Title 47: Telecommunication
PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS
Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

---

§64.1200 Delivery restrictions.

(a) No person or entity may:

(1) Except as provided in paragraph (a)(2) of this section, initiate any telephone call (other than a call made for emergency purposes or is made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

(2) Initiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, other than a call made with the prior express written consent of the called party or the prior express consent of the called party when the call is made by or on behalf of a tax-exempt nonprofit organization, or a call that

delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(3) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party, unless the call;

(i) Is made for emergency purposes;

(ii) Is not made for a commercial purpose;

(iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing;

(iv) Is made by or on behalf of a tax-exempt nonprofit organization; or

(v) Delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(4) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless—

(i) The unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(6) of this section, with the recipient; and

(ii) The sender obtained the number of the telephone facsimile machine through—

(A) The voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or

(B) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.

(C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(4)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(4)(v) of this section;

(D) The notice includes—

(*1*) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(*2*) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

(iv) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

(v) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(4)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient

subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vi) A facsimile broadcaster will be liable for violations of paragraph (a)(4) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(5) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(6) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

(7) Abandon more than three percent of all telemarketing calls that are answered live by a person, as measured over a 30-day period for a single calling campaign. If a single calling campaign exceeds a 30-day period, the abandonment rate shall be calculated separately for each successive 30-day period or portion thereof that such calling campaign continues. A call is “abandoned” if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting.

(i) Whenever a live sales representative is not available to speak with the person answering the call, within two (2) seconds after the called person's completed greeting, the telemarketer or the seller must provide:

(A) A prerecorded identification and opt-out message that is limited to disclosing that the call was for “telemarketing purposes” and states the name of the business, entity, or individual on whose behalf the call was placed, and a telephone number for such business, entity, or individual that permits the called person to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; provided, that, such telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges, and

(B) An automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make a do-not-call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When the called person elects to opt-out using such mechanism, the mechanism must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call.

(ii) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line or to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section after the subscriber to such line has granted prior express written consent for the call to be made shall not be

considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(iii) The seller or telemarketer must maintain records establishing compliance with paragraph (a)(7) of this section.

(iv) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by this paragraph (a)(7).

(8) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded voice telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated;

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; and

(3) In every case where the artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii), provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism, must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call. When the artificial or prerecorded voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the seller's do-not-call list.

(c) No person or entity shall initiate any telephone solicitation to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local

time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules;

(B) Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

NOTE TO PARAGRAPH (c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

(E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel engaged in telemarketing.* Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) *Identification of sellers and telemarketers.* A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making calls for telemarketing

purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, “Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.”

(f) As used in this section:

(1) The term *advertisement* means any material advertising the commercial availability or quality of any property, goods, or services.

(2) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(3) The term *clear and conspicuous* means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures. With respect to facsimiles and for purposes of paragraph (a)(4)(iii)(A) of this section, the notice must be placed at either the top or bottom of the facsimile.

(4) The term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(5) The term *established business relationship* for purposes of telephone solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(6) The term *established business relationship* for purposes of paragraph (a)(4) of this section on the sending of facsimile advertisements means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(7) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(8) The term *prior express written consent* means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

(i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(ii) The term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(9) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(10) The term *sender* for purposes of paragraph (a)(4) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(11) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(12) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or

services, which is transmitted to any person.

(13) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(14) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(15) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(16) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

(17) The term *effectively mitigate* means identifying the source of the traffic and preventing that source from continuing to originate traffic of the same or similar nature.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of

any database, list or listing system maintained by such State for the regulation of telephone solicitations.

(i)-(j) [Reserved]

(k) Voice service providers may block calls so that they do not reach a called party as follows:

(1) A provider may block a voice call when the subscriber to which the originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.

(2) A provider may block a voice call purporting to originate from any of the following:

(i) A North American Numbering Plan number that is not valid;

(ii) A valid North American Numbering Plan number that is not allocated to a provider by the North American Numbering Plan Administrator or the Pooling Administrator; and

(iii) A valid North American Numbering Plan number that is allocated to a provider by the North American Numbering Plan Administrator or Pooling Administrator, but is unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of the blocking.

(3) A terminating provider may block a voice call without liability under the Communications Act or the Commission's rules where:

(i) Calls are blocked based on the use of reasonable analytics designed to identify unwanted calls;

(ii) Those analytics include consideration of caller ID authentication information where available;

(iii) A consumer may opt out of blocking and is provided with sufficient information to make an informed decision;

(iv) All analytics are applied in a non-discriminatory, competitively neutral manner;

(v) Blocking services are provided with no additional line-item charge to consumers; and

(vi) The terminating provider provides, without charge to the caller, the redress requirements set forth in paragraph (k)(8) of this section.

(4) A provider may block voice calls or cease to accept traffic from an originating or intermediate provider without liability under the Communications Act or the Commission's rules where the originating or intermediate provider, when notified by the Commission, fails

to effectively mitigate illegal traffic within 48 hours or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls. Prior to initiating blocking, the provider shall provide the Commission with notice and a brief summary of the basis for its determination that the originating or intermediate provider meets one or more of these two conditions for blocking.

(5) A provider may not block a voice call under paragraphs (k)(1) through (4) of this section if the call is an emergency call placed to 911.

(6) A provider may not block calls under paragraphs (k)(1) through (4) of this section unless that provider makes all reasonable efforts to ensure that calls from public safety answering points and government emergency numbers are not blocked.

(7) For purposes of this section, a provider may rely on Caller ID information to determine the purported originating number without regard to whether the call, in fact originated from that number.

(8) Any terminating provider blocking pursuant to this subsection must provide a single point of contact, readily available on the terminating provider's public-facing website, for handling call blocking error complaints and must resolve disputes within a reasonable time. When a caller makes a credible claim of erroneous blocking and the terminating provider determines that the calls should not have been blocked, the terminating provider must promptly cease blocking calls from that number unless circumstances change. The terminating provider may not impose any charge on callers for reporting, investigating, or resolving blocking error complaints.

(l) A reporting carrier subject to §52.15(f) of this title shall:

(1) Maintain records of the most recent date each North American Numbering Plan (NANP) telephone number allocated or ported to the reporting carrier was permanently disconnected.

(2) Beginning on the 15th day of the month after the Consumer and Governmental Affairs Bureau announces that the Administrator is ready to begin accepting these reports and on the 15th day of each month thereafter, report to the Administrator the most recent date each NANP telephone number allocated to or ported to it was permanently disconnected.

(3) For purposes of this paragraph (l), a NANP telephone number has been permanently disconnected when a subscriber permanently has relinquished the number, or the provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated with the subscriber. A NANP telephone number that is ported to another provider is not permanently disconnected.

(4) Reporting carriers serving 100,000 or fewer domestic retail subscriber lines as reported on their most recent Forms 477, aggregated over all the providers' affiliates, must begin keeping the records required by paragraph (l)(1) of this section six months after the

effective date for large providers and must begin filing the reports required by paragraph (l)(2) of this section no later than the 15th day of the month that is six months after the date announced by the Consumer and Governmental Affairs Bureau pursuant to paragraph (l)(2).

(m) A person will not be liable for violating the prohibitions in paragraph (a)(1), (2), or (3) of this section by making a call to a number for which the person previously had obtained prior express consent of the called party as required in paragraph (a)(1), (2), or (3) but at the time of the call, the number is not assigned to the subscriber to whom it was assigned at the time such prior express consent was obtained if the person, bearing the burden of proof and persuasion, demonstrates that:

(1) The person, based upon the most recent numbering information reported to the Administrator pursuant to paragraph (l) of this section, by querying the database operated by the Administrator and receiving a response of “no”, has verified that the number has not been permanently disconnected since the date prior express consent was obtained as required in paragraph (a)(1), (2), or (3) of this section; and

(2) The person's call to the number was the result of the database erroneously returning a response of “no” to the person's query consisting of the number for which prior express consent was obtained as required in paragraph (a)(1), (2), or (3) of this section and the date on which such prior express consent was obtained.

[68 FR 44177, July 25, 2003, as amended at 68 FR 59131, Oct. 14, 2003; 69 FR 60316, Oct. 8, 2004; 70 FR 19337, Apr. 13, 2005; 71 FR 25977, May 3, 2006; 71 FR 56893, Sept. 28, 2006; 71 FR 75122, Dec. 14, 2006; 73 FR 40185, July 14, 2008; 77 FR 34246, June 11, 2012; 83 FR 1577, Jan. 12, 2018; 84 FR 10267, Mar. 20, 2019; 84 FR 11232, Mar. 26, 2019; 85 FR 56534, Sept. 14, 2020]

Need assistance?

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 19, 2020

Title 16 → Chapter I → Subchapter C → Part 310

Title 16: Commercial Practices

PART 310—TELEMARKETING SALES RULE

Contents

§310.1 Scope of regulations in this part.
§310.2 Definitions.
§310.3 Deceptive telemarketing acts or practices.
§310.4 Abusive telemarketing acts or practices.
§310.5 Recordkeeping requirements.
§310.6 Exemptions.
§310.7 Actions by states and private persons.
§310.8 Fee for access to the National Do Not Call Registry.
§310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

Back to Top

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

Back to Top

§310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's

or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash-to-cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

(1) An electronic fund transfer as defined in section 903 of the EFTA;

(2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or

(3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

(h) *Charitable contribution* means any donation or gift of money or any other thing of value.

(i) *Commission* means the Federal Trade Commission.

(j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(k) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) *Credit card sales draft* means any record or evidence of a credit card transaction.

(m) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(p) *Donor* means any person solicited to make a charitable contribution.

(q) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(r) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(s) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(u) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(v) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(w) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an

affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(x) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(y) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(z) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(aa) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(bb) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a “remotely created check,” as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(fff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026.

(dd) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(ee) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(ff) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(gg) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business

address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(hh) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77557, Dec. 14, 2015]

Back to Top

§310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay[659] for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

[659] When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before the consumer enrolls in an offered program.

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;[660]

[660] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule.

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and

Regulation Z,[661] or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.[662] Such authorization shall be deemed verifiable if any of the following means is employed:

[661] Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 226.

[662] Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.,* and Regulation E, 12 CFR part 205.

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;[663]

[663] For purposes of this Rule, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

(B) The number of debits, charges, or payments (if more than one);

(C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(D) The amount(s) of the debit(s), charge(s), or payment(s);

(E) The customer's or donor's name;

(F) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(G) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(H) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction

involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or

sponsorship by, any person or government entity.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77558, Dec. 14, 2015]

Back to Top

§310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(*1*) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(*2*) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in §310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a

free-to-pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section;

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours;

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request;

hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) Initiating any outbound telephone call to a person when:

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the “do-not-call” registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(*1*) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature[664] of that person; or

[664]For purposes of this Rule, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(*2*) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in §310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver

prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;[665] and

[665] For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate §310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business

associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the “do-not-call” registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

(4) A seller or telemarketer will not be liable for violating §310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or

telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed[666]; and

[666] This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

(iv) The seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011; 80 FR 77559, Dec. 14, 2015]

Back to Top

§310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;[667]

[667] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records

required under this section.

Back to Top

§310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided,* however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided,* however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided,* however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided,* however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided,* however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission,

electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) for any requested charitable contribution; *provided,* however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that §§310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77559, Dec. 14, 2015]

Back to Top

§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

Back to Top

§310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the

annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $66 for each area code of data accessed, up to a maximum of $18,044; *provided,* however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under §310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $66 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $33 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must

provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014; 80 FR 77560, Dec. 14, 2016; 81 FR 59845, Aug. 31, 2016; 82 FR 39534, Aug. 21, 2017; 83 FR 46640, Sept. 14, 2018; 84 FR 44687, Aug. 27, 2019; 85 FR 62597, Oct. 5, 2020]

Back to Top

§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Back to Top

Need assistance?

ARKANSAS STATE STATUES

ARKANSAS DECEPTIVE TRADE PRACTICES ACT – Ark. Code Ann. 4-88-101 *et seq.*

§ 4-88-104. Civil enforcement

In addition to the criminal penalty imposed hereunder, the Attorney General of this state shall have authority, acting through the Consumer Counsel, to file an action in the court designated in § 4-88-112 for civil enforcement of the provisions of this chapter, including, but not limited to, the seeking of restitution and the seeking of an injunction prohibiting any person from engaging in any deceptive or unlawful practice prohibited by this chapter.

§ 4-88-107. Deceptive and unconscionable trade practices

(a) Deceptive and unconscionable trade practices made unlawful and prohibited by this chapter include, but are not limited to, the following:

(1) Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model;

(3) Advertising the goods or services with the intent not to sell them as advertised;

(10) Engaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.

(b) The deceptive and unconscionable trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

§ 4-88-108. Concealment, suppression, or omission of material facts

(a) When utilized in connection with the sale or advertisement of any goods, services, or charitable solicitation, the following is unlawful:

(1) The act, use, or employment by a person of any deception, fraud, or false pretense;

(2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.

§ 4-88-112. Investigations--Refusal to comply

(a) In the event any person fails or refuses to file a statement, appear, or produce records as required by § 4-88-111, the Attorney General, acting through the Consumer Counsel, may file, in the circuit court of the county in which the person resides or transacts business or of the judicial district in which the State Capitol is located, a petition for an order of such court for the civil enforcement of such section.

(b) Upon the filing of the petition and service upon the person, the court shall have jurisdiction to hear and determine the matter so presented and to enter such order, including temporary injunctions, as may be required to effectuate this chapter.

(c) Willful concealment, destruction, alteration, or falsification of any documentary material which would be subject to subpoena by the court or the disobedience of any order of the court is declared to be unlawful and shall be punished as contempt of court.

(d) Any final order shall be subject to appeal to the Supreme Court of Arkansas.

§ 4-88-113. Civil enforcement and remedies--Suspension or forfeiture of charter, franchise, etc.

(a) In any proceeding brought by the Attorney General for civil enforcement of the provisions of this chapter, prohibiting unlawful practices as defined in this chapter, the circuit court may make such orders or judgments as may be necessary to:

(1) Prevent the use or employment by such person of any prohibited practices;

(2)(A) Restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practice declared to be unlawful by this chapter, together with other damages sustained.

(B) In determining the amount of restitution to be awarded under this section, the court shall consider affidavits from nontestifying purchasers, provided that:

(i) The affidavits are offered as evidence of a material fact;

(ii) The affidavits are more probative on the point for which they are offered than any other evidence which the Attorney General can procure through reasonable efforts;

(iii) The interests of justice will be best served by admission of the affidavits; and

(iv) The Attorney General makes the names and addresses of the affiants available to the adverse party sufficiently in advance to provide the adverse party with a fair opportunity to communicate with them; and

(3) Assess penalties to be paid to the state, not to exceed ten thousand dollars ($10,000) per violation, against persons found to have violated this chapter.

(b) Upon petition of the Attorney General, the court may order the suspension or forfeiture of franchises, corporate charters, or other licenses or permits or authorization to do business in this state.

(c) Any person who violates the terms of an injunction issued under this chapter shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars ($10,000) for any single action brought by the Attorney General.

(d)(1) Every person who directly or indirectly controls another person who is in violation of or liable under this chapter and every partner, officer, or director of another person who is in violation of or liable under this chapter shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded in any proceeding for civil enforcement of the provisions of this chapter, provided that the persons to be held jointly and severally liable knew or reasonably should have known of the existence of the facts by reason of which the violation or liability exists.

(2) There is contribution as in cases of contract among the several persons so liable.

(3) Every person subject to liability under subdivision (d)(1) of this section shall be deemed, as a matter of law, to have purposefully availed himself or herself of the privileges of conducting activities within Arkansas sufficient to subject the person to the personal jurisdiction of the circuit court hearing an action brought pursuant to this chapter.

(e) As compensation for his services under this chapter, the Attorney General shall be entitled to all expenses reasonably incurred in the investigation and prosecution of suits, including, but not limited to, expenses for expert witnesses, to be paid by

the defendant when judgment is rendered for the state, and, in addition, shall recover attorney's fees and costs.

(f)(1)(A) A person who suffers an actual financial loss as a result of his or her reliance on the use of a practice declared unlawful by this chapter may bring an action to recover his or her actual financial loss proximately caused by the offense or violation, as defined in this chapter.

(B) A private class action under this subsection is prohibited unless the claim is being asserted for a violation of Arkansas Constitution, Amendment 89.

(2) To prevail on a claim brought under this subsection, a claimant must prove individually that he or she suffered an actual financial loss proximately caused by his or her reliance on the use of a practice declared unlawful under this chapter.

(3) A court may award reasonable attorney's fees.

[Continued on next page]

REGULATION OF TELEPHONICE SELLERS – Ark. Code Ann. § 4-99-101 *et seq.*

§ 4-99-104. Registration procedures--Fees--Duration

(a)(1) Not less than ten (10) days before doing business in this state, a telephonic seller shall register with the Secretary of State by filing the information required by this chapter and a filing fee of one hundred dollars ($100).

(2) A seller shall be deemed to do business in this state if the seller solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration of a telephonic seller shall be valid for one (1) year from the effective date thereof and may be renewed by making the filing required by this chapter and paying a filing fee of one hundred dollars ($100).

(c) The information required by this chapter shall be submitted on a form prescribed by the Secretary of State and shall be verified by a declaration signed by each principal of the telephonic seller under penalty of perjury.

(d)(1) Except as provided in subdivision (d)(2) of this section and before expiration of a seller's annual registration, if there is a material change in the information required under this chapter, the seller shall, within ten (10) days, file an addendum updating the information with the Secretary of State.

(2) Changes in salespersons soliciting on behalf of a seller shall be updated in quarterly intervals computed from the effective date of registration.

(e)(1) Upon receipt of a filing and filing fee under subsection (a) or subsection (b) of this section, the Secretary of State shall send the telephonic seller a written confirmation of registration.

(2) If the seller has more than one (1) business location, the confirmation of registration shall be sent to the principal business location identified in the seller's filing in sufficient number so that the seller has a confirmation of registration for each location to be displayed in a conspicuous place at each of the seller's business locations and available for inspection by any governmental agency at each location.

(3) Until confirmation of registration is received and posted, the seller shall post in a conspicuous place at each of the seller's business locations within this state a copy of the first page of the registration form sent to the Secretary of State.

(f)(1) Every salesperson shall be employed in a principal-agent relationship by a telephonic seller registered under this chapter and shall, within seventy-two (72) hours after accepting such employment, register with the Secretary of State.

(2) An application for registration shall be on a form prescribed by the Secretary of State, verified by a declaration signed by each salesperson under penalty of perjury, and shall be accompanied by a fee in the sum of ten dollars ($10.00).

(3) When effective, the registration shall be for a period of one (1) year and may be renewed upon the payment of the fee prescribed in this section for additional one-year periods.

(g) All fees collected by the Secretary of State under this section shall be deposited into the State Treasury as general revenues.

§ 4-99-110. Soliciting prospective purchasers on behalf of unregistered telephonic seller prohibited--Violation

(a)(1) A salesperson shall not solicit prospective purchasers on behalf of a telephonic seller who is not currently registered with the Secretary of State under this chapter.

(2) A salesperson who violates this section shall be guilty of a Class A misdemeanor.

(b) Except as provided in subdivision (a)(1) of this section, any person, including without limitation the seller, a salesperson, agent or representative of the seller, or an independent contractor, who willfully violates a provision of this chapter or who directly or indirectly employs a device, scheme, or artifice to deceive in connection with the offer or sale by a telephonic seller, or who willfully, directly or indirectly, engages in any act, practice, or course of business that operates or would operate as fraud or deceit upon a person in connection with a sale by a telephonic seller shall be, upon conviction, guilty of a Class D felony.

(c)(1) A person who controls a seller liable under this section, or a salesperson liable under subdivision (a)(1) of this section, every partner, officer, or director of such a seller or salesperson, a person occupying a similar status or performing a similar function, and an employee of such a seller or salesperson who materially aids in the sale or attempted sale are also liable jointly and severally with and to the same extent as the seller or salesperson, unless the nonseller or nonsalesperson who is so liable sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(2) There is contribution as in cases of contract among the several persons so liable.

§ 4-99-111. Exclusivity of chapter--Deceptive trade practices

(a) The provisions of this chapter are not exclusive. The remedies specified in this chapter for violation of any section of this chapter or for conduct proscribed by any section of this chapter shall be in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

(b) Violation of any of the provisions of this chapter shall constitute an unfair or deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq. All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this chapter.

§ 4-99-201. Caller identification--Information offered--Penalty for violation

(a)(1) Any person who on behalf of any charity, business, or organization calls a residential phone number for the purpose of soliciting or requesting a contribution or to offer goods or services shall immediately disclose to the person contacted:

(A) The caller's identity and the identity of the person or organization on whose behalf the telephone call is being made; and

(B) The purpose of the telephone call, including a brief description of the goods or services to be offered.

(2) If the person receiving the telephone call indicates that he or she does not want to hear about the charity, goods, or services, the caller shall not attempt to provide additional information during that conversation about the charity, goods, or services.

(b) A violation of this section shall be a Class A misdemeanor.

(c)(1) A violation of the provisions of this section shall constitute an unfair and deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this section.

(3)(A) No person under subdivision (a)(1) of this section shall display or cause to be displayed a fictitious or misleading name or telephone number on an Arkansas resident's telephone caller identification service.

(B) For purposes of this section, “caller identification service” means a service offered by a telecommunications provider that provides caller identification information to a device capable of displaying the information.

(d) Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law.

(e) The obligations under this section are cumulative and should in no way be deemed to limit the obligations imposed under any other law.

§ 4-99-203. Consumer's express written authorization required

(a)(1) For the purposes of this section, “telemarketer” means any person who initiates telephone calls to, or who receives telephone calls from, a consumer in connection with a plan, program, or campaign to market goods and services.

(2) The term “telemarketer” does not include a federally insured depository institution or its subsidiary when it obtains or submits for payment a check, draft, or other form of negotiable instrument drawn on or debited against a person's checking, savings, share, or other depository account at that institution.

(b)(1) It shall be unlawful for any telemarketer as defined in subsection (a) of this section to obtain or submit for payment a check, draft, or other form of negotiable instrument drawn on a person's checking, savings, share, or other depository account without the consumer's express written authorization.

(2) For the purpose of this section, a check bearing the valid signature of the consumer shall constitute the consumer's express written authorization.

(c)(1) A violation of the provisions of this section shall constitute an unfair and deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this section.

(d) Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law.

(e) The obligations under this section are cumulative and should in no way be deemed to limit the obligations under any other law.

THE ARKANSAS CONSUMER TELEPHONE PRIVACY ACT – Ark. Code Ann. § 4-99-401 *et seq.*

§ 4-99-405. Prohibitions

It shall be a violation of this subchapter for any person to:

(1) Make or transmit a telephone solicitation to the telephone number of any consumer included in the then-current database maintained by the Attorney General pursuant to this subchapter;

(2) Make or transmit a telephone solicitation without having first accessed, in the manner specified by the Attorney General, the then-current database maintained by the Attorney General pursuant to this subchapter; or

(3) Make or transmit a telephone solicitation if that telephone solicitation violates the Federal Trade Commission Do-Not-Call rule set out in 16 C.F.R. § 310.4, as in effect on March 1, 2003.

§ 4-99-407. Enforcement by the Attorney General

(a) Any violation by any person of the prohibitions set out in § 4-99-405 shall constitute an unfair or deceptive act or practice as defined by § 4-88-101 et seq. of the Deceptive Trade Practices Act.

(b) All authority granted to the Attorney General and all remedies available to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be granted to and available to the Attorney General for the enforcement of this subchapter after the time period referred to in § 4-99-404(6) has been provided for affected persons to update their database.

[Continued on next page]

BUSINESS MISCONDUCT – Ark. Code Ann. § 5-63-201 *et seq.*

§ 5-63-204. Telephone solicitation by automation

(a)(1) It is unlawful for any person to use a telephone for the purpose of offering any goods or services for sale, or for conveying information regarding any goods or services for the purpose of soliciting the sale or purchase of the goods or services when the use involves an automated system for the selection and dialing of telephone numbers and the playing of recorded messages when a message is completed to the called number.

(2) However, nothing in this section prohibits the use of:

(A) A telephone involving an automated system for the selection and dialing of telephone numbers and the play of recorded messages to:

(i) Inform the purchaser of the goods or services concerning receipt and availability of the goods or services for delivery to the purchaser; or

(ii) Convey information concerning any delay or pertinent information about the current status of any purchase order previously made; or

(B) An automated telephone system with a recorded message when the call is made or message given solely in response to a call initiated by the person to which the automatic call or recorded message is directed.

(b) A person who violates this section upon conviction is guilty of a Class D felony.

(c)(1) The Attorney General, a prosecuting attorney, any law enforcement officer, or any telephone company serving an area from which automated telephone calls are made may seek injunctive relief to enforce the provision of this section.

(2) If a civil action is filed pursuant to this section, the prevailing party is entitled to a reasonable attorney's fee and court costs.

IC 24-4.7 ARTICLE 4.7. TELEPHONE SOLICITATION OF CONSUMERS

Ch. 1.General Provisions
Ch. 2.Definitions
Ch. 3.Duties of the Division
Ch. 4.Telephone Solicitations
Ch. 5.Civil Remedies

IC 24-4.7-1 Chapter 1. General Provisions

24-4.7-1-1Application
24-4.7-1-2Compliance with other law

IC 24-4.7-1-1 Application

Sec. 1. This article does not apply to any of the following:

(1) A telephone call made in response to an express request of the person called.

(2) A telephone call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(3) A telephone call made on behalf of a charitable organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code, but only if all of the following apply:

(A) The telephone call is made by a volunteer or an employee of the charitable organization.

(B) The telephone solicitor who makes the telephone call immediately discloses all of the following information upon making contact with the consumer:

(i) The solicitor's true first and last name.

(ii) The name, address, and telephone number of the charitable organization.

(4) A telephone call made by an individual licensed under IC 25-34.1 if:

(A) the sale of goods or services is not completed; and

(B) the payment or authorization of payment is not required;

until after a face to face sales presentation by the seller.

(5) A telephone call made by an individual licensed under IC 27-1-15.6 or IC 27-1-15.8 when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer (as defined in IC 27-1-2-3).

(6) A telephone call soliciting the sale of a newspaper of general circulation, but only if the telephone call is made by a volunteer or an employee of the newspaper.

(7) Any telephone call made to a consumer by a communications service provider (as defined in IC 8-1-32.5-4) that:

(A) offers broadband Internet service; and

(B) has an established business relationship (as defined in 47 CFR 64.1200) with the consumer.

(8) Any telephone call made to a consumer by:

(A) a financial institution organized or reorganized under the laws of any state or the United States; or

(B) a person licensed by the department of financial institutions under IC 24-4.4, IC 24-4.5, or 750 IAC 9;

that has an established business relationship (as defined in 47 CFR 64.1200) with the consumer.

As added by P.L.189-2001, SEC.1. Amended by P.L.97-2004, SEC.90; P.L.242-2019, SEC.1.

IC 24-4.7-1-2 Compliance with other law

Sec. 2. This article does not relieve a person from complying with any other applicable law.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2 Chapter 2. Definitions

24-4.7-2-1Applicability of definitions
24-4.7-2-1.7"Caller"
24-4.7-2-2"Consumer"
24-4.7-2-3"Consumer goods or services"
24-4.7-2-4"Division"
24-4.7-2-5"Doing business in Indiana"
24-4.7-2-5.5"Executive"
24-4.7-2-6"Fund"
24-4.7-2-7"Listing"
24-4.7-2-7.3"Person"
24-4.7-2-7.5"Place of primary use"
24-4.7-2-7.7"Supplier"
24-4.7-2-8"Telephone number"
24-4.7-2-9"Telephone sales call"
24-4.7-2-10"Telephone solicitor"

IC 24-4.7-2-1 Applicability of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-1.7 "Caller"

Sec. 1.7. "Caller" has the meaning set forth in IC 24-5-14-2.

As added by P.L.61-2014, SEC.1.

IC 24-4.7-2-2 "Consumer"

Sec. 2. (a) "Consumer" means a residential telephone subscriber who:

(1) for the telephone service received:

(A) has a place of primary use in Indiana; or

(B) is issued an Indiana telephone number or an Indiana identification number; and

(2) is an actual or a prospective:

(A) purchaser, lessee, or recipient of consumer goods or services; or

(B) donor to a charitable organization.

(b) The term includes a user of a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) who:

(1) is issued an Indiana telephone number or an Indiana identification number for the service; or

(2) purchases prepaid wireless calling service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.6.

IC 24-4.7-2-3 "Consumer goods or services"

Sec. 3. "Consumer goods or services" means any of the following:

(1) Tangible or intangible personal property or real property that is normally used for personal, family, or household purposes.

(2) Property intended to be attached to or installed on real property without regard to whether it is attached or installed.

(3) Services related to property described in subdivision (1) or (2).

(4) Credit cards or the extension of credit.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-4 "Division"

Sec. 4. "Division" refers to the consumer protection division of the office of the attorney general.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-5 "Doing business in Indiana"

Sec. 5. (a) "Doing business in Indiana" means:

(1) making; or

(2) causing others to make;

telephone sales calls to consumers located in Indiana whether the telephone sales calls are made from a location in Indiana or outside Indiana.

(b) A person that controls, directly or indirectly, one (1) or more persons that make or cause another person to make a telephone call to a consumer located in Indiana is "doing business in Indiana", no matter where the person is located or domiciled.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.7; P.L.153-2017, SEC.1.

IC 24-4.7-2-5.5 "Executive"

Sec. 5.5. "Executive" means any of the following, as applicable:

(1) With respect to a corporation, a person who is or performs the duties of the:

(A) president;

(B) chief executive officer;

(C) treasurer; or

(D) chief financial officer;

of the corporation.

(2) With respect to a partnership, a partner authorized to act on behalf of the partnership.

(3) With respect to a limited liability company, a member of the limited liability company who has not had the member's authority to act on behalf of the limited liability company revoked.

As added by P.L.242-2019, SEC.2.

IC 24-4.7-2-6 "Fund"

Sec. 6. "Fund" refers to the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-7 "Listing"

Sec. 7. "Listing" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3 that lists the telephone numbers of consumers who do not wish to receive telephone sales calls.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.8.

IC 24-4.7-2-7.3 "Person"

Sec. 7.3. "Person" means:

(1) an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries; or

(2) any other legal entity.

As added by P.L.153-2017, SEC.2.

IC 24-4.7-2-7.5 "Place of primary use"

Sec. 7.5. "Place of primary use", with respect to a telephone subscriber, means the street address representative of where the subscriber's use of the telephone service primarily occurs, which must be:

(1) the residential street address of the subscriber or, in the case of a subscriber of interconnected VOIP service, the subscriber's registered location (as defined in 47 CFR 9.3); and

(2) in the case of mobile telecommunications services (as defined in IC 6-8.1-15-7), within the licensed service area of the home service provider, as set forth in IC 6-8.1-15-8.

As added by P.L.226-2011, SEC.9.

IC 24-4.7-2-7.7 "Supplier"

Sec. 7.7. "Supplier" has the meaning set forth in IC 24-5-0.5-2(a)(3).

As added by P.L.61-2014, SEC.2.

IC 24-4.7-2-8 "Telephone number"

Sec. 8. "Telephone number" means a residential telephone number that:

(1) is assigned to a subscriber who has a place of primary use in Indiana; or

(2) otherwise represents an Indiana telephone number or is associated with an Indiana identification number.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.10.

IC 24-4.7-2-9 "Telephone sales call"

Sec. 9. (a) "Telephone sales call" means a telephone call made to a consumer for any of the following purposes:

(1) Solicitation of a sale of consumer goods or services.

(2) Solicitation of a charitable contribution.

(3) Obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) The term includes any of the following:

(1) A call made by use of an automated dialing device.

(2) A call made by use of a recorded message device.

(3) Transmission of:

(A) a text message; or

(B) a graphic message;

using short message service (SMS).

(4) Transmission of:

(A) an image;

(B) a photograph; or

(C) a multimedia message;

using multimedia messaging service (MMS).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.11.

IC 24-4.7-2-10 "Telephone solicitor"

Sec. 10. "Telephone solicitor" means a person doing business in Indiana. The term includes a person that controls, directly or indirectly, one (1) or more other persons.

As added by P.L.189-2001, SEC.1. Amended by P.L.153-2017, SEC.3.

IC 24-4.7-3 Chapter 3. Duties of the Division

24-4.7-3-1 Quarterly listing
24-4.7-3-2 Agents
24-4.7-3-3 Investigation
24-4.7-3-4 Required notice to Indiana residents
24-4.7-3-5 Reports
24-4.7-3-6 Consumer protection division telephone solicitation fund
24-4.7-3-7 Adoption of rules

IC 24-4.7-3-1 Quarterly listing

Sec. 1. (a) A quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone shall be established, maintained, and published as provided in this section.

(b) The telephone number of a consumer shall be placed on the listing if the consumer requests to be added to the listing according to a procedure approved by the division.

(c) The listing shall be updated upon receipt of a request from a consumer.

(d) A telephone solicitor may obtain a copy of the listing upon request of the telephone solicitor as provided in this section.

(e) The division shall establish a fee to be paid by a telephone solicitor for obtaining a copy of the listing. The fee established under this subsection may not exceed the amount necessary to cover the cost of providing the listing to telephone solicitors.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-2 Agents

Sec. 2. (a) The division may contract with an agent to perform the division's duties under section 1 of this chapter if both of the following conditions are satisfied:

(1) The agent has demonstrated experience in maintaining a national no sales solicitation calls listing.

(2) The contract requires the vendor to provide the listing in:

(A) a printed hard copy format; and

(B) any other format offered;

at a cost that does not exceed the production cost of the format offered.

(b) If the division enters into a contract under this section, the division must retain the ultimate authority for the following:

(1) Approval of the procedures for establishment, maintenance, and publication of the listing.

(2) Establishing fees required by section 1(e) of this chapter.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-3 Investigation

Sec. 3. The division shall investigate complaints received concerning violations of this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-4 Required notice to Indiana residents

Sec. 4. The division shall notify Indiana residents of the following:

(1) The rights and duties created by this article, including the right of any of the following consumers to place a telephone number on the listing established and maintained under section 1 of this chapter:

(A) Subscribers of interconnected VOIP service.

(B) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).

(C) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).

(2) The prohibition under 47 U.S.C. 227(b) against a person making any call using an:

(A) automatic telephone dialing system; or

(B) artificial or prerecorded voice;

to any telephone number assigned to a mobile telecommunications service (as defined in IC 6-8.1-15-7), or to another radio common carrier service.

(3) The prohibition under 47 U.S.C. 227(b) against a person initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior consent of the called party, subject to the exceptions set forth in 47 U.S.C. 227(b).

(4) Information concerning the placement of a telephone number on the National Do Not Call Registry operated by the Federal Trade Commission.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.12; P.L.242-2019, SEC.3.

IC 24-4.7-3-5 Reports

Sec. 5. (a) The division shall, after June 30 and before October 1 of each year, report to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4 in an electronic format under IC 5-14-6 on the following:

(1) The total amount of fees deposited in the fund during the most recent state fiscal year.

(2) The expenses incurred by the division in maintaining and promoting the listing during the most recent state fiscal year.

(3)The projected budget required by the division to comply with this article during the current state fiscal year.

(4) Any other expenses incurred by the division in complying with this article during the most recent state fiscal year.

(5) The total number of subscribers on the listing at the end of the most recent state fiscal year.

(6) The number of new subscribers added to the listing during the most recent state fiscal year.

(7) The number of subscribers removed from the listing for any reason during the most recent state fiscal year.

(b) The interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4 shall, before November 1 of each year, issue in an electronic format under IC 5-14-6 a report and recommendations to the legislative council concerning the information received under subsection (a).

As added by P.L.189-2001, SEC.1. Amended by P.L.28-2004, SEC.163; P.L.53-2014, SEC.139.

IC 24-4.7-3-6 Consumer protection division telephone solicitation fund

Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the following purposes:

(1) The administration of:

(A) this article;

(B) IC 24-5-0.5-3(b)(19);

(C) IC 24-5-12;

(D) IC 24-5-14; and

(E) IC 24-5-14.5.

(2) The reimbursement of county prosecutors for expenses incurred in extraditing violators of any statute set forth in subdivision (1).

The fund shall be used exclusively for these purposes.

(b) The division shall administer the fund.

(c) The fund consists of all revenue received:

(1) under this article;

(2) from civil penalties recovered under IC 24-5-0.5-4(h);

(3) from civil penalties recovered after June 30, 2019, under IC 24-5-12-23(b);

(4) from civil penalties recovered after June 30, 2019, under IC 24-5-14-13(b); and

(5) from civil penalties recovered under IC 24-5-14.5-12.

(d) Money in the fund is continuously appropriated to the division for the purposes set forth in subsection (a).

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds two hundred thousand dollars ($200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

As added by P.L.189-2001, SEC.1. Amended by P.L.85-2006, SEC.1; P.L.151-2013, SEC.5; P.L.65-2014, SEC.5; P.L.242-2019, SEC.4.

IC 24-4.7-3-7 Adoption of rules

Sec. 7. The division may adopt rules under IC 4-22-2 to implement this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4 Chapter 4. Telephone Solicitations

24-4.7-4-1 Prohibitions
24-4.7-4-2 Violations; disclosure
24-4.7-4-3 Consumer information containing telephone numbers; exclusion of numbers on listing required; exception
24-4.7-4-4 Contracts and sales
24-4.7-4-5 Transactions
24-4.7-4-6 Compliance with other applicable laws
24-4.7-4-7 Prohibitions; providing telephone numbers for solicitation purposes; transferring live calls; providing assistance or support to violators; inapplicability to communications service providers

IC 24-4.7-4-1 Prohibitions

Sec. 1. A telephone solicitor may not make or cause to be made a telephone sales call to a telephone number if that telephone number appears in the most current quarterly listing published by the division.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-2 Violations; disclosure

Sec. 2. A telephone solicitor who makes a telephone sales call to a telephone number shall immediately disclose the following information upon making contact with the consumer:

(1) The solicitor's true first and last name.

(2) The name of the business or person on whose behalf the telephone solicitor is soliciting.

(3) The person with which the solicitor is employed or has contracted.

As added by P.L.189-2001, SEC.1. Amended by P.L.153-2017, SEC.4.

IC 24-4.7-4-3 Consumer information containing telephone numbers; exclusion of numbers on listing required; exception

Sec. 3. (a) This section does not apply to a person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies.

(b) A telephone solicitor, a supplier, a caller, or any other person who obtains consumer information that includes telephone numbers shall exclude the telephone numbers that appear on the division's most current listing.

As added by P.L.189-2001, SEC.1. Amended by P.L.61-2014, SEC.3.

IC 24-4.7-4-4 Contracts and sales

Sec. 4. (a) This section does not apply to any of the following:

(1) A sale in which:

(A) no prior payment is made to a merchant;

(B) an invoice accompanies the goods or services; and

(C) a consumer is allowed seven (7) days to cancel the services or return the goods without obligation for payment.

(2) A contractual agreement that:

(A) requires payment; and

(B) allows the consumer at least ten (10) days to cancel the contract and receive a full refund of the payment.

(3) A sale regulated by 170 IAC 7-1.1-19.

(4) A newspaper subscription executed through a telephone call.

(b) A contract made under a telephone sales call is not valid and enforceable against a consumer unless the contract complies with this section.

(c) A contract made under a telephone sales call must satisfy all of the following:

(1) The contract must be reduced to writing and signed by the consumer.

(2) The contract must contain the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(3) The description of goods or services as stated in the contract must be the same as the description principally used in the telephone solicitation.

(4) The contract must contain, in bold, conspicuous type immediately preceding the signature the words "you are not obligated to pay any money unless you sign this contract and return it to the seller".

(5) The contract may not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

As added by P.L.189-2001, SEC.1. Amended by P.L.22-2002, SEC.1.

IC 24-4.7-4-5 Transactions

Sec. 5. (a) This section does not apply to any of the following:

(1) A transaction made in accordance with prior negotiations in the course of a visit by a consumer to a merchant that operates a retail business establishment that has a fixed, permanent location where consumer goods are displayed or offered for sale on a continuing basis.

(2) A transaction in which:

(A) a consumer may obtain a full refund for the return of undamaged and unused goods; or

(B) a consumer may, within seven (7) days after receipt of merchandise by a consumer, give a cancellation of services notice to a seller and return the merchandise, and the seller must process the refund within thirty (30) days after receipt of the returned merchandise.

(3) A transaction in which a consumer purchases goods or services under a television, radio, or print advertisement or a sample, brochure, or catalog of a merchant that contains:

(A) the name, address, and business telephone number of the merchant;

(B) a description of the goods or services being sold; and

(C) limitations or restrictions that apply to the offer.

(4) A transaction in which a merchant is a bona fide charitable organization.

(b) A contract made under a telephone sales call in violation of this section is not valid and enforceable against a consumer.

(c) A merchant who engages a telephone solicitor to make or cause to be made a telephone sales call may not:

(1) make or submit a charge to a consumer's credit card account; or

(2) make or cause to be made any electronic transfer of funds;

until the merchant receives from the consumer a copy of the contract, signed by the consumer, that complies with this chapter.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-6 Compliance with other applicable laws

Sec. 6. A telephone solicitor, a supplier, or a caller must also comply with all other applicable laws, including the following, if applicable:

(1) IC 24-5-12.
(2) IC 24-5-14.
(3) IC 24-5-14.5.

As added by P.L.189-2001, SEC.1. Amended by P.L.22-2002, SEC.2; P.L.61-2014, SEC.4.

IC 24-4.7-4-7 Prohibitions; providing telephone numbers for solicitation purposes; transferring live calls; providing assistance or support to violators; inapplicability to communications service providers

Sec. 7. (a) This section does not apply to the sale, transfer, or provision of a consumer's telephone number to a person that is exempt from this article under IC 24-4.7-1-1.

(b) A telephone solicitor, a supplier, or a caller may not sell, transfer, or make available to another person for solicitation purposes a consumer's telephone number if the telephone solicitor, supplier, or caller knows that the telephone number appears in the most current quarterly listing published by the division.

(c) A telephone solicitor, a supplier, or a caller may not transfer a live call to one (1) or more other persons if the call has been placed to a consumer in violation of this article or IC 24-5-14.

(d) A telephone solicitor, a supplier, or a caller may not provide substantial assistance or support to another person if the telephone solicitor, supplier, or caller knows or consciously avoids knowing that the person has engaged in any act or practice that violates this article or IC 24-5-14.

(e) A person may not provide substantial assistance or support to a telephone solicitor, a supplier, or a caller if the person knows or consciously avoids knowing that the telephone solicitor, supplier, or caller has engaged in any act or practice that violates this article or IC 24-5-14. A communications service provider (as defined in IC 8-1-32.5-4) does not violate this subsection, and this subsection does not:

(1) provide a right of action against a communications service provider; or
(2) subject a communications service provider to any criminal penalties or civil remedies set forth in this article or in IC 24-5-14;

if the communications service provider's equipment or services are used only to transport, handle, or retransmit a communication that violates this article or IC 24-5-14.
As added by P.L.61-2014, SEC.5. Amended by P.L.227-2015, SEC.1.

IC 24-4.7-5 Chapter 5. Civil Remedies

24-4.7-5-0.1 Application of certain amendments to chapter
24-4.7-5-1 Deceptive acts; state contractors
24-4.7-5-2 Remedies
24-4.7-5-3 Voidable contracts
24-4.7-5-4 Statute of limitations
24-4.7-5-5 Jurisdiction
24-4.7-5-6 Representation of state

IC 24-4.7-5-0.1 Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.222-2005 apply only to a contract entered into or renewed after July 1, 2005.
As added by P.L.220-2011, SEC.393.

IC 24-4.7-5-1 Deceptive acts; state contractors

Sec. 1. (a) A telephone solicitor, a supplier, or a caller who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter.

(b) A person who directly or indirectly controls a person that fails to comply with any provision of IC 24-4.7-4 commits a separate deceptive act that is actionable by the attorney general under this chapter.

(c) If:

(1) the person described in subsection (b) is an executive with respect to a telephone solicitor, a supplier, or a caller; and

(2) the telephone solicitor, supplier, or caller fails to comply with any provision of IC 24-4.7-4;

the person described in subsection (b) commits a separate deceptive act that is actionable by the attorney general under this chapter.

(d) A contractor who contracts or seeks to contract with the state:

(1) may be prohibited from contracting with the state; or

(2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, a person that directly or indirectly controls the contractor, any agent acting on behalf of the contractor or an affiliate or principal of the contractor, or a person that directly or indirectly controls the agent does not comply or has not complied with the terms of this article, even if this article is preempted by federal law.

As added by P.L.189-2001, SEC.1. Amended by P.L.165-2005, SEC.5 and P.L.222-2005, SEC.32; P.L.61-2014, SEC.6; P.L.153-2017, SEC.5; P.L.242-2019, SEC.5.

IC 24-4.7-5-2 Remedies

Sec. 2. (a) In an action under this chapter, the attorney general may obtain any or all of the following:

(1) An injunction to enjoin future violations of IC 24-4.7-4.

(2) A civil penalty of not more than the following:

(A) Ten thousand dollars ($10,000) for the first violation of IC 24-4.7-4.

(B) Twenty-five thousand ($25,000) dollars for each violation after the first violation.

For purposes of this subdivision, each telephone call in violation of IC 24-4.7-4-1 is considered a separate violation.

(3) All money the defendant obtained through violation of IC 24-4.7-4.

(4) The attorney general's reasonable costs in:

(A) the investigation of the deceptive act; and

(B) maintaining the action.

(5) Reasonable attorney's fees.

(6) Costs of the action.

(b) Except as provided in subsection (c), the attorney general may obtain the remedies described in subsection (a) separately against or from each person that violates IC 24-4.7-4-1, including a person that directly or indirectly controls a person that violates IC 24-4.7-4-1.

(c) This subsection applies only to a person that directly or indirectly controls a person that violates IC 24-4.7-4-1. A person to which this subsection applies is not liable for a civil penalty under subsection (a)(2) if the person establishes by a preponderance of the evidence that the person:

(1) did not know; and

(2) in the exercise of reasonable care could not have known;

of the violation.

As added by P.L.189-2001, SEC.1. Amended by P.L.153-2017, SEC.6.

IC 24-4.7-5-3 Voidable contracts

Sec. 3. In an action under this chapter, the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to an aggrieved consumer.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-4 Statute of limitations

Sec. 4. An action brought under this chapter may not be brought more than two (2) years after the occurrence of the deceptive act.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-5 Jurisdiction

Sec. 5. An action under this chapter may be brought in the circuit or superior court of Marion County.
As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-6 Representation of state

Sec. 6. The attorney general may employ counsel to represent the state in an action under this chapter.
As added by P.L.189-2001, SEC.1.

IC 24-5-14 Chapter 14. Regulation of Automatic Dialing Machines

24-5-14-1 Automatic dialing-announcing device
24-5-14-2 "Caller"
24-5-14-3 Commercial telephone solicitation
24-5-14-4 Subscriber
24-5-14-5 Restrictions on use of automatic dialing-announcing device
24-5-14-6 Disconnect requirement
24-5-14-7 Live operator preceding message; disclosure
24-5-14-8 Time restrictions
24-5-14-9 Failure to comply; petition; injunction
24-5-14-10 Misdemeanor
24-5-14-12 Prohibited use of automatic dialing-announcing device
24-5-14-13 Deceptive act of caller; remedies and penalties

IC 24-5-14-1 Automatic dialing-announcing device

Sec. 1. As used in this chapter, "automatic dialing-announcing device" means a device that:

(1) selects and dials telephone numbers; and

(2) working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-2 "Caller"

Sec. 2. As used in this chapter, "caller" means an individual, corporation, limited liability company, partnership, unincorporated association, or the entity that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line. The term includes an individual who is an officer of a corporation or a member of a limited liability company that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line, if the individual:

(1) has a high degree of involvement in, or actual notice of, the contact or attempt to contact that does not comply with section 5 of this chapter; and

(2) fails to take reasonable steps to prevent the unlawful contact or attempted contact.

As added by P.L.151-1988, SEC.1. Amended by P.L.8-1993, SEC.364; P.L.153-2017, SEC.7.

IC 24-5-14-3 Commercial telephone solicitation

Sec. 3. (a) As used in this chapter, "commercial telephone solicitation" means any unsolicited call to a subscriber when:

(1) the person initiating the call has not had a prior business or personal relationship with the subscriber; and

(2) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) The term does not include calls initiated by the following:

(1) The state or a political subdivision (as defined by IC 36-1-2-13) for exclusively public purposes.

(2) The United States or any of its subdivisions for exclusively public purposes (involving real property in Indiana).

As added by P.L.151-1988, SEC.1.

IC 24-5-14-4 Subscriber

Sec. 4. As used in this chapter, "subscriber" means:

(1) a person who has subscribed to telephone service from a telephone company; or

(2) other persons living or residing with the subscribing person.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-5 Restrictions on use of automatic dialing-announcing device

Sec. 5. (a) This section does not apply to any of the following messages:

(1) Messages from school districts to students, parents, or employees.

(2) Messages to subscribers with whom the caller has a current business or personal relationship.

(3) Messages advising employees of work schedules.

(b) A caller may not use or connect to a telephone line an automatic dialing-announcing device unless:

(1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or
(2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

As added by P.L.151-1988, SEC.1. Amended by P.L.169-2015, SEC.165; P.L.216-2015, SEC.40.

IC 24-5-14-6 Disconnect requirement

Sec. 6. A caller may not use an automatic dialing-announcing device unless the device is designed and operated to disconnect within ten (10) seconds after termination of the telephone call by the subscriber.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-7 Live operator preceding message; disclosure

Sec. 7. When a message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose the following:

(1) The name of the business, firm, organization, association, partnership, or entity for which the message is being made.
(2) The purpose of the message.
(3) The identity or kinds of goods or services the message is promoting.
(4) If applicable, the fact that the message intends to solicit payment or the commitment of funds.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-8 Time restrictions

Sec. 8. (a) This section does not apply to messages described in section 5(a) of this chapter.

(b) A caller may not use an automatic dialing-announcing device for commercial telephone solicitation so that a subscriber receives a telephone call before 9 a.m. or after 8 p.m.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-9 Failure to comply; petition; injunction

Sec. 9. Upon petition by any person that a caller has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the caller from further violations.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-10 Misdemeanor

Sec. 10. A caller who fails to comply with this chapter commits a Class C misdemeanor.

As added by P.L.151-1988, SEC.1.

IC 24-5-14-12 Prohibited use of automatic dialing-announcing device

Sec. 12. A caller may not use an automatic dialing-announcing device to make a telephone call to the following:

(1) A hospital (as defined in IC 16-18-2-179(b)).
(2) An ambulatory outpatient surgical center (as defined in IC 16-18-2-14).
(3) A health facility (as defined in IC 16-18-2-167).
(4) An emergency medical services facility (as defined in IC 16-18-2-111).
(5) A business providing emergency ambulance services (as defined in IC 16-18-2-107).
(6) A state institution (as defined in IC 12-7-2-184).
(7) A private mental health institution licensed under IC 12-25.
(8) A residential facility (as defined in IC 12-7-2-165).
(9) A law enforcement agency (as defined in IC 10-13-3-10).
(10) A fire department (as defined in IC 36-8-17-2).

As added by P.L.117-1992, SEC.1. Amended by P.L.2-1993, SEC.134; P.L.2-2003, SEC.63.

IC 24-5-14-13 Deceptive act of caller; remedies and penalties

Sec. 13. (a) A caller who violates this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and that is subject to:

(1) the remedies and penalties under IC 24-5-0.5-4(c), IC 24-5-0.5-4(d), and IC 24-5-0.5-4(f); and

(2) a civil penalty of not more than the following:

(A) Ten thousand dollars ($10,000) for the first violation.

(B) Twenty-five thousand dollars ($25,000) for each violation after the first violation.

(b) A civil penalty recovered by the attorney general under subsection (a)(2) for a violation of this chapter shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.

As added by P.L.117-1992, SEC.2. Amended by P.L.242-2019, SEC.11.

IC 24-5-12 Chapter 12. Telephone Solicitations

24-5-12-0.1 Application of certain amendments to chapter
24-5-12-0.2 Applicability
24-5-12-1 "Division" defined
24-5-12-2 "Item" defined
24-5-12-3 "Owner" defined
24-5-12-4 "Person" defined
24-5-12-5 "Principal" defined
24-5-12-6 "Prospect" defined
24-5-12-7 "Salesperson" defined
24-5-12-8 "Seller" defined
24-5-12-9 "Solicitation" defined
24-5-12-10 Registration of sellers
24-5-12-11 Registration statement; filing; fee
24-5-12-12 Registration statement; required information
24-5-12-13 Registration statement; gifts, prizes, or other items represented or implied; additional information required
24-5-12-14 Annual update of registration; additional fee
24-5-12-15 Disclosures required; update of changes; filing
24-5-12-16 Record of filings; assigned registration number
24-5-12-17 Reference to compliance with chapter restricted
24-5-12-18 Failure to comply with sections 10 through 16; cancellation of contract
24-5-12-19 Deceptive statements; failure to deliver item ordered; voiding of contract; requisites
24-5-12-20 Damages; costs and attorney's fees
24-5-12-21 Violations; injunction
24-5-12-22 Failure to comply; penalty
24-5-12-23 Deceptive acts; injunction; civil penalties; venue
24-5-12-24 Construction of chapter
24-5-12-25 Blocking telephone number or identity of solicitor; violations

IC 24-5-12-0.1 Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 2 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

(2) The amendments made to section 23 of this chapter by P.L.222-2005 apply only to a contract entered into or renewed after July 1, 2005.

As added by P.L.220-2011, SEC.396.

IC 24-5-12-0.2 Applicability

Sec. 0.2. This chapter does not apply to a seller solely because the seller makes or will make, during any calendar year, a solicitation in a telephone call that is exempt from the application of IC 24-4.7 under IC 24-4.7-1-1.

As added by P.L.105-2020, SEC.1.

IC 24-5-12-1 "Division" defined

Sec. 1. As used in this chapter, "division" means the consumer protection division of the office of the attorney general.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-2 "Item" defined

Sec. 2. As used in this chapter, "item" means tangible or intangible property or services. The term includes but is not limited to coupon books for use with a business other than the seller's business and certificates of a type that the purchaser must redeem to obtain the item described in the certificate.

As added by P.L.253-1987, SEC.1. Amended by P.L.24-1989, SEC.23.

IC 24-5-12-3 "Owner" defined

Sec. 3. As used in this chapter, "owner" means a person who owns or controls ten percent (10%) or more of the equity of a seller, or otherwise has a claim to ten percent (10%) or more of the net income of a seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-4 "Person" defined

Sec. 4. As used in this chapter, "person" means an individual, an incorporated or unincorporated organization or association, or any other legal entity.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-5 "Principal" defined

Sec. 5. As used in this chapter, "principal" means an owner, an officer, a general partner, a trustee, or other individual with supervisory functions usually exercised by those persons.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-6 "Prospect" defined

Sec. 6. As used in this chapter, "prospect" means a person solicited by a seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-7 "Salesperson" defined

Sec. 7. As used in this chapter, "salesperson" means a person employed, authorized, or appointed by a seller, including an independent contractor, who solicits a sale on behalf of the seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-8 "Seller" defined

Sec. 8. As used in this chapter, "seller" means a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation if in the solicitation any one (1) of the following occurs:

(1) There is a false representation or implication that a prospect will receive a gift, prize, or the value of a gift or prize.

(2) There is an offer of a vacation at a reduced price if the vacation involves the prospect attending a presentation in which the prospect is solicited to purchase a time share or camping club membership and if the seller does not own the time share or camping club, does not represent the owner of the time share or camping club, or misrepresents the value of the vacation. Terms in this subdivision have the meaning set forth in IC 32-32.

(3) There is a representation or implication that a prospect who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices that are below those that are usually charged or will be charged for the items if the price advantage for the prospect does not exist.

(4) There is a false representation or implication as to the identity of the person making the solicitation.

(5) There is a representation or implication that the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) There is an offer to sell the prospect precious metals, precious stones, coal, or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, if the seller does not own the items, does not represent the owner, or misrepresents the value of the items.

As added by P.L.253-1987, SEC.1. Amended by P.L.2-2002, SEC.77; P.L.242-2019, SEC.8; P.L.105-2020, SEC.2.

IC 24-5-12-9 "Solicitation" defined

Sec. 9. As used in this chapter, "solicitation" means a telephone conversation or attempted telephone conversation that occurs in a telephone call made by a seller to another person in which the seller offers, or attempts to offer, an item to the other person in exchange for money or other consideration.

As added by P.L.253-1987, SEC.1. Amended by P.L.105-2020, SEC.3.

IC 24-5-12-10 Registration of sellers

Sec. 10. (a) Except as provided in section 0.2 of this chapter, before doing business in Indiana, a seller must register with the division.

(b) A seller does business in Indiana if the seller makes or will make a solicitation during any calendar year:

(1) from a location in Indiana; or

(2) to a prospect who is located in Indiana.

As added by P.L.253-1987, SEC.1. Amended by P.L.242-2019, SEC.9; P.L.105-2020, SEC.4.

IC 24-5-12-11 Registration statement; filing; fee

Sec. 11. To register under this chapter a person must file with the division a registration statement disclosing the information required by this chapter and pay a fifty dollar ($50) registration fee.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-12 Registration statement; required information

Sec. 12. The registration statement must contain the following information:

(1) The name of the seller.

(2) Whether the seller is doing business as a corporation, a partnership, an individual, or another legal entity.

(3) The names under which the seller has done, is doing, or intends to do business.

(4) The name of any parent or affiliated business that will engage in business transactions with the prospect or will take responsibility for statements made by the seller or a salesperson of the seller.

(5) The names, dates of birth, business addresses, business telephone numbers, and titles of all the seller's officers, directors, trustees, general partners, general managers, principals, executives, and any other person charged with responsibility for the seller's business activities relating to telephone sales.

(6) The length of time the seller has:

(A) solicited telephone sales; and

(B) solicited telephone sales for the items to be offered to the prospect.

(7) A statement of the amount to be paid by the prospect, or when not known, the approximate amount or range of amount to be paid.

(8) A complete and detailed description of any service that the seller proposes to undertake to perform for a prospect who purchases the item offered.

(9) An unexecuted copy of all contracts that may be offered in the transaction being solicited.

(10) The complete street address or addresses of all locations, designating the principal location from which the seller will be conducting business, and, if the principal location is outside Indiana, a designation of its principal location within Indiana.

(11) A listing of all telephone numbers to be used by the seller and the address of each location using these numbers.

(12) A copy of all sales scripts the seller requires salespersons to use when soliciting a prospect or, if no sales script is required to be used, a statement to that effect.

(13) The name and address of the seller's agent in Indiana, authorized to receive service of process in Indiana.

As added by P.L.253-1987, SEC.1. Amended by P.L.105-2020, SEC.5.

IC 24-5-12-13 Registration statement; gifts, prizes, or other items represented or implied; additional information required

Sec. 13. If the seller represents or implies, or directs a salesperson to represent or imply, to a prospect that a purchaser will receive one (1) or more items (whether the items are designated as gifts, premiums, bonuses, prizes, or otherwise), the registration statement must also contain the following information:

(1) A list of items offered.

(2) The value of each item described to a prospect and the basis for the valuation.

(3) The price paid by the seller to its supplier for each of these items, and the names, business addresses, and business telephone numbers of the supplier of each item.

(4) The manner in which the seller decides which items a prospect is to receive, if a purchaser is to receive fewer than all of the items described by the seller.

(5) The odds a prospect or purchaser has of receiving each described item, if a purchaser is to receive fewer than all of the items described by the seller.

(6) All terms and conditions that a prospect must meet in order to receive the item, if a purchaser is to receive fewer than all of the items described by the seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-14 Annual update of registration; additional fee

Sec. 14. On August 1 of each year, every person registered under this chapter shall file an update to the registration. The registrant shall pay an additional fifty dollars ($50) for filing the annual update.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-15 Disclosures required; update of changes; filing

Sec. 15. In addition to the annual update described in section 14 of this chapter, an update shall be filed whenever changes occur that make the disclosures required under this chapter inaccurate, false, or misleading.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-16 Record of filings; assigned registration number

Sec. 16. The director of the division shall maintain a record of all filings made under this chapter and shall assign a registration number to each of them. The director shall advise the seller, in writing, of the assigned number. All advertisements, pamphlets, brochures, or any other materials used in the solicitation or completion of telephonic sales must include the assigned registration number in the following manner: "C.P.D. Reg. No. T.S. _____.".
As added by P.L.253-1987, SEC.1.

IC 24-5-12-17 Reference to compliance with chapter restricted

Sec. 17. A seller may not make any reference to its compliance with this chapter other than by setting forth the registration number as provided in section 16 of this chapter.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-18 Failure to comply with sections 10 through 16; cancellation of contract

Sec. 18. If a seller fails to comply with sections 10 through 16 of this chapter, a purchaser may cancel any contract with the seller by notifying the seller in any manner.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-19 Deceptive statements; failure to deliver item ordered; voiding of contract; requisites

Sec. 19. If a seller:

(1) uses any untrue, misleading, or deceptive statement in a solicitation or sale; or

(2) fails to deliver an item ordered within four (4) weeks;

the purchaser may void the contract within ninety (90) days from the date of the contract by giving written notice to the seller and is entitled to a return from the seller of all consideration paid to the seller. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser.
As added by P.L.253-1987, SEC.1. Amended by P.L.5-1988, SEC.131.

IC 24-5-12-20 Damages; costs and attorney's fees

Sec. 20. In addition to any other remedies or penalties under this chapter, a person who is damaged by a seller's failure to comply with this chapter or by a seller's breach of contract may bring an action for recovery of the person's actual damages, including court costs and attorney's fees.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-21 Violations; injunction

Sec. 21. Upon petition by any person that a seller has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the seller from further violations.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-22 Failure to comply; penalty

Sec. 22. A seller who fails to comply with sections 10 through 16 of this chapter commits a Level 6 felony.
As added by P.L.253-1987, SEC.1. Amended by P.L.158-2013, SEC.275.

IC 24-5-12-23 Deceptive acts; injunction; civil penalties; venue

Sec. 23. (a) A seller who fails to comply with any provision of:

(1) this chapter; or

(2) IC 24-4.7;

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5. An action by the attorney general for a violation of this chapter or IC 24-4.7 may be brought in the circuit or superior court of Marion County.

(b) A civil penalty recovered by the attorney general under:

(1) IC 24-5-0.5-4(g); or
(2) IC 24-5-0.5-8;
for a violation of this chapter shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.
As added by P.L.253-1987, SEC.1. Amended by P.L.24-1989, SEC.24; P.L.165-2005, SEC.8 and P.L.222-2005, SEC.34; P.L.242-2019, SEC.10.

IC 24-5-12-24 Construction of chapter
Sec. 24. This chapter may not be construed to relieve a person from complying with any other statute or ordinance.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-25 Blocking telephone number or identity of solicitor; violations
Sec. 25. (a) If a person makes a solicitation to a prospect that is outside of the course of dealing (as described in IC 26-1-1-205), whether personally, through salespersons, or through the use of an automated dialing and answering device, the person may not knowingly or intentionally block or attempt to block the display of the person's:
(1) telephone number; or
(2) identity;
by a caller identification service (as defined in IC 24-5-14.5-3) when attempting to initiate a telephone conversation for the purpose of making a solicitation to a prospect.
(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.
As added by P.L.48-1998, SEC.7. Amended by P.L.151-2013, SEC.7.

IC 23-0.5-5 Chapter 5. Foreign Entities

23-0.5-5-1 Law governing; registration
23-0.5-5-2 Foreign entity registration in Indiana; failure to register
23-0.5-5-3 Foreign entity registration statement
23-0.5-5-4 Amended foreign registration statement
23-0.5-5-5 Activities not constituting doing business in Indiana
23-0.5-5-6 Foreign entity name
23-0.5-5-7 Withdrawal of registration
23-0.5-5-8 Conversion to domestic filing entity
23-0.5-5-9 Dissolution; statement of withdrawal; service of process
23-0.5-5-10 Merger; notice
23-0.5-5-11 Revocation of registration; grounds; notice
23-0.5-5-12 Application for reinstatement; effective date
23-0.5-5-13 Denial of reinstatement; notice; appeal
23-0.5-5-14 Attorney general action to enjoin

IC 23-0.5-5-1 Law governing; registration

Sec. 1. (a) The law of the jurisdiction of formation of an entity governs:

(1) the internal affairs of the entity;

(2) the liability that a person has as an interest holder or governing person for a debt, obligation, or other liability of the entity; and

(3) the liability of a series of a limited liability company.

(b) A foreign entity is not precluded from registering to do business in Indiana because of any difference between the law of the entity's jurisdiction of formation and the law of Indiana.

(c) Registration of a foreign entity to do business in Indiana does not authorize the foreign entity to engage in any activities and affairs or exercise any power that a domestic entity of the same type may not engage in or exercise in Indiana.

As added by P.L.118-2017, SEC.5.

IC 23-0.5-5-2 Foreign entity registration in Indiana; failure to register

Sec. 2. (a) A foreign entity may not do business in Indiana until it registers with the secretary of state under this article. However, this requirement does not apply to foreign regulated entities.

(b) A foreign entity doing business in Indiana may not maintain an action or proceeding in this state unless it is registered to do business in Indiana.

(c) The failure of a foreign entity to register to do business in Indiana does not impair the validity of a contract or act of the foreign entity or preclude it from defending an action or proceeding in Indiana.

(d) A limitation on the liability of an interest holder or governing person of a foreign entity is not waived solely because the foreign entity does business in Indiana without registering.

(e) Section 1(a) of this chapter applies to a foreign entity even if the foreign entity fails to register under this chapter.

(f) A foreign entity is liable for a civil penalty of not more than ten thousand dollars ($10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.13.

IC 23-0.5-5-3 Foreign entity registration statement

Sec. 3. To register to do business in Indiana, a foreign entity must deliver a foreign registration statement to the secretary of state for filing. The statement must be signed by the entity and state or be accompanied by:

(1) the name of the foreign entity and, if the name does not comply with IC 23-0.5-3-1, an alternate name adopted under section 6(a) of this chapter;

(2) the type of entity;

(3) the entity's jurisdiction of formation;

(4) the date of formation in the jurisdiction described in subdivision (3);

(5) the street address of the entity's principal office;

(6) the information required by IC 23-0.5-4-3(b);

(7) if the entity is a nonprofit corporation, whether the corporation has members;

(8) if the entity is a nonprofit corporation, whether the corporation, if the corporation had been incorporated in Indiana, would be a public benefit, mutual benefit, or religious corporation;

(9) if the entity is a limited liability company and if the organizational documents of the entity provide for a manager or managers, a statement to that effect; and
(10) a certificate of existence or similar document authenticated by the secretary of state or other official having custody of business records of the entity in the state or country where the entity was organized.
As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.14.

IC 23-0.5-5-4 Amended foreign registration statement
Sec. 4. A registered foreign entity shall deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:
(1) the name of the entity;
(2) the entity's jurisdiction of formation;
(3) an address required by section 3(5) of this chapter; or
(4) the information required by IC 23-0.5-4-3(b).
As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.15.

IC 23-0.5-5-5 Activities not constituting doing business in Indiana
Sec. 5. (a) Activities of a foreign entity which do not constitute doing business in Indiana under this article include:
(1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
(2) carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governing persons;
(3) maintaining accounts in financial institutions;
(4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;
(5) selling through independent contractors;
(6) soliciting or obtaining orders by any means if the orders require acceptance outside Indiana before they become contracts;
(7) making loans or otherwise creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;
(9) conducting an isolated transaction completed within thirty (30) days that is not conducted in the course of repeated transactions of a like nature;
(10) owning, without more, property;
(11) doing business in interstate commerce; and
(12) if the entity is a nonprofit corporation, soliciting funds if otherwise authorized by Indiana law.
(b) A person does not do business in Indiana solely by being an interest holder or governing person of a foreign entity that does business in Indiana.
(c) This section does not apply in determining the contacts or activities that may subject a foreign entity to service of process, taxation, or regulation under law of Indiana other than this article.
(d) The list of activities in subsection (a) is not exhaustive and recodifies, not repeals, those activities previously listed in IC 23-1-49-1, IC 23-16-10-2, IC 23-17-26-1, and IC 23-18-11-2.
As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.16.

IC 23-0.5-5-6 Foreign entity name
Sec. 6. (a) A foreign entity whose name does not comply with IC 23-0.5-3-1 for an entity of its type may not register to do business in Indiana until it adopts, for the purpose of doing business in Indiana, an alternate name that complies with IC 23-0.5-3-1. A registered foreign entity that registers under an alternate name under this subsection need not comply with IC 23-0.5-3-4. After registering to do business in Indiana with an alternate name, a registered foreign entity shall do business in Indiana under:
(1) the alternate name; or
(2) a name the entity is authorized to use under IC 23-0.5-3-4.
(b) If a registered foreign entity changes its name to a name that does not comply with IC 23-0.5-3-1, it may not do business in Indiana until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with IC 23-0.5-3-1.
As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.17.

IC 23-0.5-5-7 Withdrawal of registration

Sec. 7. (a) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the entity and state:

(1) the name of the entity and its jurisdiction of formation;

(2) that the entity is not doing business in Indiana and that it withdraws its registration to do business in Indiana;

(3) that the entity revokes the authority of its registered agent to accept service of process on its behalf in Indiana;

(4) an address to which service of process may be made under subsection (c); and

(5) a commitment to notify the secretary of state in the future of any change in its street address.

(b) A statement of withdrawal may include an electronic mail address to which service of process may be made under subsection (c). If an electronic mail address is included in the statement of withdrawal, the statement of withdrawal must include a commitment to notify the secretary of state in the future of any change in the electronic mail address.

(c) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in Indiana may be made under IC 23-0.5-4-10.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.18; P.L.177-2019, SEC.7; P.L.156-2020, SEC.86.

IC 23-0.5-5-8 Conversion to domestic filing entity

Sec. 8. A registered foreign entity that converts to any type of domestic filing entity is deemed to have canceled its registration on the effective date of the conversion.

As added by P.L.118-2017, SEC.5.

IC 23-0.5-5-9 Dissolution; statement of withdrawal; service of process

Sec. 9. (a) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not a filing entity shall deliver a statement of withdrawal to the secretary of state for filing. The statement must be signed by the dissolved or converted entity and state:

(1) in the case of a foreign entity that has completed winding up:

(A) its name and jurisdiction of formation; and

(B) that the foreign entity surrenders its registration to do business in Indiana; and

(2) in the case of a foreign entity that has converted to a domestic or foreign entity that is not a filing entity:

(A) the name of the converting foreign entity and its jurisdiction of formation;

(B) the type of entity other than a filing entity to which it has converted and its jurisdiction of formation;

(C) that it surrenders its registration to do business in Indiana and revokes the authority of its registered agent to accept service on its behalf; and

(D) a street address to which service of process may be made under subsection (c).

(b) A statement of withdrawal under this section may include an electronic mail address to which service of process may be made under subsection (c).

(c) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign entity was registered to do business in Indiana may be made under IC 23-0.5-4-10.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.19; P.L.177-2019, SEC.8.

IC 23-0.5-5-10 Merger; notice

Sec. 10. (a) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the secretary of state to do business in Indiana, the foreign entity shall deliver to the secretary of state for filing a notice of merger or conversion. The notice must be signed by the surviving or converted entity and state:

(1) the name of the registered foreign entity before the merger or conversion;

(2) the type of entity it was before the merger or conversion;

(3) the name of the applicant entity and, if the name does not comply with IC 23-0.5-3-1, an alternate name adopted under section 6(a) of this chapter;

(4) the type of entity of the applicant entity and its jurisdiction of formation; and

(5) the following information regarding the entity, if different than the information for the foreign entity before the merger or conversion:
(A) The street address of the principal office of the entity.
(B) The information required under IC 23-0.5-4-3(b).

(b) When a notice of merger or conversion takes effect, the registration of the registered foreign entity to do business in Indiana is transferred without interruption to the entity into which it has merged or to which it has been converted.

As added by P.L.118-2017, SEC.5.

IC 23-0.5-5-11 Revocation of registration; grounds; notice

Sec. 11. (a) The secretary of state may revoke the registration of a registered foreign entity if:
(1) the entity does not pay, not later than sixty (60) days after the due date, any fee, tax, interest, or penalty required to be paid to the secretary of state under this article or law of Indiana other than this article;
(2) the entity does not deliver to the secretary of state for filing, not later than sixty (60) days after the due date, a biennial report;
(3) the entity does not have a registered agent as required by IC 23-0.5-4-1;
(4) the entity does not deliver to the secretary of state for filing a statement of change under IC 23-0.5-4-6 not later than thirty (30) days after a change occurs in the name or address of the entity's registered agent; or
(5) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of entity filings in the state or country under whose law the entity is registered stating that it has been dissolved or disappeared as the result of a merger.

(b) If the secretary of state determines that one (1) or more grounds exists under subsection (a) for revocation of a registration, the secretary of state shall provide to the foreign entity written notice of the determination, unless the secretary of state:
(1) receives a receipt showing failure of a previous attempt of service of process upon the entity's registered agent at the address of the registered office; and
(2) determines that the secretary of state's office has no record of the entity's principal office address.

(c) The notice under subsection (b) must state:
(1) the effective date of the revocation, which must be at least sixty (60) days after the date the secretary of state delivers the copy; and
(2) the grounds for revocation under subsection (a).

(d) The authority of a registered foreign entity to do business in Indiana ceases on the effective date of the notice of revocation under subsection (b), unless before that date the entity cures each ground for revocation stated in the notice. If the entity cures each ground, the secretary of state shall file a record so stating.

(e) The secretary of state's revocation of a registration appoints the secretary of state the entity's agent for service of process in any proceeding based on a cause of action that arose during the time the entity was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the entity. Upon receipt of process, the secretary of state shall mail a copy of the process to the entity at its principal office shown in its most recent biennial report or in any subsequent communication received from the entity stating the current mailing address of its principal office, unless the secretary of state:
(1) receives a receipt showing failure of a previous attempt of service of process upon the entity's registered agent at the address of the registered office; and
(2) determines that the secretary of state's office has no record of the entity's principal office address.

(f) Revocation of an entity's registration does not terminate the authority of the registered agent of the entity.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.20.

IC 23-0.5-5-12 Application for reinstatement; effective date

Sec. 12. (a) An entity that has had its registration revoked under section 11(b) of this chapter may, not later than five (5) years after the effective date of the revocation, apply to the secretary of state for reinstatement. The application for reinstatement must include all the following:
(1) The name of the entity.
(2) The effective date of the revocation of the entity's registration.
(3) A statement that the ground or grounds for revocation of the entity's registration either did not exist or have been eliminated.
(4) A statement that the entity's name satisfies the requirements of IC 23-0.5-3-1 or section 6 of this chapter.
(5) A certificate from the department of state revenue stating that all taxes owed by the entity have been paid.

(b) If the secretary of state determines that the application contains the information required under subsection (a) and that the information is correct, the secretary of state shall:

(1) cancel the certificate of revocation of the entity's registration;

(2) prepare a certificate of reinstatement that specifies:

(A) that the revocation of the entity's registration has been canceled; and

(B) the date that the reinstatement is effective; and

(3) file the original certificate of reinstatement.

(c) When the certificate of reinstatement is effective, the certificate of reinstatement relates back to and is considered to take effect as of the effective date of the revocation of the entity's registration and the entity resumes carrying on its business as if the revocation of the entity's registration had never occurred.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.21.

IC 23-0.5-5-13 Denial of reinstatement; notice; appeal

Sec. 13. (a) If the secretary of state denies an entity's application for reinstatement under section 12(a) and 12(b) of this chapter, the secretary of state shall serve the entity with a written notice that explains the reason or reasons for denial.

(b) The entity may appeal the denial of reinstatement to the circuit or superior court of the county in which its registered agent is located not later than thirty (30) days after service of the denial of reinstatement is perfected. The entity appeals by petitioning the court to set aside the revocation and attaching to the petition copies of all the following:

(1) The secretary of state's notice of revocation provided under section 11(b) of this chapter.

(2) The entity's application for reinstatement described in section 12(a) of this chapter.

(3) The secretary of state's notice of denial described in subsection (a).

(c) The court may order the secretary of state to reinstate the registration or may take any other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.22.

IC 23-0.5-5-14 Attorney general action to enjoin

Sec. 14. The attorney general may maintain an action to enjoin a foreign entity from doing business in Indiana in violation of this article.

As added by P.L.118-2017, SEC.5. Amended by P.L.52-2018, SEC.23.

HOME SOLICITATION SALES
Act 227 of 1971

AN ACT to prescribe the rights and duties of parties to home solicitation sales; to regulate certain telephone solicitation; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

The People of the State of Michigan enact:

445.111 Definitions.

Sec. 1. As used in this act:

(a) "Home solicitation sale" means a sale of goods or services of more than $25.00 in which the seller or a person acting for the seller engages in a personal, telephonic, or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include any of the following:

(*i*) A sale made pursuant to a preexisting revolving charge account.

(*ii*) A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(*iii*) A sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance.

(*iv*) A sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale.

(*v*) A sale made pursuant to a printed advertisement in a publication of general circulation.

(*vi*) A sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services.

(*vii*) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

(b) "Fixed location" means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

(c) "Business day" means Monday through Friday and does not include Saturday, Sunday, or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(d) "Federally insured depository institution" means a state or national bank, state or federal savings bank, state or federal savings and loan association, or state or federal credit union that holds deposits insured by an agency of the United States.

(e) As used in only the definition of home solicitation sales, "goods or services" does not include any of the following:

(*i*) A loan, deposit account, or trust account lawfully offered or provided by a federally insured depository institution or a subsidiary or affiliate of a federally insured depository institution.

(*ii*) An extension of credit that is subject to any of the following acts:

(A) The mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(B) The secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.

(C) The regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.

(D) The consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(E) 1984 PA 379, MCL 493.101 to 493.114.

(F) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(*iii*) A sale of a security or interest in a security that is subject to the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(f) "Written solicitation" means a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless the postcard or other written notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service.

(g) "ADAD" or "automatic dialing and announcing device" means any device or system of devices that is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers.

(h) "Commission" means the public service commission.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(i) "Do-not-call list" means a do-not-call list of consumers and their residential telephone numbers maintained by the commission, by a vendor designated by the commission, or by an agency of the federal government, under section 1a.

(j) "Existing customer" means an individual who has purchased goods or services from a person, who is the recipient of a voice communication from that person, and who either paid for the goods or services within the 12 months preceding the voice communication or has not paid for the goods and services at the time of the voice communication because of a prior agreement between the person and the individual.

(k) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(*l*) "Residential telephone subscriber" or "subscriber" means a person residing in this state who has residential telephone service.

(m) "Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call. Telephone solicitation does not include any of the following:

(*i*) A voice communication to a residential telephone subscriber with that subscriber's express invitation or permission prior to the voice communication.

(*ii*) A voice communication to an existing customer of the person on whose behalf the voice communication is made, unless the existing customer is a consumer who has requested that he or she not receive calls from or on behalf of that person under section 1c(1)(g).

(*iii*) A voice communication to a residential telephone subscriber in which the caller requests a face-to-face meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication.

(n) "Telephone solicitor" means any person doing business in this state who makes or causes to be made a telephone solicitation from within or outside of this state, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.

(o) "Vendor" means a person designated by the commission to maintain a do-not-call list under section 1a. The term may include a governmental entity.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 1980, Act 108, Imd. Eff. May 10, 1980;—Am. 1998, Act 126, Imd. Eff. June 10, 1998;—Am. 1999, Act 18, Imd. Eff. Apr. 28, 1999;—Am. 2002, Act 612, Eff. Mar. 31, 2003;—Am. 2009, Act 93, Imd. Eff. Sept. 24, 2009.

445.111a Telephonic solicitation using recorded message prohibited; establishment of state do-not-call list.

Sec. 1a. (1) A home solicitation sale shall not be made by telephonic solicitation using in whole or in part a recorded message. A person shall not make a telephone solicitation that consists in whole or in part of a recorded message.

(2) Within 120 days after the effective date of the amendatory act that added this subsection, the commission shall do 1 of the following:

(a) Establish a state do-not-call list. All of the following apply if the commission establishes a do-not-call list under this subdivision:

(*i*) The commission shall publish the do-not-call list quarterly for use by telephone solicitors.

(*ii*) The do-not-call list fund is created in the state treasury. Money received from fees under subparagraph (*iii*) shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to the commission to cover the costs of administering the do-not-call list, but may not be appropriated to compensate or reimburse a vendor designated under subdivision (b) to maintain a do-not-call list under that subdivision.

(*iii*) The commission shall establish and collect 1 or both of the following fees to cover the costs to the commission for administering the do-not-call list:

(A) Fees charged to telephone solicitors for access to the do-not-call list.

(B) Fees charged to residential telephone subscribers for inclusion on the do-not-call list. The commission shall not charge a residential telephone subscriber a fee of more than $5.00 for a 3-year period.

(*iv*) The commission shall maintain the do-not-call list for at least 1 year. After 1 year, the commission may at any time elect to designate a vendor to maintain a do-not-call list under subdivision (b), in which case subdivision (b) shall apply.

(b) Designate a vendor to maintain a do-not-call list. All of the following apply to a vendor designated to

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

maintain a do-not-call list under this subdivision:

(*i*) The commission shall establish a procedure or follow existing procedure for the submission of bids by vendors to maintain a do-not-call list under this subdivision.

(*ii*) The commission shall establish a procedure or follow existing procedure for the selection of the vendor to maintain the do-not-call list. In selecting the vendor, the commission shall consider at least all of the following factors:

(A) The cost of obtaining and the accessibility and frequency of publication of the do-not-call list to telephone solicitors.

(B) The cost and ease of registration on the do-not-call list to consumers who are seeking inclusion on the do-not-call list.

(*iii*) The commission may review its designation and make a different designation under this subdivision if the commission determines that another person would be better than the designated vendor in meeting the selection factors established under subparagraph (*ii*) or if the designated vendor engages in activities the commission considers contrary to the public interest.

(*iv*) If the commission does not establish a state do-not-call list under subdivision (a), the commission shall comply with the designation requirements of this subdivision for at least 1 year. After 1 year, the commission may at any time elect to establish and maintain a do-not-call list under subdivision (a), in which case subdivision (a) shall apply.

(*v*) Unless the vendor is a governmental entity, a vendor designated by the commission under this subdivision is not a governmental agency and is not an agent of the commission in maintaining a do-not-call list.

(*vi*) The commission and a vendor designated under this subdivision shall execute a written contract. The contract shall include the vendor's agreement to the requirements of this section and any additional requirements established by the commission.

(*vii*) The commission shall not use state funds to compensate or reimburse a vendor designated under this subdivision. The vendor may receive compensation or reimbursement for maintaining a designated do-not-call list under this subdivision only from 1 or both of the following:

(A) Fees charged by the vendor to telephone solicitors for access to the do-not-call list.

(B) Fees charged by the vendor to residential telephone subscribers for inclusion on the do-not-call list. A designated vendor shall not charge a residential telephone subscriber a fee of more than $5.00 for a 3-year period.

(*viii*) The designee do-not-call list fund is created in the state treasury. If the vendor is a department or agency of this state, money received from fees under subparagraph (*vii*) by that vendor shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to that vendor to cover the costs of administering the do-not-call list.

(3) In determining whether to establish a state do-not-call list under subsection (2)(a) or designate a vendor under subsection (2)(b), and in designating a vendor under subsection (2)(b), the commission shall consider comments submitted to the commission from consumers, telephone solicitors, or any other person.

(4) Beginning 90 days after the commission establishes a do-not-call list under subsection (2)(a) or designates a vendor to maintain a do-not-call list under subsection (2)(b), a telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of that do-not-call list.

(5) Notwithstanding any other provision of this section, if an agency of the federal government establishes a federal do-not-call list, within 120 days after the establishment of the federal do-not-call list, the commission shall designate the federal list as the state do-not-call list. The federal list shall remain the state do-not-call list as long as the federal list is maintained. A telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of the federal list.

(6) A telephone solicitor shall not use a do-not-call list for any purpose other than meeting the requirements of subsection (4) or (5).

(7) The commission or a vendor shall not sell or transfer the do-not-call list to any person for any purpose unrelated to this section.

History: Add. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

445.111b Information to be provided by person making telephone solicitation; interference with caller ID function prohibited.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Sec. 1b. (1) At the beginning of a telephone solicitation, a person making a telephone solicitation to a residential telephone subscriber shall state his or her name and the full name of the organization or other person on whose behalf the call was initiated and provide a telephone number of the organization or other person on request. A natural person must be available to answer the telephone number at any time when telephone solicitations are being made.

(2) The person answering the telephone number required under subsection (1) shall provide a residential telephone subscriber calling the telephone number with information describing the organization or other person on whose behalf the telephone solicitation was made to the residential telephone subscriber and describing the telephone solicitation.

(3) A telephone solicitor shall not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone of the residential telephone subscriber.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003.

445.111c Unfair or deceptive act or practice; violation; penalty; damages.

Sec. 1c. (1) It is an unfair or deceptive act or practice and a violation of this act for a telephone solicitor to do any of the following:

(a) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, all of the following information:

(*i*) Total purchase price to the consumer of the goods or services to be received.

(*ii*) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of an offer to sell goods or services.

(*iii*) Any material term or condition of the seller's refund, cancellation, or exchange policy, including a consumer's right to cancel a home solicitation sale under section 2 and, if applicable, that the seller does not have a refund, cancellation, or exchange policy.

(*iv*) Any material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the "no purchase required" method of entering the contest.

(*v*) Any material aspect of an investment opportunity the seller is offering, including, but not limited to, risk, liquidity, earnings potential, market value, and profitability.

(*vi*) The quantity and any material aspect of the quality or basic characteristics of any goods or services offered.

(*vii*) The right to cancel a sale under this act, if any.

(b) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered.

(c) Make a false or misleading statement with the purpose of inducing a consumer to pay for goods or services.

(d) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization. As used in this subdivision, "verifiable authorization" means a written authorization or confirmation, an oral authorization recorded by the telephone solicitor, or confirmation through an independent third party.

(e) Offer to a consumer in this state a prize promotion in which a purchase or payment is necessary to obtain the prize.

(f) Fail to comply with the requirements of section 1a or 1b.

(g) Make a telephone solicitation to a consumer in this state who has requested that he or she not receive calls from the organization or other person on whose behalf the telephone solicitation is made.

(h) While making a telephone solicitation, misrepresent in a message left for a consumer on his or her answering machine or voice mail that the consumer has a current business matter or transaction or a current business or customer relationship with the telephone solicitor or another person and request that the consumer call the telephone solicitor or another person to discuss that matter, transaction, or relationship.

(2) Except as provided in this subsection, beginning 210 days after the effective date of the amendatory act that added this section, a person who knowingly or intentionally violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both. This subsection does not prohibit a person from being charged with, convicted of, or punished for any other crime including any other violation of law arising out of the same transaction as the violation of this section. This subsection does not apply if the violation of this section is a failure to comply with the requirements of section 1a(1), (4), or (5) or section 1b.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(3) A person who suffers loss as a result of violation of this section may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorney fees. This subsection does not prevent the consumer from asserting his or her rights under this act if the telephone solicitation results in a home solicitation sale, or asserting any other rights or claims the consumer may have under applicable state or federal law.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003;—Am. 2006, Act 133, Imd. Eff. May 12, 2006.

445.111d Do-not-call list; notice of description and enrollment; "telecommunication provider" defined.

Sec. 1d. (1) Beginning 210 days after the effective date of the amendatory act that added this section, if a telephone directory includes residential telephone numbers, a person that publishes a new telephone directory shall include in the telephone directory a notice describing the do-not-call list and how to enroll on the do-not-call list.

(2) Beginning 210 days after the effective date of the amendatory act that added this section, each telecommunication provider that provides residential telephone service shall include a notice describing the do-not-call list and how to enroll on the do-not-call list with 1 of that telecommunication provider's bills for telecommunication services to a residential telephone subscriber each year. If the federal communication commission or any other federal agency establishes a federal "do not call" list, the notice shall also describe that list and how to enroll on that list. As used in this subsection, "telecommunication provider" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003.

445.111e Applicability of MCL 445.111a, 445.111b, 445.111c, and 445.111d.

Sec. 1e. Sections 1a, 1b, 1c, and 1d do not apply to a person subject to any of the following:

(a) The charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(b) The public safety solicitation act, 1992 PA 298, MCL 14.301 to 14.327.

(c) Section 527 of the internal revenue code of 1986.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003.

445.112 Right of buyer to cancel home solicitation sale; time; notice of cancellation; restriction on right to cancel; sale subject to debtor's right to rescind.

Sec. 2. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, a buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with this act. The seller in a home solicitation sale shall not acquire payment by having an independent courier service or other third party pick up the buyer's payment at the buyer's residence until after the buyer's right-to-revoke period prescribed by this act has expired.

(2) Cancellation occurs when the buyer mails or delivers the notice of cancellation provided for in section 3(2) or any other written notice, or sends a telegram, to the seller at the address stated in the notice of cancellation.

(3) A notice of cancellation or other written notice, if mailed to the seller, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) A written notice or telegram given by the buyer other than the notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) A buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and all of the following conditions are met:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation.

(b) The buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days.

(c) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(6) If a home solicitation sale is also subject to the debtor's right to rescind certain transactions, the buyer may proceed either under those provisions or under this section.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 2000, Act 15, Imd. Eff. Mar. 8, 2000.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

445.113 Written agreement or offer to purchase; contents; form; cancellation; exceptions; conditions.

Sec. 3. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall present to the buyer and obtain the buyer's signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs.

The agreement or offer to purchase shall contain a statement substantially as follows in immediate proximity to the space reserved in the agreement or offer to purchase for the signature of the buyer:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right. Additionally, the seller is prohibited from having an independent courier service or other third party pick up your payment at your residence before the end of the 3-business-day period in which you can cancel the transaction."

(2) The seller shall attach to the copy or cause to be printed on the reverse side of the written agreement or offer to purchase retained by the buyer a notice of cancellation in duplicate that shall appear as follows:

"notice of cancellation

(enter date of transaction)

(date)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to (name of seller), at (address of seller's place of business) not later than midnight on

_____

(date)

I hereby cancel this transaction.

_____

(date)

_____

(buyer's signature) "

(3) The notices required by this section shall be in not less than 10-point bold type and shall be 2 points larger than the text of the contract. A written agreement or offer to purchase and the notice of cancellation attached to the agreement or offer shall be written in the same language as that used in any oral presentation that was given to facilitate sale of the goods or services. The seller shall enter on the blanks in the notice of cancellation the date of transaction, which is the date the buyer signs the written agreement, and the date for mailing the notice of cancellation. An error in entering this information shall not diminish the buyer's rights under this act.

(4) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his or her intention to cancel.

(5) This section does not apply to a home solicitation sale where the seller engaged in a telephone solicitation of the sale if sections 505 to 507 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2505 to 484.2507, apply to the solicitation or sale.

(6) This section does not apply to a home solicitation sale of natural gas or electricity if the seller is any of the following:

(a) An electric utility or gas utility that is regulated by the commission and complies with any orders or tariffs issued by the commission concerning home solicitations by alternative electric suppliers or alternative gas suppliers in making the solicitation.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(b) An alternative gas supplier or alternative electric supplier licensed by the commission that complies with any applicable orders or tariffs issued by the commission concerning home solicitations in making the solicitation.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 2000, Act 15, Imd. Eff. Mar. 8, 2000;—Am. 2002, Act 612, Eff. Mar. 31, 2003;—Am. 2006, Act 138, Imd. Eff. May 12, 2006.

445.114 Tender of payments or goods to buyer; failure to tender goods; effect of noncompliance.

Sec. 4. (1) Except as provided in this section, within 10 days after a home solicitation sale has been canceled or an offer to purchase revoked the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972.

445.115 Demand by seller for return of goods; care and availability of goods; effect of failure to demand return of goods; compensation for services performed.

Sec. 5. (1) Except as provided by section 4(3), if a home solicitation sale has been canceled or an offer to purchase revoked, a seller may demand the return of goods delivered within 20 days after the cancellation or revocation. The buyer shall take good care of the goods and shall make the goods available for return to the seller at the buyer's residence. If the seller fails to demand return of the goods as prescribed in this subsection, the goods shall become the property of the buyer without obligation.

(2) If the seller has performed any services pursuant to a home solicitation sale before its cancellation, the seller is not entitled to compensation.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978.

445.116 Refunds or penalties as set off or defense.

Sec. 6. In connection with a home solicitation sale, refunds or penalties to which the debtor is entitled pursuant to this act may be set off against the debtor's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this act.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

445.117 Action for collection of home solicitation sale contract.

Sec. 7. No person may bring any action in any court of this state for the collection of any home solicitation sale contract without proving that such person was at all times in compliance with this act.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

MICHIGAN CONSUMER PROTECTION ACT
Act 331 of 1976

AN ACT to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties.

History: 1976, Act 331, Eff. Apr. 1, 1977.

The People of the State of Michigan enact:

445.901 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan consumer protection act".

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.902 Definitions.

Sec. 2. (1) As used in this act:

(a) Subject to subsection (2), "business opportunity" means the sale or lease of any products, equipment, supplies, or services for the purpose of enabling the purchaser to start a business, and in which the seller represents 1 or more of the following:

(*i*) That the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, or currency operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller.

(*ii*) That the seller may, in the ordinary course of business, purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using whole or in part the supplies, services, or chattels sold to the purchaser.

(*iii*) The seller guarantees that the purchaser will derive income from the business opportunity that exceeds the price paid for the business opportunity; or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity. As used in this subparagraph, "guarantee" means a written or oral representation that would cause a reasonable person in the purchaser's position to believe that income is assured.

(*iv*) That the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity that exceeds the price paid for the business opportunity. This subparagraph does not apply to the sale of a marketing program made in conjunction with the licensing of a federally registered trademark or a federally registered service mark, or to the sale of a business opportunity for which the purchaser pays less than $500.00 in total for the business opportunity from any time before the date of sale to any time within 6 months after the date of sale.

(b) "Documentary material" includes the original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(c) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(d) "Person" means an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity.

(e) "Recording group" means a vocal or instrumental group that meets both of the following:

(*i*) At least 1 of the members of the group has previously released a commercial sound recording under the group's name.

(*ii*) At least 1 of the members of the group has a legal right to use the group's name, by virtue of use or operation under the group's name without abandoning the name of or affiliation with the group.

(f) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

(g) "Trade or commerce" means the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity. "Trade or commerce" does not include the purchase or sale of a franchise, as defined in section 2 of the franchise investment law, 1974 PA 269, MCL 445.1502, but does include a pyramid promotional scheme as defined in section 2 of the pyramid promotional scheme act, MCL 445.2582.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(2) As used in this act, "business opportunity" does not include a sale of a franchise as defined in section 2 of the franchise investment law, 1974 PA 269, MCL 445.1502, or the sale of an ongoing business if the owner of the business sells and intends to sell only that single business opportunity.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1984, Act 91, Imd. Eff. Apr. 20, 1984;—Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006;—Am. 2018, Act 189, Eff. Sept. 11, 2018.

445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules; applicability of subsection (1)(hh).

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(b) Using deceptive representations or deceptive designations of geographic origin in connection with goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(d) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

(j) Representing that a part, replacement, or repair service is needed when it is not.

(k) Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not.

(*l*) Misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger.

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(r) Representing that a consumer will receive goods or services "free" or "without charge", or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

(w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(dd) Subject to subdivision (ee), representations by the manufacturer of a product or package that the product or package is 1 or more of the following:

(*i*) Except as provided in subparagraph (*ii*), recycled, recyclable, degradable, or is of a certain recycled content, in violation of guides for the use of environmental marketing claims, 16 CFR part 260.

(*ii*) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, representations by a manufacturer that the container holding device is degradable contrary to the definition provided in that act.

(ee) Representing that a product or package is degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

(*i*) Is written or printed in a bold type that is not smaller than 10-point.

(*ii*) Fully describes the prize, including its cash value, won by the consumer.

(*iii*) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.

(*iv*) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

(hh) Except as provided in subsection (3), requiring a consumer to disclose his or her Social Security number as a condition to selling or leasing goods or providing a service to the consumer, unless any of the following apply:

(*i*) The selling, leasing, providing, terms of payment, or transaction includes an application for or an extension of credit to the consumer.

(*ii*) The disclosure is required or authorized by applicable state or federal statute, rule, or regulation.

(*iii*) The disclosure is requested by a person to obtain a consumer report for a permissible purpose described in section 604 of the fair credit reporting act, 15 USC 1681b.

(*iv*) The disclosure is requested by a landlord, lessor, or property manager to obtain a background check of the individual in conjunction with the rent or leasing of real property.

(*v*) The disclosure is requested from an individual to effect, administer or enforce a specific telephonic or other electronic consumer transaction that is not made in person but is requested or authorized by the individual if it is to be used solely to confirm the identity of the individual through a fraud prevention service database. The consumer good or service shall still be provided to the consumer upon verification of his or her

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

identity if he or she refuses to provide his or her Social Security number but provides other information or documentation that can be used by the person to verify his or her identity. The person may inform the consumer that verification through other means than use of the Social Security number may cause a delay in providing the service or good to the consumer.

(ii) If a credit card or debit card is used for payment in a consumer transaction, issuing or delivering a receipt to the consumer that displays any part of the expiration date of the card or more than the last 4 digits of the consumer's account number. This subdivision does not apply if the only receipt issued in a consumer transaction is a credit card or debit card receipt on which the account number or expiration date is handwritten, mechanically imprinted, or photocopied. This subdivision applies to any consumer transaction that occurs on or after March 1, 2005, except that if a credit or debit card receipt is printed in a consumer transaction by an electronic device, this subdivision applies to any consumer transaction that occurs using that device only after 1 of the following dates, as applicable:

(*i*) If the electronic device is placed in service after March 1, 2005, July 1, 2005 or the date the device is placed in service, whichever is later.

(*ii*) If the electronic device is in service on or before March 1, 2005, July 1, 2006.

(jj) Violating section 11 of the identity theft protection act, 2004 PA 452, MCL 445.71.

(kk) Advertising or conducting a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This subdivision does not apply if any of the following are met:

(*i*) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.

(*ii*) At least 1 member of the performing group was a member of the recording group and has a legal right to use the recording group's name, by virtue of use or operation under the recording group's name without having abandoned the name or affiliation with the recording group.

(*iii*) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(*iv*) The advertising does not relate to a live musical performance or production taking place in this state.

(*v*) The performance or production is expressly authorized by the recording group.

(*ll*) Violating section 3e, 3f, 3g, 3h, 3i, or 3k.

(2) The attorney general may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall not be promulgated to implement subsection (1)(dd) or (ee).

(3) Subsection (1)(hh) does not apply to either of the following:

(a) Providing a service related to the administration of health-related or dental-related benefits or services to patients, including provider contracting or credentialing. This subdivision is intended to limit the application of subsection (1)(hh) and is not intended to imply that this act would otherwise apply to health-related or dental-related benefits.

(b) An employer providing benefits or services to an employee.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1994, Act 46, Imd. Eff. Mar. 23, 1994;—Am. 1994, Act 276, Imd. Eff. July 11, 1994;—Am. 1996, Act 74, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 226, Imd. Eff. May 30, 1996;—Am. 2000, Act 14, Imd. Eff. Mar. 8, 2000;—Am. 2002, Act 613, Imd. Eff. Dec. 20, 2002;—2004, Act 455, Eff. Mar. 1, 2005;—2004, Act 459, Eff. Mar. 1, 2005;—2004, Act 461, Eff. Mar. 1, 2005;—2004, Act 462, Eff. Mar. 1, 2005;—Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006;—Am. 2008, Act 211, Eff. Nov. 1, 2008;—Am. 2008, Act 310, Imd. Eff. Dec. 18, 2008;—Am. 2010, Act 195, Imd. Eff. Oct. 5, 2010;—Am. 2018, Act 211, Eff. Sept. 24, 2018.

Administrative rules: R 14.51 et seq. of the Michigan Administrative Code.

445.903a Home appliance; contents of service contract.

Sec. 3a. (1) As used in this section, "company" means a person engaged in trade or commerce who provides a service contract to consumers.

(2) A service contract for the repair or maintenance of a home appliance shall contain the following provision:

If performance of the service contract is interrupted because of a strike or work stoppage at the company's place of business, the effective period of the service contract shall be extended for the period of the strike or work stoppage.

History: Add. 1979, Act 150, Imd. Eff. Nov. 19, 1979.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

445.903b Failure of seller to file notice unlawful; form and contents of notice; notice of change in information; reference to MCL 445.903 includes reference to this section.

Sec. 3b. (1) In addition to the unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce defined in section 3, it is unlawful for the seller of a business opportunity to fail to file a notice with the attorney general on or before the first sale of a business opportunity in this state if the purchaser pays more than $500.00 in total for the business opportunity from anytime before the date of sale to anytime within 6 months after the date of sale. The form of the notice shall be prescribed by the attorney general. The attorney general shall not require the seller to file more than the following information:

(a) The name of the seller.

(b) The name under which the seller intends to do business.

(c) The seller's principal business address.

(d) If the seller is not domiciled in Michigan, a consent to service of process.

(2) The seller shall immediately notify the attorney general of a change in the information contained in the notice.

(3) A reference to section 3 in this act shall be considered to include a reference to this section.

History: Add. 1984, Act 91, Imd. Eff. Apr. 20, 1984.

445.903c Advertising or listing in telephone directory; misrepresenting name or location prohibited; violation; penalty; applicability to telephone service provider, publisher, or distributor.

Sec. 3c. (1) A person shall not advertise or cause to be listed in a telephone directory an assumed or fictitious business name that intentionally misrepresents where the business is actually located or operating or falsely states that the business is located or operating in the same area covered by the telephone directory.

(2) A person who violates this section is subject to a civil fine of not less than $100.00 or more than $10,000.00.

(3) This section does not apply to a telephone service provider or to the publisher or distributor of a telephone service directory, unless the conduct proscribed in this section is on behalf of that telephone service provider or that publisher or distributor.

History: Add. 1998, Act 229, Eff. Mar. 23, 1999.

445.903d Advertising or listing in telephone directory; misrepresenting name or location prohibited; violation; penalty; applicability to telephone service provider, publisher, or distributor.

Sec. 3d. (1) A person shall not advertise or cause to be listed in a telephone directory a business address or local telephone number that intentionally misrepresents where the business is actually located or operating or that falsely states that the business is located or operating in the same area covered by the telephone directory.

(2) A person who violates this section is subject to a civil fine of not less than $100.00 or more than $10,000.00.

(3) This section does not apply to a telephone service provider or to the publisher or distributor of a telephone directory, unless the conduct proscribed in this section is on behalf of that telephone service provider or that publisher or distributor.

(4) This section does not apply to a telephone service provider that lists, in a telephone directory, a local telephone number that forwards calls to provide customer service.

History: Add. 1998, Act 230, Eff. Mar. 23, 1999.

445.903e Issuance of gift certificate; prohibited conduct; definitions.

Sec. 3e. (1) A person engaged in the retail sale of goods or services shall not do any of the following in connection with a gift certificate issued for retail goods or services:

(a) Refuse to accept a gift certificate in payment for goods or services used or bought for use primarily for personal, family, or household purposes, including, but not limited to, goods or services advertised on sale or pursuant to a liquidation or closeout. This subdivision does not apply if the gift certificate has an expiration date that does not violate section 3g and it is presented for redemption after that expiration date.

(b) In any manner restrict the holder of a gift certificate from using the gift certificate in a manner consistent with the stated terms and conditions of the gift certificate.

(c) Alter any term or condition of a gift certificate after it is issued.

(d) If a gift certificate has any terms or conditions, fail to disclose the terms and conditions to a prospective purchaser by doing any of the following:

(*i*) If a gift certificate is offered for sale by mail, conspicuously stating in the offer that "terms and

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

conditions are applied to gift certificates and gift cards".

(*ii*) If a gift certificate is offered for sale by electronic, computer, or telephonic means, including a statement that "terms and conditions are applied to gift certificates or gift cards" before the prospective purchaser is able to purchase the gift certificate or conspicuously including that statement in the electronic message offering the gift certificate for purchase.

(e) If a gift certificate has any terms or conditions, fail to disclose the terms and conditions by conspicuously printing the terms and conditions on 1 of the following:

(*i*) The gift certificate.

(*ii*) The envelope or packaging containing the gift certificate, if a toll-free telephone number to access the terms and conditions is printed on the gift certificate.

(*iii*) A separate printed document delivered to the purchaser, if a toll-free telephone number to access the terms and conditions is printed on the gift certificate.

(f) If a gift certificate has any terms or conditions, fail to include in any advertisement or promotion for the gift certificate a notice that states that "terms and conditions are applied to gift certificates and gift cards".

(g) If the value of the gift certificate or remaining balance of the gift certificate is less than the purchase price of goods or services, refuse to accept the gift certificate and apply it to the purchase price of the goods or services.

(2) As used in this section and sections 3f and 3g:

(a) "Person engaged in the retail sale of goods" includes a person conducting a closeout, liquidation, or going-out-of-business sale on behalf of the person engaged in the retail sale of goods or that person's creditors.

(b) Subject to subsection (3), "gift certificate" means a written promise or a gift card or other electronic payment device that meets all of the following:

(*i*) Is usable at a single retailer, is usable at an affiliated group of retailers that share the same name, mark, or logo, or is usable at multiple, unaffiliated retailers or service providers.

(*ii*) Is issued in a specified amount.

(*iii*) May or may not be increased in value or reloaded.

(*iv*) Is purchased or loaded on a prepaid basis for the future purchase or delivery of goods or services.

(*v*) Is honored upon presentation.

(c) "Terms and conditions" includes, but is not limited to, an expiration date or a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

(d) "Use" of a gift certificate includes making purchases with or adding value to the gift certificate.

(3) As used in this section, "gift certificate" does not include any of the following:

(a) A general use, prepaid card or other electronic payment device that is issued or sponsored by a financial institution in a predetermined amount and is usable at multiple, unaffiliated retailers or at automated teller machines. As used in this subdivision, "financial institution" means a bank, bank and trust, national bank, savings bank, savings and loan association, credit union, or money transmitter organized under the laws of this state, another state, the District of Columbia, the United States, or any territory or protectorate of the United States and their respective subsidiaries, affiliates, or holding companies.

(b) An electronic payment device linked to a deposit account.

(c) A prepaid telephone calling card regulated under state or federal law or a card used in connection with prepaid wireless telephone service.

(d) An electronic payment device used to access an account from which an individual may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis under the internal revenue code, 26 USC 1 to 1789, or regulations adopted pursuant to the internal revenue code.

(e) A prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price, if any expiration date of the prepaid discount card or program is clearly and conspicuously disclosed.

(f) A payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered.

(g) A gift certificate sold below face value or at a volume discount to an employee, to a nonprofit or charitable organization, or to an educational institution for fund-raising purposes.

(h) A gift certificate distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program, if the consumer or employee is not required to give consideration for the gift certificate.

(i) An electronic credit voucher issued by a person that holds a certificate issued under chapter 411 of title 49 of the United States Code, 49 USC 41101 to 41113, or a permit issued under chapter 413 of title 49 of the United States Code, 49 USC 41301 to 41313.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

History: Add. 2008, Act 210, Eff. Nov. 1, 2008.

445.903f Possession or use of gift certificate; charging service fee prohibited; "service fee" defined.

Sec. 3f. A person engaged in the retail sale of goods or services shall not charge an inactivity fee or other service fee to a consumer for the possession or use of a gift certificate. As used in this section, "service fee" does not include any fee charged to and paid by a consumer in connection with the sale of a gift certificate, unless the fee is deducted or debited from the face value of the gift certificate.

History: Add. 2008, Act 211, Eff. Nov. 1, 2008.

445.903g Expiration of gift certificate; limitation.

Sec. 3g. A person engaged in the retail sale of goods or services shall not sell a gift certificate to a consumer that expires within a period of less than 5 years.

History: Add. 2008, Act 209, Eff. Nov. 1, 2008.

445.903h Vehicle rental transaction; inclusion of vehicle license cost recovery fee; amount; fee in excess of costs; duties of car rental company; definitions.

Sec. 3h. (1) At the time a car rental company provides a consumer with a price quote or estimate for a vehicle rental transaction, and in the rental agreement, the car rental company shall do either of the following:

(a) Provide an estimated total price for the vehicle rental transaction.

(b) Disclose the existence of any vehicle license cost recovery fee and any other separately stated mandatory fee.

(2) If a vehicle license cost recovery fee is included as a separately stated mandatory fee in a vehicle rental transaction, the amount of the fee shall be based on the car rental company's good-faith estimate of the car rental company's average per vehicle portion of the total annual costs to license, title, and register its vehicles. If the total amount of the vehicle license recovery fees collected by a car rental company under this section in any calendar year exceeds the car rental company's actual costs to license, title, and register rental vehicles for that calendar year, the car rental company shall do both of the following:

(a) Retain the excess amount.

(b) Adjust the vehicle license recovery fees for the following calendar year by reducing the fees by an amount equal to the excess amount collected in the preceding calendar year.

(3) As used in this section:

(a) "Car rental company" means a person whose primary business is renting vehicles to consumers under rental agreements for periods of 90 days or less.

(b) "Estimated total price" means an estimated total for a vehicle rental transaction based on the duration of the vehicle rental transaction, the rental rate, and any mandatory fees.

(c) "Mandatory fee" means a fee, charge, or surcharge that a car rental company includes in every vehicle rental transaction. A fee, charge, or surcharge associated with optional products and services available for purchase by a consumer at the time of rental is not a mandatory fee.

(d) "Vehicle" means a motor vehicle as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

(e) "Vehicle license cost recovery fee" means a charge that may be included in a vehicle rental transaction originating in this state to recover costs incurred by a car rental company to license, title, and register rental vehicles.

History: Add. 2008, Act 310, Imd. Eff. Dec. 18, 2008.

445.903i Ownership or operation of clothing donation box; definitions.

Sec. 3i. (1) A person that engages in the conduct of trade or commerce and owns or operates a clothing donation box shall not do any of the following:

(a) Mark the clothing donation box or any sign near the clothing donation box in any manner that represents or implies that any personal property placed in the clothing donation box, or the proceeds of that personal property, is donated to 1 or more charitable organizations if it is not.

(b) Display the name, logo, trademark, or service mark of a charitable organization on a clothing donation box or on any sign near the clothing donation box if that charitable organization does not receive any of the personal property placed in the clothing donation box or any of the proceeds of that personal property.

(c) If charitable organizations receive some but not all of the personal property placed in the clothing donation box or the proceeds of that personal property, fail to clearly and conspicuously disclose on the donation box or on a sign at the donation box the name, address, and telephone number of each charitable organization that receives any of that property or those proceeds; what percentage of that property or those

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

proceeds that charitable organization receives; the name, address, and telephone number of any other person that receives any of that property or those proceeds; and what percentage of that property or those proceeds that person receives.

(2) As used in this section:

(a) "Charitable organization" means a benevolent, educational, philanthropic, humane, patriotic, religious, or eleemosynary organization of persons organized for any lawful purpose or purposes not involving pecuniary profit or gain for its officers or members.

(b) "Clothing donation box" means a receptacle in which a person may place clothing or other items of personal property he or she intends to donate to a charitable organization and that has a capacity of at least 27 cubic feet.

History: Add. 2010, Act 195, Imd. Eff. Oct. 5, 2010.

445.903k Providing, offering, or receiving compensation for providing or offering of veterans' benefit service; advertising or promoting event regarding veterans' pension or medical benefits; limitations; definitions.

Sec. 3k. (1) A person that is engaged in trade or commerce shall not engage in any of the following acts or practices:

(a) Providing, or offering to provide, a veterans' benefit service to a veteran or family member of a veteran unless the person is any of the following:

(*i*) Employed by a government agency that is authorized to provide the veterans' benefit service.

(*ii*) An accredited individual under the federal laws and regulations applicable to the administration of veterans' benefits.

(*iii*) An employee or authorized representative of a recognized veterans' services organization.

(b) Receiving compensation for providing or offering to provide a veterans' benefit service to a veteran or family member of a veteran unless all of the following are met:

(*i*) The person is permitted to receive compensation for providing or offering to provide that service to the veteran or family member under the federal laws and regulations applicable to the administration of veterans' benefits.

(*ii*) Before providing or offering to provide that service, the person discloses all of the following to the veteran or family member:

(A) That the person is not affiliated with a government agency or recognized veterans' services organization.

(B) If applicable, that the veterans' benefit service is available free of charge from a government agency or recognized veterans' services organization.

(C) That the veteran may qualify for benefits other than or in addition to the benefits the veteran or family member may obtain if the person is engaged to provide the veterans' benefit service.

(D) That receipt of a certain level of veterans' benefits is not guaranteed if the person is engaged to provide the veterans' benefit service.

(c) Using financial or other personal information gathered for insurance or other purposes in providing or offering to provide a veterans' benefit service, unless the requirements of this section are met.

(d) Receiving compensation for referring a veteran or a family member of a veteran to an individual who is accredited by the United States Department of Veterans Affairs.

(e) Representing, either directly or by implication, either orally or in writing, that the receipt of a certain level of veterans' benefits is guaranteed.

(2) A person engaged in trade or commerce shall not advertise or promote any event, presentation, seminar, workshop, or other public gathering regarding veterans' pension or medical benefits or entitlements that does not include the following disclosure: "This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the Michigan Department of Military and Veterans Affairs, the Michigan Veterans Affairs Agency, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States or any of their auxiliaries. Products or services that may be discussed at this event are not necessarily endorsed by those organizations. You may qualify for benefits other than or in addition to the benefits discussed at this event.".

(3) All of the following apply to the disclosure required under subsection (2):

(a) The disclosure must be in the same type size and font as the term "veteran" or any variation of that term as used in the event advertisement or promotional materials.

(b) The disclosure must be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements.

(c) The disclosure does not apply if the United States Department of Veterans Affairs, the department of

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

military and veterans affairs, the Michigan veterans affairs agency, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to advertise or promote events, presentations, seminars, workshops, or other public gatherings described in this subsection. The disclosure also does not apply if the event, presentation, seminar, workshop, or gathering is part of an accredited continuing legal education course.

(4) This section does not apply to officers, employees, or volunteers of this state, of any county, city, or other political subdivision of this state, or of a federal agency of the United States, who are acting in their official capacity.

(5) As used in this section:

(a) "Compensation" means money, property, or anything else of value, including, but not limited to, exclusive arrangements or agreements for the provision of services or the purchase of products.

(b) "Recognized veterans' services organization" means a veterans' services organization that is recognized under the federal laws and regulations applicable to the administration of veterans' benefits.

(c) "Veterans' benefit service" means any of the following:

(*i*) The preparation, presentation, or prosecution of a claim affecting an individual who has filed or has expressed an intention to file an application for veteran, dependent, or survivor pension or medical benefits under laws administered by the United States Department of Veterans Affairs or the department of military and veterans affairs pertaining to veterans, dependents, and survivors.

(*ii*) Advice or representation concerning the preparation, presentation, or prosecution of a claim described in subparagraph (*i*).

History: Add. 2018, Act 211, Eff. Sept. 24, 2018.

445.904 Exemptions; burden of proof.

Sec. 4. (1) This act does not apply to either of the following:

(a) A transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.

(b) An act done by the publisher, owner, agent, or employee of a newspaper, periodical, directory, radio or television station, or other communications medium in the publication or dissemination of an advertisement unless the publisher, owner, agent, or employee knows or, under the circumstances, reasonably should know of the false, misleading, or deceptive character of the advertisement or has a direct financial interest in the sale or distribution of the advertised goods, property, or service.

(2) Except for the purposes of an action filed by a person under section 11, this act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by any of the following:

(a) The banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(b) 1939 PA 3, MCL 460.1 to 460.11.

(c) The motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(d) The savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804.

(e) The credit union act, 2003 PA 215, MCL 490.101 to 490.601.

(3) This act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, if either of the following is met:

(a) The method, act, or practice occurred on or after March 28, 2001.

(b) The method, act, or practice occurred before March 28, 2001. However, this subdivision does not apply to or limit a cause of action filed with a court concerning a method, act, or practice if the cause of action was filed in a court of competent jurisdiction on or before June 5, 2014.

(4) The burden of proving an exemption from this act is upon the person claiming the exemption.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1993, Act 10, Imd. Eff. Mar. 31, 1993;—Am. 2000, Act 432, Eff. Mar. 28, 2001;—Am. 2003, Act 216, Imd. Eff. Dec. 2, 2003;—Am. 2014, Act 251, Eff. Mar. 31, 2015.

Compiler's note: Enacting section 1 of Act 251 of 2014 provides:

"Enacting section 1. This amendatory act is retroactive and is effective March 28, 2001."

Enacting section 2 of Act 251 of 2014 provides:

"Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation that this act applies to or creates a cause of action for an unfair, unconscionable, or deceptive method, act, or practice occurring before March 28, 2001 that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, that may result from the decision of the Michigan supreme court in Converse v Auto Club Group Ins Co, No. 142917, October 26, 2012. "

445.905 Action to restrain defendant by temporary or permanent injunction; venue; costs;

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

civil penalty; notice to defendant; notice to attorney general; violation of injunction, order, decree, or judgment; civil fine; retention of jurisdiction, continuation of cause, and petition for recovery of civil fine.

Sec. 5. (1) If the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice that is unlawful pursuant to section 3, and gives notice in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil fine of not more than $25,000.00. For a violation of section 3(1)(kk), each performance or production is a separate violation.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the attorney general shall notify the person of his or her intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his or her usual place of business or, if the person does not have a usual place of business, to his or her last known address, or, if the person is a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(3) A prosecuting attorney or law enforcement officer receiving notice of an alleged violation of this act, or of a violation of an injunction, order, decree, or judgment issued in an action brought pursuant to this section, or of an assurance under this act, shall immediately forward written notice of the violation together with any information he or she may have to the office of the attorney general.

(4) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil fine of not more than $5,000.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil fine as provided by this section.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006.

445.906 Assurance of discontinuance of method, act, or practice.

Sec. 6. (1) When the attorney general has authority to institute an action or proceeding pursuant to section 5, he may accept an assurance of discontinuance of a method, act, or practice which is alleged to be unlawful under section 3 from the person who is alleged to have engaged, be engaging, or be about to engage in the method, act, or practice. The assurance shall not constitute an admission of guilt nor be introduced in any other proceeding. The assurance may include a stipulation for any or all of the following:

(a) The voluntary payment by the person for the costs of investigation.

(b) An amount to be held in escrow pending the outcome of an action.

(c) An amount for restitution to an aggrieved person.

(2) An assurance of discontinuance shall be in writing and may be filed with the circuit court of Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by a court for good cause.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.907 Subpoena; notice; confidentiality; penalty.

Sec. 7. (1) Upon the ex parte application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after an ex parte hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act. A person served with a subpoena may be accompanied by counsel when he appears before the attorney general. The subpoena may compel a person to produce the books, records, papers, documents, or things relating to an alleged violation of this act. During the examination of documentary material under the subpoena, the court may require a person having knowledge of the documentary material or the matters contained therein to attend and give testimony under oath or acknowledgment with respect to the documentary material.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(2) The subpoena shall include the notice of the time, place, and cause of the taking of testimony, the examination, or the attendance and shall allow not less than 10 days before the date of the taking of testimony or examination, unless for good cause shown the court shortens that period of time.

(3) Service of the notice shall be in the manner provided and subject to the provisions that apply to service of process upon a defendant in a civil action commenced in the circuit court.

(4) The notice shall:

(a) State the time and place for the taking of testimony or the examination and the name and address of the person to be examined. If the name is not known, the notice shall give a general description sufficient to identify the person or the particular class or group to which the person belongs.

(b) State a reference to this section and the general subject matter under investigation.

(c) Describe the documentary material to be produced with reasonable specificity so as to indicate fairly the material demanded.

(d) Prescribe a return date within which the documentary material shall be produced.

(e) Identify the members of the attorney general's staff to whom the documentary material shall be made available for inspection and copying.

(5) At any time before the date specified in the notice, upon motion for good cause shown, the court may extend the reporting date or modify or set aside the notice and subpoena.

(6) The documentary material or other information obtained by the attorney general pursuant to an investigation under this section shall be confidential records of the office of the attorney general and shall not be available for public inspection or copying or divulged to any person except as provided in this section. The attorney general may disclose documentary material or other information as follows:

(a) To other law enforcement officials.

(b) In connection with an enforcement action brought pursuant to this act.

(c) Upon order of the court, to a party in a private action brought pursuant to this act.

(7) A person who discloses information designated confidential by this section, except as permitted by subsection (6) or under court order, is guilty of a misdemeanor and may be fined not more than $2,500.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.908 Compliance with notice; conduct requiring assessment of civil penalty; petition for order to enforce compliance; violation of final order; injunction.

Sec. 8. (1) A person upon whom a notice is served pursuant to section 7 shall comply with the terms of the notice unless otherwise provided by the order of the circuit court.

(2) A person who does any of the following shall be assessed a civil penalty of not more than $5,000.00.

(a) Knowingly without good cause fails to appear when served with a notice.

(b) Knowingly avoids, evades, or prevents compliance, in whole or in part, with an investigation, including the removal from any place, concealment, destruction, mutilation, alteration, or falsification of documentary material in the possession, custody, or control of a person subject to the notice.

(c) Knowingly conceals relevant information.

(3) The attorney general may file a petition in the circuit court of the county in which the person is established or conducts business or, if the person is not established in this state, in the circuit court of Ingham county for an order to enforce compliance with a subpoena or this section. A violation of a final order entered pursuant to this section shall be punished as civil contempt.

(4) Upon the petition of the attorney general, the circuit court may enjoin a person from doing business in this state if the person persistently and knowingly evades or prevents compliance with an injunction issued pursuant to this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.909 Publication, public inspection and copying, and distribution of rules, final judgments, assurance of discontinuance, and other matters; request; fee.

Sec. 9. (1) The attorney general shall publish, make available for public inspection and copying during business hours, and distribute by subscription upon the request of any person:

(a) Rules promulgated under section 3 (2).

(b) Copies of final judgments rendered under this act provided to the attorney general by clerks of the courts pursuant to section 12 (1).

(c) Any other matter as required by Act No. 306 of the Public Acts of 1969, as amended.

(d) An assurance of discontinuance entered into pursuant to section 6.

(2) The attorney general may charge a reasonable fee to cover the expense of copying or distribution.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.909a List of consumer complaints.

Sec. 9a. After each calendar quarter, the attorney general shall by electronic mail provide to the better business bureau of western Michigan, inc., better business bureau of Michiana, inc., better business bureau of Detroit and eastern Michigan, inc., and better business bureau serving NW Ohio and SE Michigan, inc., a list of complaints made by consumers to the attorney general during that calendar quarter of violations of section 3(1)(gg) in connection with a telephone solicitation. The list shall contain the name of each person against whom 1 or more complaints were made and the number of complaints against that person.

History: Add. 2002, Act 613, Imd. Eff. Dec. 20, 2002.

445.910 Class action by attorney general for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 10. (1) The attorney general may bring a class action on behalf of persons residing in or injured in this state for the actual damages caused by any of the following:

(a) A method, act, or practice in trade or commerce defined as unlawful under section 3.

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3 (1) by a final judgment of the circuit court or an appellate court of this state which is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

(c) A method, act, or practice in trade or commerce declared by a circuit court of appeals or the supreme court of the United States to be an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 U.S.C. 45(a)(1), in a decision which affirms or directs the affirmance of a cease and desist order issued by the federal trade commission if the order is final within the meaning of section 5(g) of the federal trade commission act, 15 U.S.C. 45(g), and which is officially reported not less than 30 days before the method, act, or practice on which the action is based occurs. For purposes of this subdivision, a method, act, or practice shall not be deemed to be unfair or deceptive within the meaning of section 5(a)(1) of the federal trade commission act solely because the method, act, or practice is made unlawful by another federal statute that refers to or incorporates section 5(a)(1) of the federal trade commission act.

(2) On motion of the attorney general and without bond in an action under this section the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his assets to the detriment of members of the class.

(3) If at any stage of the proceedings the court requires that notice be sent to the class, the attorney general may petition the court to require the defendant to bear the cost of the notice. In determining whether to impose the cost on the defendant or the state, the court shall consider the probability that the attorney general will succeed on the merits of the action.

(4) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery shall be limited to actual damages.

(5) An action shall not be brought by the attorney general under this section more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends on a later date.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.911 Action by person for declaratory judgment, injunction, or actual damages; class action by person for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 11. (1) Whether or not he seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is unlawful under section 3.

(b) Enjoin in accordance with the principles of equity a person who is engaging or is about to engage in a method, act, or practice which is unlawful under section 3.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(2) Except in a class action, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorneys' fees.

(3) A person who suffers loss as a result of a violation of this act may bring a class action on behalf of persons residing or injured in this state for the actual damages caused by any of the following:

(a) A method, act, or practice in trade or commerce defined as unlawful under section 3.

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3(1) by a final judgment of the circuit court or an appellate court of this state which is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

(c) A method, act, or practice in trade or commerce declared by a circuit court of appeals or the supreme court of the United States to be an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 U.S.C. 45(a)(1), in a decision which affirms or directs the affirmance of a cease and desist order issued by the federal trade commission if the order is final within the meaning of section 5(g) of the federal trade commission act, 15 U.S.C. 45(g), and which is officially reported not less than 30 days before the method, act, or practice on which the action is based occurs. For purposes of this subdivision, a method, act, or practice shall not be deemed to be unfair or deceptive within the meaning of section 5(a)(1) of the federal trade commission act solely because the method, act, or practice is made unlawful by another federal statute that refers to or incorporates section 5(a)(1) of the federal trade commission act.

(4) On motion of a person and without bond in an action brought under subsection (3) the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his assets to the detriment of members of the class.

(5) If at any stage of proceedings brought under subsection (3) the court requires that notice be sent to the class, a person may petition the court to require the defendant to bear the cost of notice. In determining whether to impose the cost on the defendant or the plaintiff, the court shall consider the probability that the person will succeed on the merits of his action.

(6) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery shall be limited to actual damages.

(7) An action under this section shall not be brought more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends at a later date. However, when a person commences an action against another person, the defendant may assert, as a defense or counterclaim, any claim under this act arising out of the transaction on which the action is brought.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.912 Mailing copy of complaint, judgment, decree, or order to attorney general; violation of injunction as evidence.

Sec. 12. (1) Upon commencement of an action brought pursuant to section 11 or section 15, the clerk of the court shall mail a copy of the complaint to the attorney general, and upon entry of a judgment or decree in the action, the clerk of the court shall mail a copy of the judgment, decree, or order to the attorney general.

(2) In a subsequent action by the attorney general brought pursuant to section 10 proof of a violation of a permanent injunction issued pursuant to section 5 is conclusive evidence that the defendant engaged in a method, act, or practice which is unlawful under this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.913 Filing fees for commencing action or filing voluntary assurance.

Sec. 13. When the attorney general or prosecuting attorney commences an action or files a voluntary assurance pursuant to this act, filing fees shall not be required to be paid.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.914 Investigation by law enforcement officer.

Sec. 14. A law enforcement officer in the state, if requested by the attorney general or a prosecuting

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

attorney, shall aid and assist in an investigation of an alleged or actual violation of this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.915 Investigation and prosecution by prosecuting attorney.

Sec. 15. A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.916 Other causes of action not affected; inconsistent ordinance or regulation prohibited.

Sec. 16. This act shall not affect any other cause of action which is available. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated pursuant to this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.917 Investigation of financial institutions; subpoena; report.

Sec. 17. (1) The commissioner of the financial institutions bureau may investigate, in the manner set forth in section 7, a state or federally chartered bank, savings and loan association, or credit union, or a regulatory loan licensee which the commissioner believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commissioner requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commissioner in accordance with section 7.

(3) Upon conclusion of an investigation, the commissioner shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.918 Investigation of public utilities; subpoena; report.

Sec. 18. (1) The public service commission may investigate, in the manner set forth in section 7, a public utility subject to its jurisdiction pursuant to Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws, the motor carrier act, Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.20 of the Michigan Compiled Laws, and the Michigan telecommunication act, Act No. 179 of the Public Acts of 1991, being sections 484.2101 to 484.2605 of the Michigan Compiled Laws, which the commission believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commission requires the use of the subpoena power provided in this act, an application shall be made to the attorney general who shall procure a subpoena on behalf of the commission in accordance with section 7.

(3) Upon conclusion of an investigation, the commission shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1993, Act 10, Imd. Eff. Mar. 31, 1993.

445.919 Investigation of certain persons by cemetery commission; subpoena; report.

Sec. 19. (1) The cemetery commission may investigate, in the manner set forth in section 7, a person subject to Act No. 251 of the Public Acts of 1968, as amended, being sections 456.521 to 456.543 of the Michigan Compiled Laws, who the commission believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commission requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commission in accordance with section 7.

(3) Upon conclusion of an investigation, the commission shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.920 Investigation of certain persons by director of department of energy, labor, and economic growth; subpoena; report.

Sec. 20. (1) The director of the department of energy, labor, and economic growth may investigate, in the manner set forth in section 7, a person subject to the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818; the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703; the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098; or the franchise investment law, 1974 PA 269, MCL 445.1501 to 445.1546, who the director believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(2) When the director requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the director in accordance with section 7.

(3) Upon conclusion of an investigation, the director shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 2009, Act 92, Imd. Eff. Sept. 24, 2009.

445.921 Investigation of certain persons by commissioner of insurance; subpoena; report.

Sec. 21. (1) The commissioner of insurance may investigate, in the manner set forth in section 7, a person subject to Act No. 218 of the Public Acts of 1956, as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, who the commissioner believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commissioner requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commissioner in accordance with section 7.

(3) Upon conclusion of an investigation, the commissioner shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.922 Effective date.

Sec. 22. This act shall take effect April 1, 1977.

History: 1976, Act 331, Eff. Apr. 1, 1977.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

407.1070. Definitions. — As used in sections 407.1070 to 407.1085, the following terms shall mean:

(1) **"Advertisement"**, as defined in section 407.010;

(2) **"Caller identification service"**, a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;

(3) **"Consumer"**, a natural person who purchases, may purchase or is solicited for purchase of merchandise or an investment opportunity by a telemarketer through telemarketing;

(4) **"Established business relationship"**, a prior or existing relationship formed by a voluntary two-way communication between a seller or telemarketer and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer regarding products or services offered by such seller or telemarketer, which relationship has not been previously terminated by either party;

(5) **"Fictitious name"**, any name, other than the legal name, used by a seller or telemarketer;

(6) **"Investment opportunity"**, anything tangible or intangible that is offered for sale, sold or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation;

(7) **"Material aspect or element"**, any factor likely to significantly influence the consumer's choice of, or conduct regarding, merchandise;

(8) **"Merchandise"**, any objects, wares, goods, commodities, intangibles, real estate or services; except that merchandise shall not include any services, goods or memberships given to a contributor by an entity, organized pursuant to Chapter 501 (c)(3) of the United States Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;

(9) **"Prize"**, anything offered or purportedly offered or given or purportedly given to a consumer by chance. For purposes of this definition, chance exists if a consumer is guaranteed to receive anything of value and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the consumer will receive;

(10) **"Promptly"**, at the beginning of any call initiated by a telemarketer to a consumer;

(11) **"Seller"**, any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide merchandise to the consumer in exchange for consideration;

(12) **"Telemarketer"**, any person, or any recorded, computer-generated, electronically generated or other voice communication of any kind, who, in connection with telemarketing, initiates or receives telephone calls to or from a consumer. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director or partner to the management activities of a business;

(13) **"Telemarketing"**, a plan, program or campaign which is conducted to induce the purchase or lease of merchandise by use of one or more telephones and which involves more than one telephone call.

(L. 2000 S.B. 763)

407.1073. Telemarketers, required disclosures — misrepresentations prohibited. — 1. A telemarketer shall disclose, promptly and in a clear and conspicuous manner, to the consumer receiving the telephone call the following:

(1) That the purpose of the telephone call is to make a sale;

(2) The telemarketer's identifiable name and the seller on whose behalf the solicitation is being made;

(3) The nature of the merchandise or investment opportunity being sold;

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure shall be made before or in conjunction with the description of the prize to the consumer called; and

(5) If the telephone call is made by any recorded, computer-generated, electronically generated or other voice communication of any kind. When engaged in telemarketing, such voice communication shall, promptly at the beginning of the telephone call, inform the consumer that the call is being made by a recorded, computer-generated, electronically generated or other type of voice communication, as the case may be.

2. Before a consumer pays for merchandise offered for sale through telemarketing, the telemarketer shall disclose, in a clear and conspicuous manner, the following:

(1) The seller or telemarketer's identifiable name and the address or telephone number where the seller or telemarketer can be reached;

(2) The total cost and quantity of the merchandise that is the subject of the telemarketing sales call;

(3) Any material restriction, limitation or condition to purchase, receive or use the merchandise that is the subject of a telemarketing sales call;

(4) Any material aspect of the nature or terms of the refund, cancellation, exchange or repurchase policies, including the absence of such policies;

(5) Any material aspect of an investment opportunity being offered, including benefits, the price of the land or other investment, and the location of the investment;

(6) Material elements of a prize promotion, including:

(a) The odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds;

(b) That no purchase or payment of any kind is required to win a prize or to participate in a prize promotion;

(c) The no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which consumers may write or call for information on how to participate; and

(d) All material conditions to receive or redeem the prize.

3. A telemarketer shall not misrepresent, directly or by implication, any of the following:

(1) A description of the prize;

(2) Its market value;

(3) The actual number of each prize to be awarded;

(4) The date by which the prize will be awarded.

4. A telemarketer shall not misrepresent any material aspect of the performance, quality, efficacy, nature or basic characteristics of merchandise that is the subject of a telemarketing sales call.

(L. 2000 S.B. 763)

407.1076. Unlawful telemarketing acts or practices. — It is an unlawful telemarketing act or practice for any seller or telemarketer to engage in the following conduct:

(1) Misrepresent any material fact required pursuant to section 407.1073. It is a defense to this subdivision if a seller or telemarketer shows, by a preponderance of the evidence, that the misrepresentation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, and no civil penalties shall be imposed if this defense is met;

(2) Threaten, intimidate or use profane or obscene language;

(3) Cause the telephone to ring or engage any consumer in telephone conversation repeatedly or continuously in a manner a reasonable consumer would deem to be annoying, abusive or harassing;

(4) Knowingly and willfully initiate a telemarketing call to a consumer, or transfer or make available to others for telemarketing purposes a consumer's telephone number when that consumer has stated previously that he or she does not wish to receive solicitation calls by or on behalf of the seller unless such request has been rescinded;

(5) Engage in telemarketing to a consumer's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called consumer's location;

(6) Request or receive payment in advance to remove derogatory information from or improve a consumer's credit history, credit record or credit rating;

(7) Request or receive payment in advance from a consumer to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telemarketing transaction, except that this provision shall not apply to services provided by a licensed attorney;

(8) Obtain or submit for payment a check, draft or other form of negotiable paper drawn on a consumer's checking, savings, share or similar account without the consumer's express written or oral authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(a) Express written authorization by the consumer, which may include the consumer's signature on the negotiable instrument;

(b) Express oral authorization which is tape-recorded and made available upon request to the consumer's bank and which evidences clearly both the consumer's authorization of payment for the merchandise that is the subject of the sales offer and the consumer's receipt of all of the following information:

a. The date of the draft or drafts;

b. The amount of the draft or drafts;

c. The payor's name;

d. The number of draft payments;

e. A telephone number for consumer inquiry that is answered during normal business hours; and

f. The date of the consumer's oral authorization; or

(c) Written confirmation of the transaction, sent to the consumer prior to submission for payment of the consumer's check, draft or other form of negotiable paper, which shall include:

a. All of the information contained in paragraph (b) of this subdivision; and

b. The procedures by which the consumer can obtain a refund from the seller or telemarketer in the event that the confirmation is inaccurate;

(9) Procure the services of any professional delivery, courier or other pick-up service to obtain immediate receipt or possession of a consumer's payment, unless the merchandise or investment opportunity is delivered with the opportunity to inspect before any payment is collected;

(10) Knowingly provide assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any act in violation of sections 407.1070 to 407.1085; or

(11) Knowingly utilize any method to block or otherwise circumvent a consumer's use of a caller identification service.

(L. 2000 S.B. 763)

407.1079. Telemarketers required to keep certain records. — 1. A seller or telemarketer shall keep for a period of twenty-four months from the date the record is produced all verifiable authorizations and records as required in sections 407.1070 to 407.1085, in the form, manner, format or place as they keep such records in the ordinary course of business, including but not limited to:

(1) All substantially different advertising, brochures, telemarketing scripts and promotional materials;

(2) For any prize with a value of twenty-five dollars or greater, the name and last known address of each prize recipient and the prize awarded;

(3) The name and last known address of each consumer, the merchandise purchased, the date such merchandise was shipped or provided and the amount paid by the consumer for the merchandise;

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales, provided, that if the seller permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All written authorizations required to be provided or received pursuant to sections 407.1070 to 407.1085.

2. For offers of consumer credit products subject to The Truth in Lending Act, 15 U.S.C. et seq., and Regulation Z, 12 CFR 226, compliance with the record-keeping requirements pursuant to The Truth in Lending Act and Regulation Z shall constitute compliance with subdivision (3) of subsection 1 of this section.

3. The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the record keeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of the agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record, or if no such agreement exists, the seller shall be responsible for complying with subdivisions (1), (2), (3) and (5) of subsection 1 of this section and the telemarketer shall be responsible for complying with subdivision (4) of subsection 1 of this section.

4. In the event of any dissolution or termination of the telemarketer's business, the telemarketer shall maintain all records as required pursuant to this section. In the event of any sale, assignment or other change in ownership of the seller's business, the successor shall maintain all records required pursuant to this section.

(L. 2000 S.B. 763)

407.1082. Penalties — criminal penalties — civil damages. — 1. It is unlawful pursuant to section 407.020 to violate any provision of sections 407.1070 to 407.1085 or to misrepresent or omit the required disclosures of section 407.1073 or 407.1076, and pursuant to sections 407.010 to 407.130, the violator shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.

2. Any person who willfully and knowingly engages in any act or practice declared to be unlawful by any provision of subdivisions (2) to (5) of section 407.1076 shall be guilty of a class A misdemeanor. Any person who willfully and knowingly engages in any act or practice declared to be unlawful by any provision of subdivision (1) of section 407.1076, or of subdivisions (6) to (11) of section 407.1076, shall be guilty of a class E felony. Any person previously convicted of a class E felony pursuant to this subsection shall, for each subsequent conviction, be guilty of a class E felony punishable by the term of years set out for a class E felony, but with a fine of not more than five thousand dollars or a fine equal to triple the gain, with no limit on the amount recoverable pursuant to any triple-the-gain penalty. Any person who willfully and knowingly fails to keep the records required in section 407.1079 shall be guilty of a class A misdemeanor.

3. In addition to the remedies already provided in sections 407.1070 to 407.1085, any consumer that suffers a loss or harm as a result of any unlawful telemarketing act or practice pursuant to section 407.1076 may recover actual and punitive damages, reasonable attorney's fees, court costs and any other remedies provided by law.

(L. 2000 S.B. 763, A.L. 2014 S.B. 491)

Effective 1-01-17

407.1085. Exemptions — attorney general to receive complaints. — 1. The following acts or practices are exempt from the provisions of sections 407.1070 to 407.1082:

(1) Telephone calls in which the sale of merchandise is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer or seller; or

(2) Telephone calls in which the sale of merchandise is completed and a written contract is forwarded to the consumer so long as the consumer may return the merchandise within fourteen days of receipt of the merchandise and receive a refund of any moneys paid except for any coverage, fees or services earned; provided that the telemarketer shall inform the consumer at the time of the call that:

(a) A written contract regarding the sale of the merchandise will be forwarded to the consumer;

(b) The approximate date of the delivery of the merchandise; and

(c) The consumer will have a right to terminate the contract within fourteen days of receipt of the merchandise, and upon returning the merchandise, shall have a right to a refund as provided in this subdivision.

The term **"merchandise"** as used in this subdivision shall mean merchandise sold by a person, institution or company that is under the direction and supervision of the director of the department of commerce and insurance or federally chartered banks, savings and loans and credit unions, but shall not mean a person or company that is under the direction and supervision of the director of the division of professional registration or any board assigned thereto;

(3) Telephone calls initiated by a consumer that:

(a) Are not the result of any advertisement by a seller or telemarketer;

(b) Are in response to an advertisement through any media, other than direct mail or telemarketing, which discloses the name of the seller and the identity of the merchandise; provided that, this exemption shall not apply to calls initiated by the consumer in response to an advertisement that offers a prize or investment opportunity, or is used to engage in telemarketing activities prohibited by subdivision (6) or (7) of section 407.1076; or

(c) Are in response to direct mail solicitations that clearly and conspicuously disclose and do not misrepresent the material information required by subsection 2 of section 407.1073; provided that, this exemption does not apply to calls initiated by the consumer in response to an advertisement that offers a prize or investment opportunity, or is to engage in telemarketing activities prohibited by subdivision (6) or (7) of section 407.1076; or

(d) Are in response to the mailing of a catalog which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller, includes multiple pages of written materials or illustrations; and has been issued not less frequently than once a year, when the seller or telemarketer does not contact consumers by telephone but only receives calls initiated by consumers in response to the catalog, and stops further solicitation of items not in a catalog when the consumer states that he or she is not interested in any further solicitations; or

(4) Telephone calls or messages:

(a) To any consumer with such consumer's prior express invitation or permission;

(b) To any consumer with whom the seller has an established business relationship; or

(c) By or on behalf of any entity over which either a state or federal agency has regulatory authority to the extent that:

a. Subject to such authority, the entity is required to maintain a license, registration, certificate or permit to sell or provide the merchandise being offered through telemarketing;

and

b. As of August 28, 2000, the state or federal agency has, directly or through a delegation of authority which is enforceable pursuant to state or federal law, promulgated rules that regulate the telemarketing sales practices of the entity for the merchandise that entity offers through telemarketing and are reasonably consistent with the requirements of section 407.1070 through section 407.1079 and which allow consumer redress pursuant to that agency's rules or applicable federal law;

(d) Between a telemarketer and any business except calls involving the retail sale of nondurable office and cleaning supplies.

2. The office of the attorney general shall receive telemarketing complaints by means of a toll-free telephone number, by a notice in writing or by electronic means. Complaints against entities who are licensed, certificated or permitted and whose telemarketing practices are regulated by the same state or federal agency and which agency has rules regulating telemarketing practices shall be forwarded for investigation by the office of the attorney general to such agency. All other complaints shall be handled by the office of the attorney general.

(L. 2000 S.B. 763, A.L. 2008 S.B. 788)

407.1090. Required disclosures for entities soliciting contributions. — When any entity is paid for soliciting contributions via telephone calls, and the pay is based on contributions received as a result of the phone call, the entity making the calls must disclose immediately to all called parties the net percentage of contributions that go to the organization for which the contribution is solicited.

(L. 2000 S.B. 763 § 1)

407.1095. Definitions. — As used in sections 407.1095 to 407.1110, the following words and phrases mean:

(1) **"Caller identification service"**, a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;

(2) **"Residential subscriber"**, a person who, for primarily personal and familial use, has subscribed to residential telephone service, wireless service or similar service, or the other persons living or residing with such person;

(3) **"Telephone solicitation"**, any voice, facsimile, short messaging service (SMS), or multimedia messaging service (MMS), for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include communications:

(a) To any residential subscriber with that subscriber's prior express invitation or permission;

(b) By or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;

(c) By or on behalf of an entity organized pursuant to Chapter 501 (c)(3) of the United States Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;

(d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and

b. The entity is required by law or rule to develop and maintain a no-call list;

(e) By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the state of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state.

(L. 2000 S.B. 763, A.L. 2012 H.B. 1549)

407.1098. Telephone solicitation of member on no-call list prohibited. — No person or entity shall make or cause to be made any telephone solicitation to any residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

(L. 2000 S.B. 763, A.L. 2012 H.B. 1549)

407.1101. Attorney general to create no-call list database — rules — inclusion of national database — database not a public record — no cost to subscribers. — 1. The attorney general shall establish and provide for the operation of a database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. Such list is not intended to include any telephone number primarily used for business or commercial purposes.

2. The attorney general shall promulgate rules and regulations governing the establishment of a state no-call database as he or she deems necessary and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules and regulations shall include those which:

(1) Specify the methods by which each residential subscriber may give notice to the attorney general or its contractor of his or her objection to receiving such solicitations or revocation of such notice. There shall be no cost to the subscriber for joining the database;

(2) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(3) Specify the methods by which such objections and revocations shall be collected and added to the database;

(4) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of residential subscribers included in the database, including the cost assessed to that person or entity for access to the database;

(5) Specify such other matters relating to the database that the attorney general deems desirable.

3. If the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. Section 227(c)(3), the attorney general shall include that part of such single national database that relates to Missouri in the database established pursuant to this section.

4. Information contained in the database established pursuant to this section shall be used only for the purpose of compliance with section 407.1098 and this section or in a proceeding or action pursuant to section 407.1107. Such information shall not be considered a public record pursuant to chapter 610.

5. In April, July, October and January of each year, the attorney general shall be encouraged to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national do-not-call list and add those telephone numbers to the state do-not-call list.

6. The attorney general may utilize moneys appropriated from general revenue and moneys appropriated from the merchandising practices revolving fund established in section 407.140 for the purposes of establishing and operating the state no-call database.

7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

(L. 2000 S.B. 763, A.L. 2012 H.B. 1549)

407.1104. Caller identification service, telephone solicitor not to interfere with subscriber's use of service. — 1. Any person or entity who makes a telephone solicitation to any residential subscriber in this state shall, at the beginning of such solicitation, state clearly the identity of the person or entity initiating the solicitation.

2. No person or entity who makes a telephone solicitation to a residential subscriber in this state shall knowingly use any method to block or otherwise circumvent any subscriber's use of a caller identification service.

(L. 2000 S.B. 763 § 407.1107, A.L. 2012 H.B. 1549)

407.1107. Penalties, attorney general to enforce — civil, criminal, injunctive relief — private actions — defenses — statute of limitations. — 1. The attorney general may initiate proceedings relating to a knowing violation or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand dollars for each knowing violation and additional relief in any court of competent jurisdiction. The attorney general may issue investigative demands, issue subpoenas, administer oaths and conduct hearings in the course of investigating a violation of section 407.1098 or 407.1104.

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.

3. Any person who has received more than one telephone solicitation within any twelve-month period by or on behalf of the same person or entity in violation of section 407.1098 or 407.1104 may either:

(1) Bring an action to enjoin such violation;

(2) Bring an action to recover for actual monetary loss from such knowing violation or to receive up to five thousand dollars in damages for each such knowing violation, whichever is greater; or

(3) Bring both such actions.

4. It shall be a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of section 407.1098 or 407.1104.

5. No action or proceeding may be brought pursuant to this section:

(1) More than two years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or

(2) More than two years after the termination of any proceeding or action arising out of the same violation or violations by the state of Missouri, whichever is later.

6. A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or administrator as to an action or proceeding authorized by this section in the manner otherwise provided by law.

7. The remedies, duties, prohibitions and penalties of sections 407.1095 to 407.1107 are not exclusive and are in addition to all other causes of action, remedies and penalties provided by law.

8. No provider of telephone caller identification service shall be held liable for violations of section 407.1098 or 407.1104 committed by other persons or entities.

(L. 2000 S.B. 763 § 407.1110, A.L. 2012 H.B. 1549)

407.1110. Advisory group for consumer protection from telemarketers — publication of information on consumer rights. — The attorney general shall establish an advisory group composed of government entities, local telecommunications companies, businesses, and senior citizen and other community advocates to compile and promote a list of educational literature to help consumers understand their options with regard to telephone solicitations. The attorney general shall work with local exchange telecommunications companies to disseminate to their residential subscribers information about the availability of and instructions about how to request educational literature from the attorney general. The attorney general may enter into agreements with those companies for the purpose of dissemination of the educational literature. The attorney general shall include on his or her internet website information that informs residential subscribers of their rights to be placed on a no-call list and the various methods, including notice to the attorney general, of placing their names on this no-call list. The attorney general shall have this literature developed for dissemination to the public no later than January 1, 2001.

(L. 2000 S.B. 763 § 407.1113)

Article 4.

Telephone Solicitations.

§ 75-100. Findings.

The General Assembly finds all of the following:

(1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telephone solicitation technologies and techniques.

(2) While some consumers enjoy and benefit from telephone solicitations from legitimate telephone solicitors, many others object to these telephone solicitations as an intrusive invasion of their privacy in the home.

(3) In addition, the proliferation of telephone solicitations, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of telephone subscribers during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telephone solicitors to contact them.

(5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telephone solicitation practices.

(6) Legitimate telephone solicitors have no interest in continuing to invade the privacy of those telephone subscribers who affirmatively express their desires to receive no further telephone solicitations.

(7) Many telephone subscribers who have transacted business with firms that employ telephone solicitations have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place. Other telephone subscribers have had unauthorized charges placed on their telephone bill and have had their long-distance carrier switched without their authorization as a result of telephone solicitations.

(8) New technologies that make telephone solicitations more cost-effective also allow for the creation of a "Do Not Call" Registry through which North Carolina consumers can easily register their desires not to receive further telephone solicitations and telephone solicitors can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for telephone subscribers to notify telephone solicitors that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telephone solicitations. (2003-411, s. 3.)

§ 75-101. Definitions.

The following definitions apply in this Article:

(1) Affiliate. - A business establishment, business, or other legal entity that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with a telephone solicitor.

(2) Automatic dialing and recorded message player. - Any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or a sequential number generator capable of producing numbers to be called that, working alone or in conjunction with other equipment, disseminates a prerecorded message to the telephone number called.

(3) "Do Not Call" Registry. - The registry created and maintained by the Federal Trade

Commission pursuant to the Telemarketing Sales Rule. It also means any other telemarketing registry created by the federal government, including the Federal Communications Commission. It also means any registry created by the Attorney General pursuant to G.S. 75-102(n).

(4) Doing business in this State. - To make or cause to be made any telephone solicitation to North Carolina telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(5) Established business relationship. - A relationship between a seller and a consumer based on:

a. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates within the 18 months immediately preceding the date of a telephone solicitation; or

b. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telephone solicitation.

(6) Express invitation or permission. - Any invitation or permission that is registered by the telephone subscriber on an independent form and that contains the telephone number to which calls can be placed and the signature of the telephone subscriber. The form may be completed and signed electronically.

(7) Person. - Any individual, business establishment, business, or other legal entity.

(8) Telemarketing Sales Rule. - The federal regulation promulgated by the Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition), as amended, to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as amended.

(9) Telephone solicitation. - A voice or text communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. "Telephone solicitation" also includes those transactions that are defined as "telemarketing" under the Telemarketing Sales Rule.

(10) Telephone solicitor. - Any individual, business establishment, business, or other legal entity doing business in this State that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made. "Telephone solicitor" also includes any party defined as a "telemarketer" under the Telemarketing Sales Rule.

(11) Telephone subscriber. - An individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do business in North Carolina, or a wireless telephone company; or the individuals living or residing with that individual.

(12) Unsolicited telephone call. - A voice or text communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a

commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission. (2003-411, s. 3; 2019-188, s. 1.)

§ 75-102. Restrictions on telephone solicitations.

(a) Except as provided in G.S. 75-103, no telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber's telephone number appears in the latest edition of the "Do Not Call" Registry.

(b) No telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber previously has communicated to the telephone solicitor a desire to receive no further telephone solicitations from the telephone solicitor to that number.

(c) Any telephone solicitor who makes a telephone solicitation shall do all of the following:

(1) At the beginning of the telephone solicitation, state clearly the identity of the telephone solicitor and identify the individual making the telephone solicitation.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the telephone solicitor may be contacted.

(3) If the telephone subscriber requests to be taken off the contact list of the telephone solicitor, the telephone solicitor shall take all steps necessary to remove the telephone subscriber's name and telephone number from the contact list of the telephone solicitor and stop calling the telephone subscriber within 30 business days.

(4) If the telephone subscriber objects to the telephone solicitation, terminate the telephone solicitation and promptly disconnect from the telephone line of the person receiving the call.

(5) Notwithstanding subdivision (3) of this subsection, if a telephone solicitor relies on the established business relationship of an affiliate to solicit a residential telephone subscriber whose telephone number is listed in the latest edition of the "Do Not Call" Registry and the person called communicates a desire to receive no further telephone solicitations from the telephone solicitor, the telephone solicitor shall take all steps necessary to remove that telephone subscriber's telephone number from the contact lists of the telephone solicitor and that affiliate, unless the telephone subscriber indicates otherwise, and the telephone solicitor and that affiliate shall stop calling the telephone subscriber at that number within 60 business days.

(d) Every telephone solicitor shall implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the "Do Not Call" Registry. Every telephone solicitor shall train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures. Every telephone solicitor shall ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded. Compliance with the time requirements within the Telemarketing Sales Rule for incorporating and complying with updated versions of the "Do Not Call" Registry shall constitute compliance with North Carolina law.

(e) Except as provided in G.S. 75-103, no telephone solicitor shall violate any requirement of section 310.3 of the Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

(f) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or after 9:00 P.M.

(g) A telephone solicitor shall inquire as to whether the telephone subscriber is under the age of 18. If the telephone subscriber purports to be less than 18 years of age, the telephone solicitor shall discontinue the call immediately. No inquiry is required where the solicitor has taken reasonable steps to remove all telephone contacts who are less than 18 years of age from its list of subscribers being contacted or can demonstrate that it does not target subscribers who are less than 18 years of age.

(h) No telephone solicitor shall engage in threats, intimidation, or the use of profane or obscene language.

(i) No telephone solicitor shall cause misleading information to be transmitted to users of caller identification technologies or otherwise block or misrepresent the origin of the telephone solicitation. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities. It is not a violation of this subsection for a telephone solicitor to utilize the name and number of the entity the solicitation is being made on behalf of rather than the name and number of the telephone solicitor.

(j) A telephone solicitor or its agent that makes telephone solicitations on its behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep a record for a period of 24 months from the date a telephone solicitation is made of the legal name, any fictitious name used, the resident address, the telephone number, and the job title of each individual who makes a telephone solicitation for that telephone solicitor. If an individual who makes telephone solicitations for a telephone solicitor uses a fictitious name, the fictitious name shall be traceable only to the specific individual.

(k) Nothing in this section prohibits a telephone solicitor from contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not Call" Registry to obtain the telephone subscriber's express invitation or permission allowing the telephone solicitor to make telephone solicitations to the telephone subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(*l*) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the "Do Not Call" Registry to encourage the telephone subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(m) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill insert or bill message, a direct mailing, and an e-mail that notifies consumers of the existence of the "Do Not Call" Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the notification pursuant to G.S. 62-54.

(n) In the event that the federal "Do Not Call" Registry is not operational by January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney General may develop, operate, and maintain such a registry for the benefit of North Carolina telephone subscribers.

(o) In telephone solicitation transactions involving telephone subscribers, no contract or purchase agreement entered into during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all the following conditions are satisfied:

(1) The contract and the sales representations that precede it are not deceptive or abusive telemarketing acts or practices as elaborated in sections 310.3 and 310.4 of

the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.

(2) The telephone solicitor has complied with the record keeping requirements of section 310.5 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.

(3) The contract and the sales representations that precede it comply with all other applicable federal and State laws, including Article 1 of this Chapter. (2003-411, ss. 3, 4; 2009-122, s. 1; 2019-188, s. 2.)

§ 75-103. Limited exceptions.

(a) G.S. 75-102(a) does not apply to any of the following telephone solicitations that are made:

(1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.

(2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.

(3) By or on behalf of a tax-exempt nonprofit organization.

(4) By or on behalf of a telephone solicitor that employs fewer than 10 full-time or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.

(5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:

a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.

b. Complete the sale or rental of, or investment in, property, goods, or services.

c. Obtain provisional acceptance of a sale, rental, or investment.

d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.

e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

(6) By a person primarily soliciting the sale of a subscription for a newspaper of general circulation.

(b) G.S. 75-102(c)(3), 75-102(d), 75-102(g), and 75-102(j) do not apply to any telephone solicitations described in G.S. 75-103(a)(1), (2), (3), (4), and (5).

(c) G.S. 75-102(e) does not apply to any of the telephone solicitations described in subdivisions (a)(4) and (a)(5) of this section.

(d) G.S. 75-102(e) does not apply to any of the telephone solicitations described in subdivisions (a)(1), (a)(2), and (a)(3) of this section, except that these types of telephone solicitations shall comply with sections 310.3(a)(2), (a)(3), and (a)(4), 310.3(c), 310.3(d), 310.4(a), 310.4(b)(1)(i) and (iv), (b)(2), (b)(3), and (b)(4), and 310.4(e) of the Telemarketing Sales Rule.

(e) In any dispute regarding whether a telephone subscriber has provided an express invitation or permission under subsection (a) of this section, the telephone solicitor has the burden of proving that the telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission. A telephone subscriber may subsequently retract express invitation or permission by indicating a desire not to receive further telephone solicitations under G.S. 75-102(b). (2003-411, s. 3.)

§ 75-104. Restrictions on use of automatic dialing and recorded message players.

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

(1) All of the following are satisfied:

a. The person making the call is any of the following:

1. A tax-exempt charitable or civic organization.
2. A political party or political candidate.
3. A governmental official.
4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.

b. No part of the call is used to make a telephone solicitation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call, and both of the following are satisfied:

a. No part of the call is used to make a telephone solicitation.

b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service, and both of the following are satisfied:

a. No part of the call is used to make a telephone solicitation.

b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

(6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered benefits, and both of the following are satisfied:

a. No part of the call is used to make a telephone solicitation.

b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(7) No part of the call is used to make a telephone solicitation, the person making the call clearly identifies the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:

a. That the telephone subscriber has purchased a product that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Consumer Product Safety Commission or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) there is a reasonable basis to believe that the telephone subscriber has purchased the product, and (ii) the message complies with any requirements imposed by any government agency instituting the recall.

b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Food and Drug Administration or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy, (ii) there is a reasonable basis to believe that the telephone subscriber has purchased or received the medication, and (iii) the message complies with any requirements imposed by the government agency or product manufacturer, distributor, or retailer instituting the recall.

c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21 and the telephone subscriber requested that the prescription be filled, provided that the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy.

(8) The call is generated from a court proceeding notification system established by the Administrative Office of the Courts. (2003-411, s. 3; 2008-124, s. 10.3; 2009-364, s. 1; 2018-40, s. 13.2.)

§ 75-105. Enforcement.

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

(1) Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and any other violation that occurs within two years of the first violation.

(2) One hundred dollars ($100.00) for each violation within two years of the first violation, if the solicitor can show that the violations are the result of a mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103(a)(1), (2), (3), (4), and (5), or can show that the telephone solicitor complied with G.S. 75-102(d).

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone

solicitor in violation of this Article may bring any of the following actions in civil court:

(1) An action to enjoin further violations of this Article by the telephone solicitor.

(2) An action to recover five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought under subsection (b) of this section if the violations are a result of mistake and the telephone solicitor either made the telephone solicitation under G.S. 75-103(a)(1), (2), (3), (4), and (5), or can show that the telephone solicitor complied with G.S. 75-102(d).

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action. (2003-411, s. 3.)

§§ 75-106 through 75-114. Reserved for future codification purposes.

CHAPTER 51-15
UNLAWFUL SALES OR ADVERTISING PRACTICES

51-15-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, oral or written, to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.
2. "Attorney general" means the attorney general of North Dakota or the attorney general's authorized delegate.
3. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services.
4. "Person" means any natural person or the person's legal representative, partnership, corporation, limited liability company, company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.
5. "Sale" means any charitable solicitation or any sale, offer for sale, or attempt to sell any merchandise for any consideration.

51-15-02. Unlawful practices - Fraud - Misrepresentation - Unconscionable.

The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition, is declared to be an unlawful practice.

51-15-02.1. Use of check endorsements for advertising obligations prohibited.

It is a deceptive act or practice in violation of this chapter for a person to offer, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of a check.

51-15-02.2. Solicitation of payment by bill, invoice, or statement of account due.

It is a deceptive act or practice in violation of this chapter for a person to send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

51-15-02.3. Facilitating and assisting.

It is a deceptive act or practice in violation of this chapter for any person to provide assistance or support to any person engaged in any act or practice in violation of this chapter when the person providing assistance or support knows or consciously avoids knowing that the other person is engaged in an act or practice in violation of this chapter. This section does not authorize a private claim for relief for a violation of this section and no entity other than the attorney general may enforce this section.

51-15-03. Advertising media excluded.

Nothing herein contained applies to the owner or publisher of newspapers, magazines, publication of printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design, or purpose of the advertiser.

51-15-04. Powers of attorney general.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or when the attorney general believes it to be in the public interest to investigate whether a person in fact has engaged in, is engaging in, or is about to engage in, any unlawful practice under this chapter or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may:

1. Require that person to file, on forms the attorney general prescribes, a statement or report in writing, under oath or otherwise, of all the facts and circumstances concerning the sale or advertisement of merchandise by that person, as well as other data and information the attorney general may determine necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or sample thereof, record, book, document, account, or paper as the attorney general may determine necessary.
4. Pursuant to an order of a district court impound any merchandise or sample thereof, record, book, document, account, or paper material to that practice and retain the same in the attorney general's possession until the completion of all proceedings undertaken under this section or in the courts.

51-15-05. Subpoena - Hearing - Rules.

To accomplish the objectives and to carry out the duties prescribed by this chapter or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general, in addition to other powers conferred upon the attorney general by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, and prescribe forms and adopt rules as may be necessary.

51-15-06. Failure to supply information or obey subpoena.

If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereon, request an order:

1. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;
2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or limited liability company created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or limited liability company or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and
3. Granting such other relief as may be required;

until the person files the statement or obeys the subpoena.

51-15-06.1. Assurance of voluntary compliance.

The attorney general may accept an assurance of voluntary compliance for any act or practice the attorney general determines to be in violation of this chapter, or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, 51-18, 51-28, 51-29, 51-30, 51-31, 51-33 , or 51-34, from any person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of voluntary compliance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has as a principal place of business, conducts business, or in Burleigh County. Failure to comply with an assurance of voluntary compliance which has been approved by the district court is contempt of court.

51-15-07. Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil penalties - Costs recoverable in adjudicative proceedings.

Whenever it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may seek and obtain in an action in a district court an injunction prohibiting that person from continuing the unlawful practice or engaging in the unlawful practice or doing any act in furtherance of the unlawful practice after appropriate notice to that person. The notice must state generally the relief sought and be served at least ten days before the hearing of the action. The court may make an order or judgment as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any money, or property that may have been acquired by means of any practice in this chapter, or in other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, declared to be unlawful, including the appointment of a receiver.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, and that the person is about to conceal assets or oneself or leave the state, the attorney general may apply to the district court, ex parte, for an order appointing a receiver of the assets of that person. Upon a showing made by affidavit or other evidence that the person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter and that the person is about to conceal assets or oneself or leave the state, the court shall order the appointment of a receiver to receive the assets of the person.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or by an order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order, which the attorney general deems necessary or appropriate in the public interest, including if a person fails or refuses to file a statement or report, or to obey a subpoena issued by the attorney general under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. In addition to any other remedy authorized by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may impose by order and collect a civil penalty against a person found in an adjudicative proceeding to have violated a cease and desist order issued pursuant to this section, in an amount not more than one thousand dollars for each violation. The attorney general may bring an action in district court to recover penalties under this section. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein. If the attorney general prevails in an

adjudicative proceeding pursuant to this section, the attorney general may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action.

51-15-08. Powers of receiver.

When a receiver is appointed by the court pursuant to this chapter, the receiver may sue for, collect, receive, or take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, including property with which the property has been commingled if it cannot be identified in kind because of the commingling, and sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that that person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent that person has sustained out-of-pocket losses. The court has jurisdiction of all questions arising in these proceedings and may make orders and judgments therein as may be required.

51-15-09. Claims not barred.

Except as provided in section 51-15-02.3, this chapter does not bar any claim for relief by any person against any person who has acquired any moneys or property by means of any practice declared to be unlawful in this chapter. If the court finds the defendant knowingly committed the conduct, the court may order that the person commencing the action recover up to three times the actual damages proven and the court must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney's fees incurred in the action.

51-15-10. Costs recoverable.

In any action brought under the provisions of this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the court shall award to the attorney general reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. All attorney's fees, investigation fees, costs, and expenses received by the attorney general under this section must be deposited into the attorney general refund fund.

51-15-11. Civil penalties.

The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter or for each violation of chapter 51-12, 51-13, 51-14, or 51-18. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18.

CHAPTER 51-28
TELEPHONE SOLICITATIONS

51-28-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires, the terms shall have the meanings as follows:

1. "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.
2. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.
3. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
4. "Established business relationship" means a relationship between a seller and consumer based on a free trial newspaper subscription or on the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the twenty-four months immediately preceding the date of a telemarketing call.
5. "Message" means any telephone call, including voice, text, or other electronic communication, regardless of its content.
6. "Subscriber" means a person who has subscribed to a residential telephone line or the other persons living or residing with the subscribing person.
7. "Telephone line" means a telephone service to a subscriber, regardless of the technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet protocol telephone service.
8. "Telephone solicitation" means any voice, text, or other electronic communication over a telephone line for the purpose of encouraging charitable contributions, or the purchase or rental of, or investment in, property, goods, services, or merchandise, including as defined in subsection 3 of section 51-15-01, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device, or by other means. Telephone solicitation does not include communications:
   a. To any subscriber with that subscriber's prior express written request, consent, invitation, or permission.
   b. By or on behalf of any person with whom the subscriber has an established personal or business relationship.
   c. By or on behalf of a charitable organization that is exempt from federal income taxation under section 501 of the Internal Revenue Code, but only if the following applies:
      (1) The telephone call is made by a volunteer or employee of the charitable organization; and
      (2) The person who makes the telephone call immediately discloses the following information upon making contact with the consumer:
         (a) The person's true first and last name; and
         (b) The name, address, and telephone number of the charitable organization.

d. By or on behalf of any person whose exclusive purpose is to poll or solicit the expression of ideas, opinions, or votes, unless the communication is a text message.
e. By the individual soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or person who makes the initial call and the prospective purchaser, unless the communication is a text message.
f. By or on behalf of a political party, candidate, or other group with a political purpose, as defined in section 16.1-08.1-01, unless the communication is a text message.

51-28-02. Use of prerecorded or synthesized voice messages.

A caller may not use or connect to a telephone line an automatic dialing-announcing device or deliver a prerecorded or synthesized voice message to a subscriber unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district to a student, a parent, or an employee; a message to a subscriber with whom the caller has a current business relationship; or a message advising an employee of a work schedule.

51-28-03. Message requirements.

When the message is immediately preceded by a live operator, the operator must disclose at the outset of the message:

1. The name of the business, firm, organization, association, partnership, or entity for which the message is being made;
2. The purpose of the message;
3. The identity or kinds of goods or services the message is promoting; and
4. If applicable, the fact that the message intends to solicit payment or commitment of funds.

51-28-04. Requirements on automatic dialing-announcing devices.

A caller may not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber. A caller may not use an automatic dialing-announcing device that uses a random or sequential number generator unless the equipment excludes calls to the following telephone numbers:

1. Emergency telephone numbers, including 911, of any hospital, medical physician, health care facility, ambulance or emergency medical provider, fire protection facility, or law enforcement agency.
2. Any guest room or patient room of a hospital, health care facility, elderly care home, or similar establishment.
3. A paging service, a cellular telephone service, a specialized mobile radio service, or any service for which the called party is charged for the call.
4. The telephone numbers maintained on a do-not-call list established pursuant to section 51-28-09.

51-28-05. Time of day limit.

A caller may not use an automatic dialing-announcing device nor make any telephone solicitation before eight a.m. or after nine p.m. at the telephone subscriber's location.

51-28-06. Prohibited telephone solicitations.

A caller may not make or cause to be made any telephone solicitation to the telephone line of any subscriber in this state who, for at least thirty-one days before the date the call is made, has been on the do-not-call list established and maintained or used by the attorney general under section 51-28-09 or the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310.

51-28-07. Identification by caller.

Any caller who makes a telephone solicitation to a subscriber in this state shall immediately and clearly state at the beginning of the call the caller's true first and last name, the caller's telephone number, the caller's city and state of location, and the name of the business on whose behalf the telephone solicitation is made.

51-28-08. Interference with caller identification.

A caller who makes a telephone solicitation to a subscriber in this state may not knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.

51-28-08.1. Telephone caller identification system fraud - Exceptions - Definitions.

1. A person may not, in connection with any telecommunications service or internet protocol enabled voice service, knowingly cause any telephone caller identification system to:
   a. Transmit misleading or inaccurate caller identification information with the intent to defraud or cause harm; or
   b. Use or display a telephone number the caller does not own or has not received consent to use from the owner of the telephone number.
2. This section does not apply to:
   a. The blocking of caller identification information;
   b. A law enforcement agency of the federal, state, county, or municipal government;
   c. An intelligence or security agency of the federal government;
   d. A telecommunications, broadband, or voice over internet protocol service provider acting solely as an intermediary for the transmission of telephone service between the caller and the recipient;
   e. Activity engaged in under a court order that specifically authorizes the use of caller manipulation; or
   f. A caller who, based on the telephone number called, reasonably believes the recipient of the call is not physically within the state.
3. Any person who receives a call in violation of subsection 1 may bring a civil action in a court of this state in the county in which the call recipient resides to enjoin such action, or for damages, or both. If the plaintiff prevails, the court must award the plaintiff the plaintiff's actual damages or damages in an amount not less than five thousand dollars and not more than ten thousand dollars per violation, whichever is greater. Each call is a separate violation under this chapter. The court shall award the plaintiff's costs, expenses, and reasonable attorney's fees. The relief provided in this section is in addition to all remedies available to the attorney general under this chapter in any investigation or action brought by the attorney general against the caller

in the plaintiff's private action. This section may not be interpreted to limit any other claims the person may have against the caller or any other claims the attorney general may bring under this chapter, chapter 51-15, or any other state or federal laws.

4. In addition to the remedies and penalties provided in this chapter, a person violating subsection 1 is guilty of a class A misdemeanor, and the venue must be in the county in which the call recipient received the call or the county in which the call recipient resides.
5. As used in this section:
   a. "Call" means any type of telephonic communication made using a public switched telephone network, wireless cellular telephone service, or voice over internet protocol service that has the capability of accessing users on the public switched telephone network or a successor network.
   b. "Caller" means a person that places a call, whether by telephone, over a telephone line, or on a computer.
   c. "Defraud" means taking anything of value, including money, property, or time, without consent from the recipient of a call.
   d. "Telephone caller identification system" means a listing of a caller's name, telephone number, or name and telephone number shown to a recipient of a call when it is received.

51-28-09. Establishment of do-not-call list - Federal trade commission do-not-call registry.

1. The attorney general shall establish and maintain a list of telephone numbers of subscribers who object to receiving telephone solicitations. The attorney general may fulfill the requirements of this section by contracting with an agent for the establishment and maintenance of the list or by using the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310. The attorney general may adopt rules governing the establishment, distribution, and operation of the do-not-call list, as the attorney general deems necessary and appropriate to fully implement the provisions of this chapter, in addition to the following provisions:
   a. Any subscriber may contact the attorney general or the attorney general's agent and give notice, in the manner prescribed by the attorney general, that the subscriber objects to receiving telephone solicitations. The attorney general shall add the telephone number of any subscriber who gives notice of objection to the list maintained pursuant to this section.
   b. Any notice given by a subscriber under this section is effective for five years unless revoked by the subscriber. Any subsequent notices given by the same subscriber related to a different telephone number are separate from the original notice.
   c. The attorney general shall allow subscribers to give notice under this section by mail, telephone, or electronically.
   d. The attorney general shall establish the procedures by which a person wishing to make telephone solicitations may obtain access to the list. To the extent practicable, those procedures shall allow for access to paper or electronic copies of the list.

e. The attorney general may include in the list established under this section subscribers who live in North Dakota and are included in the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310. The attorney general may provide to the federal trade commission the telephone numbers of North Dakota subscribers who are in the attorney general's do-not-call list or who have otherwise notified the attorney general of the subscriber's objection to receiving telephone solicitations for inclusion in the national do-not-call registry.

f. A person or entity desiring to make telephone solicitations shall pay a fee, payable to the attorney general, for access to, or for paper or electronic copies of, the list established under section 51-28-09. The fee for acquisition of the list may not exceed two hundred dollars per quarter, or eight hundred dollars per year.

2. Notwithstanding any other provision of this chapter, the attorney general may designate the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 61, as the state do-not-call list.

51-28-10. Release of information.

Information contained in the list established under section 51-28-09 may not be used for any purposes except compliance with this chapter or in a proceeding or action under this chapter or chapter 51-15. The information contained in the list is an exempt record as defined in section 44-04-17.1.

51-28-11. Private enforcement.

Any person who receives a telephone solicitation or message in violation of this chapter may bring an action to enjoin such violation, or for damages, or both. The court may award the plaintiff the plaintiff's actual damages or damages up to two thousand dollars for each violation, whichever is greater. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section shall not limit any other claims the person may have against the caller.

51-28-12. Limitation of actions.

No action or proceeding may be brought under this chapter:

1. More than one year after the person bringing the action knew or should have known of the alleged violation; or
2. More than one year after the termination of any proceeding or action by the attorney general, whichever is later.

51-28-13. Powers of the attorney general - Remedies - Injunction - Other relief.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, the attorney general, in enforcing this chapter, has all powers provided in this chapter or chapter 51-15, and may seek all remedies in this chapter or chapter 51-15.

51-28-14. Cease and desist orders.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order which the attorney general deems necessary or appropriate in the public interest, including if any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general under this chapter or chapter 51-15. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein.

51-28-15. Civil penalties in an adjudicative proceeding.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general may impose by order and collect a civil penalty against any person found in an adjudicative proceeding to have violated any provision of this chapter, or any rule or order adopted under this chapter, in an amount not more than two thousand dollars for each violation of this chapter or any rule or order adopted under this chapter. The attorney general may bring an action in district court to recover penalties under this section.

51-28-16. Costs recoverable in adjudicative proceeding - Hearing costs.

If the attorney general prevails in an adjudicative proceeding pursuant to section 51-28-14 or 51-28-15, the attorney general may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

51-28-17. Civil penalties in court proceeding.

The court may award the attorney general civil penalties of not more than two thousand dollars per violation of this chapter. A violation of this chapter constitutes a violation of chapter 51-15 and the court may award civil penalties under section 51-15-11.

51-28-18. Costs recoverable in court proceeding.

The attorney general is entitled to an award of reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

51-28-19. Separate violations - Nonexclusive remedies and penalties.

For each remedy or penalty under this chapter or chapter 51-15, or otherwise provided by law, each telephone solicitation or message shall constitute a separate violation for purposes of an adjudicative proceeding or an action in district court. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

51-28-20. Caller identification service nonliability.

No provider of caller identification service shall be held liable for violations of this chapter committed by other persons or entities.

51-28-21. Disposition of fees, penalties, and recoveries.

All fees, penalties, and recoveries of attorney's fees, investigation fees, costs, and expenses collected pursuant to this chapter shall be retained by the attorney general for enforcement of this chapter, including to pay costs, expenses, and attorney's fees and salaries incurred in the operation of the attorney general's consumer protection and antitrust division. However, the attorney general may deposit any excess funds not required for enforcement of this chapter in the attorney general refund fund under section 54-12-18.

51-28-22. Venue.

The attorney general or a plaintiff in a private enforcement action may bring an action pursuant to this chapter in either the county of the telephone subscriber's residence or Burleigh County.

Ohio Revised Code Chapter 1345 – Consumer Sales Practices Act

1345.02 Unfair or deceptive acts or practices.

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;

(2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

(3) That the subject of a consumer transaction is new, or unused, if it is not;

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(5) That the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section;

(6) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(7) That replacement or repair is needed, if it is not;

(8) That a specific price advantage exists, if it does not;

(9) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;

(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

(C) In construing division (A) of this section, the court shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

(D) No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an event occurring after the consumer enters into the transaction.

(E)

(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. For the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such a provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

(F) Concerning a consumer transaction in connection with a residential mortgage, and without limiting the scope of division (A) or (B) of this section, the act of a supplier in doing either of the following is deceptive:

(1) Knowingly failing to provide disclosures required under state and federal law;

(2) Knowingly providing a disclosure that includes a material misrepresentation.

(G) Without limiting the scope of division (A) of this section, the failure of a supplier to obtain or maintain any registration, license, bond, or insurance required by state law or local ordinance for the supplier to engage in the supplier's trade or profession is an unfair or deceptive act or practice.

Amended by 131st General Assembly File No. TBD, SB 227, §1, eff. 4/6/2017.

Effective Date: 05-17-2000; 01-01-2007.

Ohio Revised Code Chapter 4719: TELEPHONE SOLICITORS

4719.01 Telephone solicitor definitions - exemptions.

(A) As used in sections 4719.01 to 4719.18 of the Revised Code:

(1) "Affiliate" means a business entity that is owned by, operated by, controlled by, or under common control with another business entity.

(2) "Communication" means a written or oral notification or advertisement that meets both of the following criteria, as applicable:

(a) The notification or advertisement is transmitted by or on behalf of the seller of goods or services and by or through any printed, audio, video, cinematic, telephonic, or electronic means.

(b) In the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) The notification or advertisement is followed by a telephone call from a telephone solicitor or salesperson.

(ii) The notification or advertisement invites a response by telephone, and, during the course of that response, a telephone solicitor or salesperson attempts to make or makes a sale of goods or services. As used in division (A)(2)(b)(ii) of this section, "invites a response by telephone" excludes the mere listing or inclusion of a telephone number in a notification or advertisement.

(3) "Gift, award, or prize" means anything of value that is offered or purportedly offered, or given or purportedly given by chance, at no cost to the receiver and with no obligation to purchase goods or services. As used in this division, "chance" includes a situation in which a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telephone solicitor does not identify the specific item that the person will receive.

(4) "Goods or services" means any real property or any tangible or intangible personal property, or services of any kind provided or offered to a person. "Goods or services" includes, but is not limited to, advertising; labor performed for the benefit of a person; personal property intended to be attached to or installed in any real property, regardless of whether it is so attached or installed; timeshare estates or licenses; and extended service contracts.

(5) "Purchaser" means a person that is solicited to become or does become financially obligated as a result of a telephone solicitation.

(6) "Salesperson" means an individual who is employed, appointed, or authorized by a telephone solicitor to make telephone solicitations but does not mean any of the following:

(a) An individual who comes within one of the exemptions in division (B) of this section;

(b) An individual employed, appointed, or authorized by a person who comes within one of the exemptions in division (B) of this section;

(c) An individual under a written contract with a person who comes within one of the exemptions in division (B) of this section, if liability for all transactions with purchasers is assumed by the person so exempted.

(7) "Telephone solicitation" means a communication to a person that meets both of the following criteria:

(a) The communication is initiated by or on behalf of a telephone solicitor or by a salesperson.

(b) The communication either represents a price or the quality or availability of goods or services or is used to induce the person to purchase goods or services, including, but not limited to, inducement through the offering of a gift, award, or prize.

(8) "Telephone solicitor" means a person that engages 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.

(B) A telephone solicitor is exempt from the provisions of sections 4719.02 to 4719.18 and section 4719.99 of the Revised Code if the telephone solicitor is any one of the following:

(1) A person engaging in a telephone solicitation that is a one-time or infrequent transaction not done in the course of a pattern of repeated transactions of a like nature;

(2) A person engaged in telephone solicitation solely for religious or political purposes; a charitable organization, fund-raising counsel, or professional solicitor in compliance with the registration and reporting requirements of Chapter 1716. of the Revised Code; or any person or other entity exempt under section 1716.03 of the Revised Code from filing a registration statement under section 1716.02 of the Revised Code;

(3) A person, making a telephone solicitation involving a home solicitation sale as defined in section 1345.21 of the Revised Code, that makes the sales presentation and completes the sale at a later, face-to-face meeting between the seller and the purchaser rather than during the telephone solicitation. However, if the person, following the telephone solicitation, causes another person to collect the payment of any money, this exemption does not apply.

(4) A licensed securities, commodities, or investment broker, dealer, investment advisor, or associated person when making a telephone solicitation within the scope of the person's license. As used in division (B)(4) of this section, "licensed securities, commodities, or investment broker, dealer, investment advisor, or associated person" means a person subject to licensure or registration as such by the securities and exchange commission; the National Association of Securities Dealers or other self-regulatory organization, as defined by 15 U.S.C.A. 78c; by the division of securities under Chapter 1707. of the Revised Code; or by an official or agency of any other state of the United States.

(5)

(a) A person primarily engaged in soliciting the sale of a newspaper of general circulation;

(b) As used in division (B)(5)(a) of this section, "newspaper of general circulation" includes, but is not limited to, both of the following:

(i) A newspaper that is a daily law journal designated as an official publisher of court calendars pursuant to section 2701.09 of the Revised Code;

(ii) A newspaper or publication that has at least twenty-five percent editorial, non-advertising content, exclusive of inserts, measured relative to total publication space, and an audited circulation to at least fifty per cent of the households in the newspaper's retail trade zone as defined by the audit.

(6)

(a) An issuer, or its subsidiary, that has a class of securities to which all of the following apply:

(i) The class of securities is subject to section 12 of the "Securities Exchange Act of 1934," 15 U.S.C.A. 781, and is registered or is exempt from registration under 15 U.S.C.A. 781(g)(2)(A), (B), (C), (E), (F), (G), or (H);

(ii) The class of securities is listed on the New York stock exchange, the American stock exchange, or the NASDAQ national market system;

(iii) The class of securities is a reported security as defined in 17 C.F.R. 240.11Aa3-1(a)(4).

(b) An issuer, or its subsidiary, that formerly had a class of securities that met the criteria set forth in division (B)(6)(a) of this section if the issuer, or its subsidiary, has a net worth in excess of one hundred million dollars, files or its parent files with the securities and exchange commission an S.E.C. form 10-K, and has continued in substantially the same business since it had a class of securities that met the criteria in division (B)(6)(a) of this section. As used in division (B)(6)(b) of this section, "issuer" and "subsidiary" include the successor to an issuer or subsidiary.

(7) A person soliciting a transaction regulated by the commodity futures trading commission, if the person is registered or temporarily registered for that activity with the commission under 7 U.S.C.A. 1 et seq. and the registration or temporary registration has not expired or been suspended or revoked;

(8) A person soliciting the sale of any book, record, audio tape, compact disc, or video, if the person allows the purchaser to review the merchandise for at least seven days and provides a full refund within thirty days to a purchaser who returns the merchandise or if the person solicits the sale on behalf of a membership club operating in compliance with regulations adopted by the federal trade commission in 16 C.F.R. 425;

(9) A supervised financial institution or its subsidiary. As used in division (B)(9) of this section, "supervised financial institution" means a bank, trust company, savings and loan association, savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or institution described in section 2(c)(2)(F) of the "Bank Holding Company Act of 1956," 12 U.S.C.A. 1841(c)(2)(F), as amended, supervised by an official or agency of the United States, this state, or any other state of the United States; or a licensee or registrant under sections 1321.01 to 1321.19, 1321.51 to 1321.60, or 1321.71 to 1321.83, or Chapter 1322. of the Revised Code.

(10)

(a) An insurance company, association, or other organization that is licensed or authorized to conduct business in this state by the superintendent of insurance pursuant to Title XXXIX of the

Revised Code or Chapter 1751. of the Revised Code, when soliciting within the scope of its license or authorization.

(b) A licensed insurance broker, agent, or solicitor when soliciting within the scope of the person's license. As used in division (B)(10)(b) of this section, "licensed insurance broker, agent, or solicitor" means any person licensed as an insurance broker, agent, or solicitor by the superintendent of insurance pursuant to Title XXXIX of the Revised Code.

(11) A person soliciting the sale of services provided by a cable television system operating under authority of a governmental franchise or permit;

(12) A person soliciting a business-to-business sale under which any of the following conditions are met:

(a) The telephone solicitor has been operating continuously for at least three years under the same business name under which it solicits purchasers, and at least fifty-one per cent of its gross dollar volume of sales consists of repeat sales to existing customers to whom it has made sales under the same business name.

(b) The purchaser business intends to resell the goods purchased.

(c) The purchaser business intends to use the goods or services purchased in a recycling, reuse, manufacturing, or remanufacturing process.

(d) The telephone solicitor is a publisher of a periodical or of magazines distributed as controlled circulation publications as defined in division (CC) of section 5739.01 of the Revised Code and is soliciting sales of advertising, subscriptions, reprints, lists, information databases, conference participation or sponsorships, trade shows or media products related to the periodical or magazine, or other publishing services provided by the controlled circulation publication.

(13) A person that, not less often than once each year, publishes and delivers to potential purchasers a catalog that complies with both of the following:

(a) It includes all of the following:

(i) The business address of the seller;

(ii) A written description or illustration of each good or service offered for sale;

(iii) A clear and conspicuous disclosure of the sale price of each good or service; shipping, handling, and other charges; and return policy.

(b) One of the following applies:

(i) The catalog includes at least twenty-four pages of written material and illustrations, is distributed in more than one state, and has an annual postage-paid mail circulation of not less than two hundred fifty thousand households;

(ii) The catalog includes at least ten pages of written material or an equivalent amount of material in electronic form on the internet or an on-line computer service, the person does not solicit customers by telephone but solely receives telephone calls made in response to the catalog, and

during the calls the person takes orders but does not engage in further solicitation of the purchaser. As used in division (B)(13)(b)(ii) of this section, "further solicitation" does not include providing the purchaser with information about, or attempting to sell, any other item in the catalog that prompted the purchaser's call or in a substantially similar catalog issued by the seller.

(14) A political subdivision or instrumentality of the United States, this state, or any state of the United States;

(15) A college or university or any other public or private institution of higher education in this state;

(16) A public utility as defined in section 4905.02 of the Revised Code or a retail natural gas supplier as defined in section 4929.01 of the Revised Code, if the utility or supplier is subject to regulation by the public utilities commission, or the affiliate of the utility or supplier;

(17) A person that solicits sales through a television program or advertisement that is presented in the same market area no fewer than twenty days per month or offers for sale no fewer than ten distinct items of goods or services; and offers to the purchaser an unconditional right to return any good or service purchased within a period of at least seven days and to receive a full refund within thirty days after the purchaser returns the good or cancels the service;

(18)

(a) A person that, for at least one year, has been operating a retail business under the same name as that used in connection with telephone solicitation and both of the following occur on a continuing basis:

(i) The person either displays goods and offers them for retail sale at the person's business premises or offers services for sale and provides them at the person's business premises.

(ii) At least fifty-one per cent of the person's gross dollar volume of retail sales involves purchases of goods or services at the person's business premises.

(b) An affiliate of a person that meets the requirements in division (B)(18)(a) of this section if the affiliate meets all of the following requirements:

(i) The affiliate has operated a retail business for a period of less than one year;

(ii) The affiliate either displays goods and offers them for retail sale at the affiliate's business premises or offers services for sale and provides them at the affiliate's business premises;

(iii) At least fifty-one per cent of the affiliate's gross dollar volume of retail sales involves purchases of goods or services at the affiliate's business premises.

(c) A person that, for a period of less than one year, has been operating a retail business in this state under the same name as that used in connection with telephone solicitation, as long as all of the following requirements are met:

(i) The person either displays goods and offers them for retail sale at the person's business premises or offers services for sale and provides them at the person's business premises;

(ii) The goods or services that are the subject of telephone solicitation are sold at the person's business premises, and at least sixty-five per cent of the person's gross dollar volume of retail sales involves purchases of goods or services at the person's business premises;

(iii) The person conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rule adopted by the federal trade commission in 16 C.F.R. part 310.

(19) A person who performs telephone solicitation sales services on behalf of other persons and to whom one of the following applies:

(a) The person has operated under the same ownership, control, and business name for at least five years, and the person receives at least seventy-five per cent of its gross revenues from written telephone solicitation contracts with persons who come within one of the exemptions in division (B) of this section.

(b) The person is an affiliate of one or more exempt persons and makes telephone solicitations on behalf of only the exempt persons of which it is an affiliate.

(c) The person makes telephone solicitations on behalf of only exempt persons, the person and each exempt person on whose behalf telephone solicitations are made have entered into a written contract that specifies the manner in which the telephone solicitations are to be conducted and that at a minimum requires compliance with the telemarketing sales rule adopted by the federal trade commission in 16 C.F.R. part 310, and the person conducts the telephone solicitations in the manner specified in the written contract.

(d) The person performs telephone solicitation for religious or political purposes, a charitable organization, a fund-raising council, or a professional solicitor in compliance with the registration and reporting requirements of Chapter 1716. of the Revised Code; and meets all of the following requirements:

(i) The person has operated under the same ownership, control, and business name for at least five years, and the person receives at least fifty-one per cent of its gross revenues from written telephone solicitation contracts with persons who come within the exemption in division (B)(2) of this section;

(ii) The person does not conduct a prize promotion or offer the sale of an investment opportunity;

(iii) The person conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the federal trade commission in 16 C.F.R. part 310.

(20) A person that is a licensed real estate salesperson or broker under Chapter 4735. of the Revised Code when soliciting within the scope of the person's license;

(21)

(a) Either of the following:

(i) A publisher that solicits the sale of the publisher's periodical or magazine of general, paid circulation, or a person that solicits a sale of that nature on behalf of a publisher under a written agreement directly between the publisher and the person.

(ii) A publisher that solicits the sale of the publisher's periodical or magazine of general, paid circulation, or a person that solicits a sale of that nature as authorized by a publisher under a written agreement directly with a publisher's clearinghouse provided the person is a resident of Ohio for more than three years and initiates all telephone solicitations from Ohio and the person conducts the solicitation and sale in compliance with 16 C.F.R. part 310, as adopted by the federal trade commission.

(b) As used in division (B)(21) of this section, "periodical or magazine of general, paid circulation" excludes a periodical or magazine circulated only as part of a membership package or given as a free gift or prize from the publisher or person.

(22) A person that solicits the sale of food, as defined in section 3715.01 of the Revised Code, or the sale of products of horticulture, as defined in section 5739.01 of the Revised Code, if the person does not intend the solicitation to result in, or the solicitation actually does not result in, a sale that costs the purchaser an amount greater than five hundred dollars.

(23) A funeral director licensed pursuant to Chapter 4717. of the Revised Code when soliciting within the scope of that license, if both of the following apply:

(a) The solicitation and sale are conducted in compliance with 16 C.F.R. part 453, as adopted by the federal trade commission, and with sections 1107.33 and 1345.21 to 1345.28 of the Revised Code;

(b) The person provides to the purchaser of any preneed funeral contract a notice that clearly and conspicuously sets forth the cancellation rights specified in division (G) of section 1107.33 of the Revised Code, and retains a copy of the notice signed by the purchaser.

(24) A person, or affiliate thereof, licensed to sell or issue Ohio instruments designated as travelers checks pursuant to sections 1315.01 to 1315.18 of the Revised Code.

(25) A person that solicits sales from its previous purchasers and meets all of the following requirements:

(a) The solicitation is made under the same business name that was previously used to sell goods or services to the purchaser;

(b) The person has, for a period of not less than three years, operated a business under the same business name as that used in connection with telephone solicitation;

(c) The person does not conduct a prize promotion or offer the sale of an investment opportunity;

(d) The person conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the federal trade commission in 16 C.F.R. part 310;

(e) Neither the person nor any of its principals has been convicted of, pleaded guilty to, or has entered a plea of no contest for a felony or a theft offense as defined in sections 2901.02 and 2913.01 of the Revised Code or similar law of another state or of the United States;

(f) Neither the person nor any of its principals has had entered against them an injunction or a final judgment or order, including an agreed judgment or order, an assurance of voluntary

compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt practices, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice.

(26) An institution defined as a home health agency in section 3701.881 of the Revised Code, that conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the federal trade commission in 16 C.F.R. part 310, and engages in telephone solicitation only within the scope of the institution's certification, accreditation, contract with the department of aging, or status as a home health agency; and that meets one of the following requirements:

(a) The institution is certified as a provider of home health services under Title XVIII of the Social Security Act, 49 Stat. 620, 42 U.S.C. 301, as amended;

(b) The institution is accredited by either the joint commission on accreditation of health care organizations or the community health accreditation program;

(c) The institution is providing PASSPORT services under the direction of the department of aging under sections 173.52 to 173.523 of the Revised Code;

(d) An affiliate of an institution that meets the requirements of division (B)(26)(a), (b), or (c) of this section when offering for sale substantially the same goods and services as those that are offered by the institution that meets the requirements of division (B)(26)(a), (b), or (c) of this section.

(27) A person licensed by the department of health pursuant to section 3712.04 or 3712.041 of the Revised Code to provide a hospice care program or pediatric respite care program when conducting telephone solicitations within the scope of the person's license and according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the federal trade commission in 16 C.F.R. part 310.

Amended by 132nd General Assembly File No. TBD, HB 199, §1, eff. 3/23/2018.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General AssemblyFile No.194, HB 303, §1, eff. 3/20/2013.

Effective Date: 09-26-2003; 04-06-2007

4719.02 Certificate of registration or registration renewal.

(A) No person shall act as a telephone solicitor without first having obtained a certificate of registration or registration renewal from the attorney general under section 4719.03 of the Revised Code.

(B) The application for a certificate of registration or registration renewal as a telephone solicitor shall contain all of the following information:

(1) The true name, date of birth, driver's license number, social security number or tax identification number, business address, and home address of the applicant, including each name under which the applicant intends to engage in telephone solicitations;

(2) Each business or occupation engaged in by the applicant during the three years immediately preceding the date of the application, and the location of each such business or occupation;

(3) The previous experience of the applicant as a telephone solicitor or salesperson;

(4) Whether in any jurisdiction the applicant has been arrested for, convicted of, or pleaded guilty to, has entered a plea of no contest for, or is being prosecuted by indictment or information for a felony and, if so, the nature of the felony;

(5) Whether, in a court of competent jurisdiction of this state or any other state or the United States, the applicant has been convicted of or pleaded guilty to, has entered a plea of no contest for, or is being prosecuted by indictment or information for engaging in a pattern of corrupt activity, racketeering, a violation of federal or state securities law, or a theft offense as defined in section 2913.01 of the Revised Code or in similar law of any other state or the United States;

(6) Whether there has ever been a judicial or administrative finding that the applicant has acted as a salesperson without a license, or whether such a license has been refused, revoked, or suspended in any jurisdiction;

(7) Whether the applicant has worked for or been affiliated with a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including an agreed judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice;

(8) Whether in any jurisdiction there has been entered against the applicant an injunction, a temporary restraining order, or a final judgment or order, including an agreed judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt activity, racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice; and whether there is any litigation or proceeding pending against the applicant;

(9) Whether the applicant, at any time during the previous seven years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(10) The name of any parent, affiliate, or other related entity to which either of the following applies:

(a) The entity may engage in a business transaction with a purchaser relating to any telephone solicitation by the applicant.

(b) The entity accepts responsibility or is otherwise held out by the applicant as being responsible for any statement or act of the applicant relating to any telephone solicitation by the applicant.

(11) The complete street address of each location, designating the principal location, from which the applicant will be doing business, including each location at which mail will be received by or on behalf of the applicant, and identifying any such location that is a post office box or mail drop;

(12) A list of all telephone numbers to be used by the applicant, with the street address where each telephone using these numbers will be located;

(13) The true name, current home address, date of birth, social security number, and all other names by which known, or previously known, of each of the following:

(a) Each principal officer, director, trustee, shareholder, owner, or partner of the applicant, and each other person participating in or responsible for the management of the applicant's business;

(b) Each office manager or other person principally responsible for each location from which the applicant will do business;

(c) Each salesperson or other person to be employed by the applicant.

(14) The name and street address of the statutory agent required by division (D) of this section;

(15) For any application containing answers in the affirmative to any information required by divisions (B)(4) to (8) of this section:

(a) The name of the court or administrative agency rendering the conviction, judgment, or order against the person or in which the litigation or proceeding is pending;

(b) The docket number of the matter; the date of the conviction, judgment, or order or the date the pending litigation or proceeding was initiated; and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, order, or pending litigation or proceeding.

(16) If the applicant is other than an individual or if any parent, affiliate, or other related entity is identified pursuant to division (B)(10) of this section:

(a) The applicant's place of organization and the place of organization of any such parent, affiliate, or other related entity;

(b) In the case of a partnership on the part of the applicant or such parent, affiliate, or other related entity, a copy of any written partnership agreement;

(c) In the case of a corporation, a copy of the articles of incorporation and bylaws of the applicant and such parent, affiliate, or other related entity.

(17) The identity of any person, identified pursuant to division (B)(13) of this section, that in any jurisdiction:

(a) Has been convicted of or pleaded guilty to, entered a plea of no contest for, or is being prosecuted by indictment or information 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 in section 2913.01 of the Revised Code or in similar law of any other state or the United States;

(b) Is involved in pending litigation or proceedings or has had entered against itself an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt activity, racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice;

(c) Is or has been subject to any litigation, injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar instrument, in any civil or administrative action involving engaging in a pattern of corrupt activity, racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property; the use of any untrue, deceptive, or misleading representation; or the use of any unfair, unlawful, deceptive, or unconscionable trade act or practice;

(d) At any time during the previous seven years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(e) Has been a principal, director, officer, or trustee of or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed for bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within one year after the person held that position.

(18) For any application containing answers in the affirmative to any information required by division (B)(9) of this section and for any person described in division (B)(17)(d) of this section:

(a) The name of the court or administrative agency rendering the conviction, judgment, or order against the person or in which the litigation is pending;

(b) The docket number of the matter; the date of the conviction, judgment, or order or the date the pending litigation was initiated; and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, order or pending litigation.

(19) The name and address of any person identified under division (B)(17)(e) of this section; the date of the action; the name of court that exercised jurisdiction; and the docket number of the matter;

(20) The name, address, and account number of each institution where banking or similar monetary transactions are done by the applicant;

(21) A copy of any script, outline, or presentation the applicant will require or suggest be used by a salesperson when soliciting or, if no such document is to be used, a notarized statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales

information or literature to be provided by the applicant to a purchaser in connection with any solicitation;

(22) Any other information required at any time by the attorney general.

(C)

(1) Except as otherwise provided in divisions (C)(2) and (3) of this section, no telephone solicitor shall fail to notify the attorney general in writing any later than thirty days after the date of a change in the information required by division (B) of this section.

(2) No telephone solicitor shall fail to notify the attorney general in writing any later than thirty days before any change in the information required by divisions (B)(1), (11), and (12) of this section.

(3) No telephone solicitor shall fail to notify the attorney general in writing of any change in the information required by division (B)(21) of this section prior to its use in a solicitation.

(D) No nonresident telephone solicitor shall fail to maintain a resident of this state as its statutory agent for the purpose of service of process.

(E) Information regarding social security numbers, bank accounts, and solicitation scripts, outlines, or presentations submitted in an application under this section is not a public record under section 149.43 of the Revised Code. The attorney general shall not release information of that nature to the public.

Effective Date: 12-05-1996 .

4719.03 Certificate of registration -disciplinary actions.

(A) Except as otherwise provided in division (B) of this section, the attorney general shall issue a certificate of registration or registration renewal as a telephone solicitor to any applicant or registrant that submits a completed application for the certificate, as specified under section 4719.02 of the Revised Code, and pays, as applicable, the registration fee or renewal fee prescribed pursuant to rule of the attorney general adopted under section 4719.10 of the Revised Code. All fees collected under this division shall be deposited into the state treasury to the credit of the telemarketing fraud enforcement fund created in section 4719.17 of the Revised Code. The certificate of registration or registration renewal shall expire one year after the date on which it is issued.

(B) After an adjudication conducted in accordance with Chapter 119. of the Revised Code, the attorney general may deny a certificate of registration or registration renewal or may suspend or revoke a certificate if the attorney general finds, by a preponderance of the evidence, that any of the following conditions apply:

(1) The applicant or registrant obtained a certificate of registration or registration renewal through any false or fraudulent representation or made any material misrepresentation in any registration 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 Chapter 1345. or sections 4719.01 to 4719.18 of the Revised Code 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 in section 2913.01 of the Revised Code 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 section 4719.08 of the Revised Code.

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

Effective Date: 12-05-1996 .

4719.04 Surety bond requirements.

(A) No person shall act as a telephone solicitor without having first obtained a surety bond issued by a surety company that holds a certificate of authority to do business in this state issued by the superintendent of insurance under Title XXXIX [39] of the Revised Code, and all of the following conditions are met:

(1) A copy of the bond is filed with the attorney general.

(2) The bond is in favor of any person, and of the state for the benefit of any person, that is injured by any violation of any provision of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under those sections.

(3) The bond is in the amount of fifty thousand dollars.

(4) The bond is maintained and in effect for at least two years after the date on which the telephone solicitor ceases to engage in telephone solicitations.

(B) Any person making a claim against the bond for a violation of any provision of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under those sections may maintain a civil action against the telephone solicitor and against the surety company. The surety company is liable only for damages awarded under division (B) of section 4719.15 of the Revised Code and is not liable for attorney's fees awarded under that division or for punitive damages awarded under division (C) of that section. The aggregate liability of the surety company to all persons injured by a telephone solicitor's violation of a provision of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under those sections shall not exceed the amount of the bond.

(C) A surety company may cancel a telephone solicitor's bond after giving the telephone solicitor and the attorney general written notice of the cancellation at least thirty days before the cancellation takes effect. For two years after the cancellation takes effect, a person may make a claim against the bond under division (B) of this section for a violation that occurred while the bond was in effect.

(D) The attorney general shall provide to a surety company that issues a bond to a telephone solicitor information concerning complaints received by the attorney general against the solicitor for alleged violations of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under those sections.

Effective Date: 12-05-1996 .

4719.05 Representations concerning gift, award or prize.

No telephone solicitor that intends to represent or cause to be represented, expressly or impliedly, to a purchaser that the purchaser is or may be eligible to receive a gift, award, or prize, however denominated, shall fail to submit to the attorney general, any later than fourteen days prior to first making that representation, a statement setting forth all of the following, for each item mentioned:

(A) A description of the item;

(B) The item's verifiable market value and the basis for the valuation;

(C) All terms and conditions a purchaser must satisfy in order to receive the item. The statement shall be accompanied by a copy of the written confirmation provided to purchasers pursuant to section 4719.07 of the Revised Code.

(D) Verification that no payment or purchase of any kind is required to win a prize or to participate in a prize promotion, and a description of the no-purchase or no-payment method of participating in the prize promotion;

(E)

(1) If they are ascertainable, the odds, for a given purchaser, of receiving the item;

(2) If the odds are not ascertainable, all the factors and methods used in calculating the odds.

(F) If a purchaser is to receive fewer than all the items described by the seller:

(1) The manner in which the telephone solicitor decides which item a given purchaser is to receive;

(2)

(a) If they are ascertainable, the odds, for a given purchaser, of receiving each item described;

(b) If the odds are not ascertainable, all the factors and methods used in calculating the odds.

(3) The name, address, and telephone number of each person that, during the preceding twelve months or any portion of that twelve-month period in which the telephone solicitor has done business, has received each gift, award, or prize.

Effective Date: 12-05-1996 .

4719.06 Disclosure of information.

(A) Within the first sixty seconds of a telephone call, and before requesting any financial information or conveying to the consumer any substantive information about a prize, product, or service, no telephone solicitor or salesperson shall fail to do all of the following:

(1) State the solicitor's or salesperson's true name and the company on whose behalf the solicitation is being made;

(2) State that the purpose of the telephone call is to effect a sale;

(3) Identify the goods or services being sold.

(B) If a sale or an agreement to purchase is completed during a telephone call, no telephone solicitor or salesperson, before requesting payment, shall fail to inform the purchaser of the rights granted under section 4719.07 of the Revised Code and disclose all of the following information in a clear and conspicuous manner:

(1) The street address and telephone number of the telephone solicitor;

(2) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the telephone solicitation;

(3) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the telephone solicitation;

(4) All material terms and conditions of the telephone solicitor's policy of making refunds, cancellations, exchanges, or repurchases;

(5) In any prize promotion, a description of the prize; its market value; all material conditions to receive or redeem the prize; the odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds; that no purchase or payment of any kind is required to win a prize or to participate in a prize promotion; and the no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate.

(C) No telephone solicitor or salesperson shall fail to make an oral disclosure required by this section in a clear and intelligible manner.

Effective Date: 12-05-1996 .

4719.07 Signed written confirmations of sales.

(A) No verbal agreement, made by a purchaser as a result of a telephone solicitation, to purchase goods or services from a telephone solicitor is valid or legally binding unless the telephone solicitor receives from the purchaser a signed, written confirmation that complies with divisions (F) and (G) of this section and discloses in full the terms of the agreement.

(B) No purchaser is liable for payment for goods or services provided by a telephone solicitor as a result of a telephone solicitation unless the solicitor has first received a signed, written confirmation from the purchaser that complies with divisions (F) and (G) of this section. Any goods sent or services provided without a signed, written confirmation are deemed unsolicited goods or services and become the property of the purchaser free of charge or obligation.

(C) No telephone solicitor or salesperson shall make or submit a charge to a purchaser's account, including, but not limited to, a checking, savings, share, credit card, or other account for which the purchaser may be obligated financially, unless the telephone solicitor has received from the purchaser the original copy of a confirmation that is signed by the purchaser and that complies with divisions (F) and (G) of this section.

(D) No telephone solicitor that causes a written confirmation under this section to be delivered to a purchaser by a courier shall cause the courier to obtain the signed, written confirmation or payment from the purchaser or to transport the signed, written confirmation or payment to the solicitor, or shall request that the purchaser arrange for the transportation of the signed, written confirmation or payment to occur, sooner than seven days following delivery of the written confirmation to the purchaser.

(E) No telephone solicitor who receives payment in any form from a purchaser without also receiving a signed, written confirmation that complies with divisions (F) and (G) of this section shall fail to do all of the following within five business days after the receipt of the payment:

(1) Refund all payments made, including any down payment made under the agreement;

(2) Return any goods traded in to the telephone solicitor on account of or in contemplation of an agreement resulting from the telephone solicitation, in substantially the same condition as when received by the telephone solicitor;

(3) Take any action necessary or appropriate to terminate promptly any security interest created in connection with the agreement.

(F) A confirmation under this section shall include, but not be limited to, all of the following:

(1) The name of the telephone solicitor;

(2) The number of the telephone solicitor's certificate of registration or registration renewal issued under section 4719.03 of the Revised Code;

(3) The address and telephone number at which personal or voice contact with an employee or agent of the telephone solicitor may be made during normal business hours;

(4) An itemized list of all prices or fees being requested, including any handling, shipping, delivery, or other charges;

(5) The date of the transaction;

(6) A detailed description of the goods or services being sold through the telephone solicitation;

(7) All material terms and conditions of the telephone solicitor's policy of making refunds, cancellations, exchanges, or repurchases;

(8) A duplicate copy, with the complete information as presented in the original confirmation, to be retained by the purchaser as proof of the terms of the agreement to purchase;

(9) In any prize promotion, a description of the prize; its market value; all material conditions to receive or redeem the prize; the odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds; that no purchase or payment of any kind is required to win a prize or to participate in a prize promotion; and the no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(10) In a type size of a minimum of twelve points, in boldface print, and in a color clearly contrasting with all other text and background on the confirmation, in a space immediately preceding the space allotted for the purchaser's signature, the following statement:

"YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE SELLER."

(G) Except as provided in division (F)(10) of this section, all text of a confirmation under division (A) of this section shall be printed in a type size of a minimum of ten points, in a color clearly contrasting with all background.

(H) A telephone solicitor that meets all of the following requirements is exempt from the provisions of divisions (A) through (G) of this section:

(1) The telephone solicitor does not conduct a prize promotion or offer the sale of an investment opportunity;

(2) The telephone solicitor conducts all telephone solicitation activities according to sections 310.3, 310.4, and 310.5 of the telemarketing sales rules adopted by the federal trade commission in 16 C.F.R. part 310;

(3) The telephone solicitor gives an unconditional full refund to any purchaser for the return of goods or cancellation of services within a period of not fewer than seven days after purchaser's receipt of the goods, agreement to the services, or receipt of two copies of the written notice of cancellation required by division (H)(4) of this section, whichever is later; and provides the refund to the purchaser within thirty days after receiving the goods returned by the purchaser or the written notice of cancellation of services.

(4) The telephone solicitor provides to the purchaser two copies of a written notice of cancellation rights which contains the following printed in a type size of a minimum of ten points, in a color clearly contrasting with all background:

(a) The name of the telephone solicitor;

(b) The number of the telephone solicitor's certificate of registration or registration renewal issued under section 4719.03 of the Revised Code;

(c) The address and telephone number at which personal or voice contact with an employee or agent of the telephone solicitor may be made during normal business hours;

(d) An itemized list of all prices or fees being charged, including any handling, shipping, delivery, or other charges;

(e) The date of the transaction;

(f) A detailed description of the goods or services being sold;

(g) The following language in boldface print:

"NOTICE OF CANCELLATION RIGHTS Because you agreed to buy these goods (or services or other appropriate description) as a result of a telephone solicitation, Ohio law gives you seven (7) days to cancel your purchase. If you cancel we must provide you a full refund within thirty (30) days. If you want to cancel, you must sign your name below and return a copy of this notice, together with any goods you have received, so they are postmarked no later than midnight of the seventh day following the date you received the goods or agreed to the services, or the seventh day following the date you received this notice, whichever is later. The notice and goods must be addressed as follows:

(Name and address of merchant) I want to cancel my agreement to purchase.

.....

(Signature)

.....

(Name of purchaser - printed)

.....

(Address of purchaser - printed)

.....

(Address - city, state, zip)

.....

(Date)"

Effective Date: 12-05-1996 .

Ohio Statutes:
Consumer Sales Practices Act – (excerpt, O.R.C. 1345.02, See full statute at http://codes.ohio.gov/)
Telephone Solicitation Sales Act – (Full Statute)

4719.08 Prohibited acts.

No telephone solicitor shall do any of the following:

(A) Obtain a certificate of registration or registration renewal under section 4719.03 of the Revised Code through any false or fraudulent representation or make any material misrepresentation in any registration or registration renewal application;

(B) Fail to maintain a valid certificate of registration or registration renewal;

(C) Advertise that one is registered as a telephone solicitor or represent that registration as a telephone solicitor constitutes approval or endorsement by any government or governmental office or agency;

(D) Provide inaccurate or incomplete information to the attorney general when making an application for a certificate or certificate renewal;

(E) Misrepresent that a person is registered or that the person has a valid certificate number;

(F) Misrepresent, directly or by implication, any of the following information:

(1) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a telephone solicitation;

(2) A material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a telephone solicitation;

(3) A material aspect of the performance, efficacy, nature, or characteristics of goods or services that are the subject of a telephone solicitation;

(4) A material aspect of the nature or terms of the telephone solicitor's refund, cancellation, exchange, or repurchase policies;

(5) A material aspect of a prize promotion, including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment of any kind is required to win a prize or to participate in a prize promotion;

(6) A material aspect of an investment opportunity, including, but not limited to, risk, liquidity, earnings potential, or profitability;

(7) The telephone solicitor's affiliation with, or endorsement by, any government or third-party organization.

(G) Make a false or misleading statement to induce a purchaser to pay for goods or services;

(H) Fail to notify the attorney general within fifteen days if, in a court of competent jurisdiction of this state or any other state or of the United States, the telephone solicitor is convicted of, pleads guilty to, or enters 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 in section 2913.01 of the Revised Code or in similar law of any other state or of the United States;

(I) Intentionally block or intentionally authorize or cause to be blocked the disclosure of the telephone number from which a telephone solicitation is made.

Effective Date: 04-09-2003 .

4719.09 Waiver of rights.

(A) No telephone solicitor or salesperson shall cause or attempt to cause a purchaser to waive a right granted under section 4719.07 or 4719.15 of the Revised Code.

(B) Any waiver by a purchaser of a right granted under section 4719.07 or 4719.15 of the Revised Code is contrary to the fundamental public policy of this state and is void and unenforceable.

Effective Date: 12-05-1996 .

4719.10 Administrative rules.

The attorney general, in accordance with Chapter 119. of the Revised Code, may adopt reasonable rules to carry out the purposes of sections 4719.01 to 4719.18 of the Revised Code and shall adopt rules prescribing reasonable registration and registration renewal fees for the purpose of section 4719.03 of the Revised Code.

Effective Date: 08-07-1996 .

4719.11 Conduct of investigations.

(A) If the attorney general, as a result of complaints or the attorney general's own inquiries, has reason to believe that a person has engaged, is engaging, or is preparing to engage in a violation of any provision of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under any provision of those sections, the attorney general may investigate the alleged violation.

(B) For purposes of an investigation under division (A) of this section, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of any book, document, record, or other relevant matter. If the matter to be produced is located outside the state, the attorney general may designate representatives, including officials of the state in which the matter is located, to inspect the matter on the attorney general's behalf. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine the matter at the place where it is located, provided that expenses shall not be charged to a party not subsequently found to have engaged in a violation of

a provision of sections 4719.01 to 4719.18 of the Revised Code. The attorney general may respond to similar requests from officials of other states.

(C) A person subpoenaed under this section may file a petition to extend the day on which the subpoena is to be returned or to modify or quash the subpoena, for good cause shown, in the court of common pleas of Franklin county or of the county in this state in which the person resides or in which the person's principal place of business is located. The person may file the petition at any time before the day of return specified in the subpoena or within twenty days after the service of the subpoena, whichever is the shorter period.

(D) A person subpoenaed under this section shall comply with the terms of the subpoena unless, prior to the date for return specified in the subpoena or as extended, the court orders otherwise. If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to a court of common pleas for an order that does one or more of the following:

(1) Adjudges the person in contempt of court;

(2) Grants injunctive relief to restrain the person from engaging in conduct that violates a provision of sections 4719.01 to 4719.18 of the Revised Code;

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

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

(E) If a person violates an order of a court issued under this section, the court shall punish the violation as a violation of an injunction issued under section 4719.12 of the Revised Code.

(F) If an individual refuses to testify or to produce relevant matter on the ground that the testimony or matter may incriminate the individual, the attorney general may request that a court order the individual to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 4719.15 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter.

Effective Date: 12-05-1996 .

4719.12 Injunctions - civil penalties.

(A) Whenever it appears that a person has violated, is violating, or is about to violate a provision of sections 4719.01 to 4719.18 of the Revised Code, the attorney general may bring an action in a court of common pleas to enjoin the alleged violation. Upon a showing of a violation of a provision of those sections, the court shall grant a temporary restraining order, preliminary injunction, or permanent injunction without bond. The court may impose a civil penalty of not more than five thousand dollars for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under this section. The court may issue an order for the

reimbursement of a purchaser for any loss that results from a violation of a provision of sections 4719.01 to 4719.18 of the Revised Code, for the appointment of a referee or receiver, for the sequestration of assets, or for any other appropriate relief. The court may award the attorney general all costs together with all expenses of the attorney general's investigation and reasonable attorney's fees incurred in the prosecution of the action. Moneys awarded to the attorney general under this section shall be deposited in the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

(B) In an action brought by the attorney general to enforce a provision of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under any of those provisions, the attorney general may request, and the court shall impose, a civil penalty of not less than one thousand nor more than twenty-five thousand dollars for each violation of section 4719.02, 4719.05, or 4719.06, division (C), (D), or (E) of section 4719.07, section 4719.08 or division (A) of section 4719.09 of the Revised Code that the court finds the telephone solicitor or salesperson committed. A civil penalty ordered pursuant to this section shall be paid to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

Effective Date: 12-05-1996 .

4719.13 Initiation of criminal proceedings.

(A) The attorney general may initiate criminal proceedings under sections 4719.01 to 4719.18 of the Revised Code by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

(B) The powers of the attorney general set forth in division (A) of this section are in addition to any other applicable powers of the attorney general.

(C) In a criminal proceeding in which a violation of a provision of sections 4719.01 to 4719.18 of the Revised Code is alleged, it is an affirmative defense, as defined in section 2901.05 of the Revised Code, that the person or the person's actions come within an exemption in division (B) of section 4719.01 or division (H) of section 4719.07 of the Revised Code.

Effective Date: 12-05-1996 .

4719.14 Consumer sales practices act applicable.

A violation of section 4719.02, 4719.05, or 4719.06 ; division (C), (D), or (E) of section 4719.07 ; section 4719.08 ; or division (A) of section 4719.09 of the Revised Code is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code.

Effective Date: 12-05-1996 .

4719.15 Civil action by purchaser.

(A) A purchaser injured by a violation of a provision of sections 4719.01 to 4719.18 of the Revised Code or a rule adopted under any provision of those sections may bring a civil action against the telephone solicitor or salesperson who committed the violation for damages in a court of common pleas and may apply to the court for an order enjoining the violation. Upon the purchaser's showing that the telephone solicitor or salesperson has committed a violation of one of those sections or rules, the court shall grant an injunction, temporary restraining order, or other appropriate relief.

(B) If a court awards damages under division (A) of this section, the court shall award damages in an amount that is not less than the amount that the purchaser paid to the telephone solicitor or salesperson and shall order the telephone solicitor or salesperson to pay reasonable attorney's fees and court costs to the purchaser.

(C) The court may award the purchaser punitive or exemplary damages upon the purchaser's showing that the telephone solicitor or salesperson knowingly committed an act or practice that violated a provision of sections 4719.01 to 4719.18 of the Revised Code.

(D) An action under this section shall be brought within two years after the date of the telephone solicitation upon which the action is based.

Effective Date: 12-05-1996 .

4719.16 Powers, remedies, and penalties are in addition to others provided by law.

(A) The powers, remedies, and penalties provided by sections 4719.11 to 4719.15 of the Revised Code are in addition to any other power, remedy, or penalty provided by law.

(B) The remedies and powers available to the attorney general under division (B) of section 4719.03 and sections 4719.11 to 4719.13 of the Revised Code are cumulative and concurrent, and the exercise of one remedy or power by the attorney general does not preclude or require the exercise of any other remedy or power. The attorney general is not required to use any procedure set forth in division (B) of section 4719.03 or section 4719.11 of the Revised Code prior to the exercise of a remedy or power set forth in section 4719.12 or 4719.13 of the Revised Code.

(C) In a civil proceeding or action in which a violation of a provision of sections 4719.01 to 4719.18 of the Revised Code is alleged, if the person who is alleged to have violated that provision claims that the person or the person's actions comes within an exemption in division (B) of section 4719.01 or division (H) of section 4719.07 of the Revised Code, the person has the burden of proving that the exemption applies to the person or the person's actions.

Effective Date: 12-05-1996 .

4719.17 Telemarketing fraud enforcement fund.

There is hereby created in the state treasury the telemarketing fraud enforcement fund. The treasurer of state shall deposit into the fund registration fees paid pursuant to divisions (A) and (D) of section 4719.02 of the Revised Code. The consumer protection section of the office of the attorney general shall use the moneys in the fund to pay for any expenses reasonably related to the administration of Chapter 4719. of the Revised Code, the investigation or prosecution of any crimes investigated by the consumer protection section, or for educational activities that advance the purposes of Chapter 4719. of the Revised Code as set forth in section 4719.18 of the Revised Code.

Amended by 129th General AssemblyFile No.88, SB 223, §1, eff. 6/8/2012.

Effective Date: 12-05-1996 .

4719.18 Purposes and construction of chapter.

(A) The purposes and objectives of sections 4719.01 to 4719.18 of the Revised Code are 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.

(B) The provisions of sections 4719.01 to 4719.18 of the Revised Code are remedial in nature and shall be liberally construed by the courts of this state in accordance with section 1.11 of the Revised Code.

Effective Date: 12-05-1996 .

4719.21 Blocking telephone solicitor's number prohibited.

(A) As used in this section, "telephone solicitation" and "telephone solicitor" have the same meanings as in division (A) of section 4719.01 of the Revised Code.

(B) No telephone solicitor shall intentionally block or intentionally authorize or cause to be blocked the disclosure of the telephone number from which a telephone solicitation is made.

(C) A violation of division (B) of this section is an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code. A person injured by a violation of division (B) of this section has a cause of action and is entitled to the same relief available to a consumer under section 1345.09 of the Revised Code, and all powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce division (B) of this section.

Effective Date: 04-09-2003 .

4719.22 Compliance with law regarding sanctions for human trafficking.

The attorney general shall comply with section 4776.20 of the Revised Code.

Added by 129th General AssemblyFile No.169, HB 247, §1, eff. 3/22/2013.

4719.99 Penalty.

Prior to July 1, 1996, whoever violates section 4719.02, 4719.05, or 4719.06, division (C), (D), or (E) of section 4719.07, section 4719.08, or division (A) of section 4719.09 of the Revised Code is guilty of a felony of the fourth degree. On or after July 1, 1996, whoever violates section 4719.02, 4719.05, or 4719.06, division (C), (D), or (E) of section 4719.07, section 4719.08, or division (A) of section 4719.09 of the Revised Code is guilty of a felony of the fifth degree.

Effective Date: 12-05-1996 .

V.T.C.A., Bus. & C. § 304.002

§ 304.002. Definitions

In this chapter:

(3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4001.068, Government Code.

(5) "Facsimile recording device" means a device capable of receiving a facsimile transmission.

(8) "Telemarketer" means a person who makes or causes to be made a telemarketing call.

(9) "Telemarketing call" means an unsolicited telephone call made to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

(10) "Telephone call" means a call or other transmission made to or received at a telephone number, including:

(A) a call made by an automated telephone dialing system;

(B) a transmission to a facsimile recording device; and

(C) a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number serviced by a provider of commercial mobile service, as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, Federal Communications Commission rules, or the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), as amended, except that the term does not include a transmission made to a mobile telephone number as part of an ad-based telephone service, in connection with which the telephone service customer has agreed with the service provider to receive the transmission.

V.T.C.A., Bus. & C. § 304.003

§ 304.003. Making Telemarketing Call

For purposes of this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf of another entity. A person makes a telemarketing call on behalf of another entity if, as a result of the telemarketing call, the other entity can:

(1) become entitled to receive money or other property of any kind from a sale solicited during the call; or

(2) receive information obtained during the call to:

(A) extend or offer to extend to the person solicited credit for a consumer good or service; or

(B) directly solicit a sale of a consumer good or service or extend credit for the sale.

V.T.C.A., Bus. & C. § 304.051

§ 304.051. Maintenance of Texas No-Call List

(a) The commission shall provide for the operation of a database to compile a list of names, zip codes, and telephone numbers of consumers in this state who object to receiving telemarketing calls or other unsolicited telephone calls.

(b) The Texas no-call list is a combined list consisting of the name and telephone numbers of:

(1) each consumer in this state who has requested to be on that list; and

(2) each person in the portion of the national do-not-call registry maintained by the United States government that relates to this state.

(c) The commission shall:

(1) make available an Internet website at which a person may request that a telephone number be placed on the Texas no-call list; and

(2) provide a toll-free telephone number and mailing address that a person may call or write to obtain a copy of a form to request placement of a telephone number on the Texas no-call list.

(d) The Texas no-call list shall be updated and published on January 1, April 1, July 1, and October 1 of each year.

(e) The commission may contract with a private vendor to maintain the Texas no-call list if the vendor has maintained a no-call list database containing the names and telephone numbers of consumers who have previously requested to be added to a no-call list. A contract under this subsection must require the vendor to publish the Texas portion of the national no-call list in an electronic format for any telemarketer who agrees to use the Texas no-call list only to update the telemarketer's no-call list to include those persons with whom the telemarketer does not have an established business relationship.

V.T.C.A., Bus. & C. § 304.052

§ 304.052. Telemarketing Call to Telephone Number on List Prohibited

A telemarketer may not make a telemarketing call to a telephone number published on the Texas no-call list more than 60 days after the date the telephone number appears on the current list.