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Ohio Laws Regarding Telephonic Solicitation

1. Overview

The statutes dealing with telemarketing in Ohio are the Telemarketing Act (ORC Ann. 109.87) and Telephone Solicitors Act (ORC Ann. 4719.01. *et seq.*). Ohio law prohibits telemarketers from violating federal laws that regulate telemarketing and such violations may result in civil penalties. ORC Ann. 109.87.

A person shall act as a telephone solicitor only after having obtained a certificate of registration or registration renewal from the attorney general under section 4719.03 of the Revised Code. ORC Ann. 4719.02 (A). The application shall contain information such as the personal details of the applicant, each business or occupation engaged in by the applicant during the three years immediately preceding the date of the application, the previous experience of the applicant and whether the applicant has been arrested for, convicted of, or pleaded guilty to, or is being prosecuted by indictment or information for a felony either in Ohio or any other state. ORC Ann. 4719.02 (B). The application shall also contain information whether there were any restrictive orders imposed on the applicant, or whether a license had been refused, revoked, or suspended for such person and whether the applicant, at any time during the previous seven years, had filed for bankruptcy. *Id.* Details such as the name of related entities if any, the location at which the applicant intends to do business, a list of all telephone numbers to be used by the applicant and the details regarding the 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 should also be included in the application. *Id.*

2. Definitions

In Ohio "Telephone solicitation" means a communication initiated by or on behalf of a telephone solicitor or by a salesperson which 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. ORC Ann. 4719.01(A)(7). A "Telephone solicitor" means a person that engages in telephone solicitation directly or through one or more salespersons either from a location in Ohio State, or from a location outside Ohio to persons in state. ORC Ann. 4719.01(A)(8).

3. Prohibited Conduct By Telemarketers

Ohio prohibits the intentional blocking of the telephone numbers from which the seller solicits. ORC Ann. 4719.21(B). A violation of this section is considered an unfair or deceptive trade practice. ORC Ann. 4719.21(C).

No telephone solicitor shall 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. ORC Ann. 4719.08(A). Such solicitors shall not fail to maintain a valid certificate of registration or registration renewal, and shall not falsely advertise or represent that they are registered as a telephone solicitor. ORC Ann. 4719.08(B)&(C). A telephone solicitor shall not provide inaccurate or incomplete information to the attorney general when making an application for a certificate or certificate renewal. ORC Ann. 4719.08(D). They shall also not make

misrepresentations. See ORC Ann. 4719.08(E)&(F). No telephone solicitor shall make a false or misleading statement to induce a purchaser to pay for goods or services. ORC Ann. 4719.08(G).

The telephone solicitor shall not fail to notify the attorney general within fifteen days if such 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. ORC Ann. 4719.08(H). Finally, the telephone solicitor shall not intentionally block or intentionally authorize or cause to be blocked the disclosure of the telephone number from which a telephone solicitation is made. ORC Ann. 4719.08(I).

4. Law Regarding Pre Recorded Messages

Ohio applies the federal law regarding pre-recorded messages. *Charvat v. Crawford*, 155 Ohio App. 3d 161 (Ohio Ct. App. 2003). The Telephone Consumer Protection Act, 47 U.S.C.S. § 227, and related regulations prohibit the sending of unsolicited advertisements by a prerecorded voice without obtaining the prior express invitation or permission of the recipient. See 47 U.S.C.S. § 227(b)(1)(B).

In the case of artificial or prerecorded messages, no person or entity shall initiate a call to any residential line without the prior express consent of the recipient. 47 C.F.R. 64.1200(a)(2).

However artificial or prerecorded messages may be initiated to a residential line when:

- (1) It is made for emergency purposes; 47 C.F.R. 64.1200(a)(2)(i)
- (2) It is not made for a commercial purpose; 47 C.F.R. 64.1200(a)(2)(ii)
- (3) It is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; 47 C.F.R. 64.1200(a)(2)(iii)

- (4) It is made to any person with whom the caller has an established business relationship at the time the call is made; 47 C.F.R. 64.1200(a)(2)(iv) or
- (5) It is made by or on behalf of a tax-exempt nonprofit organization. 47 C.F.R. 64.1200(a)(2)(v)

However, there are certain exemptions to the above rule, which are:

- (1) Conduct that is covered by the Federal Trade Commission's (FTC) trade regulation rule regarding pay-per-call services. 16 C.F.R. 310.6(b)(1).
- (2) FTC's trade regulation rule regarding the sale of franchises. 16 C.F.R. 310.6(b)(2).
- (3) Calls that require face to face meeting with the seller before the sale or donation is completed. 16 C.F.R. 310.6(b)(3).
- (4) Unsolicited calls initiated by the customer. 16 C.F.R. 310.6(b)(4).
- (5) Customer initiated calls in response to any media advertisement other than direct mail solicitation. 16 C.F.R. 310.6(b)(5). This exception does not apply to responses to advertisements for investment opportunities or for services relating to clearing derogatory information from credit reports, business opportunities not covered by the Franchise Rule, goods or services to protect a customer in the event of unauthorized use of the customer's credit card, recovering money expenditures resulting from a previous telemarketing transaction, or obtaining a loan or extension of credit if payment of an upfront fee is required. *Id.*
- (6) Customer initiated calls that respond to direct mail solicitations that fully disclose the details of the transaction as required in the rule. 16 C.F.R. 310.6(b)(6). This exception does not apply to responses to direct mail solicitation relating to the type of transactions specified in investment opportunities, business opportunities other

than business arrangements covered by the Franchise Rule, or goods or services described in §§ 310.3(a)(1)(vi) or to prize promotions.

- (7) Calls between a telemarketer and any business. 16 C.F.R. 310.6(b)(7). The exception does not apply to retail sale of non-durable office and cleaning supplies.

Id.

5. Law Regarding Do-Not Call Registry

Telephone numbers registered in the national do-not-call registry are automatically added to Ohio's do-not-call registry. *See* 16 CFR 310.4(b)(1)(iii). ORC Ann. 109.87 enhances the National Do Not Call Registry by granting additional enforcement authority to the Ohio Attorney General's Office. Moreover, ORC Ann. 109.87 (C)(1) empowers the Attorney General to investigate the alleged violation if the Attorney General has reason to believe that a person has engaged, is engaging, or is preparing to engage in a violation of any provision of a federal act or rule.

6. Organizations And Businesses Exempted From The Do-Not-Call List

According to ORC Ann. 4719.01(B), a telephone solicitor is exempt from ORC Ann. § 4719.02 to 4719.18 and ORC Ann. § 4719.99 if the telephone solicitor is any one of the following:

- (1) When the solicitation is a one-time or infrequent;
- (2) When solicitation is 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 §1716.03 of the Revised Code from filing a registration statement under §1716.02 of the Revised Code;

(3) When it is a home solicitation sale 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.

(5) When soliciting the sale of a newspaper of general circulation.

In addition, Ohio law exempts all those organizations covered by the federal laws regarding telephonic solicitation. ORC Ann. 109.87(B)(2)

7. Information To Be Disclosed By The Solicitor

Telephone solicitation should be made only during normal business hours. See ORC Ann. 4719.07(F)(3). Within the first sixty seconds of a telephone call, a solicitor or salesperson should (1) state the his/her 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; and (3) Identify the goods or services being sold. See ORC Ann. 4719.06(A). This oral disclosure is to be made in a clear and intelligible manner. See ORC Ann. 4719.06(C).

Before requesting payment for the sale, a solicitor should inform the person of the rights granted under section 4719.07 of the Revised Code and disclose (1) The street address and telephone number of the telephone solicitor; (2) The total costs to purchase, and the quantity of, goods or services; (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) When in any prize promotion, a description of the prize; its market value; all material conditions to receive or redeem the prize; and such other matters. See ORC Ann. 4719.06(B). Only a written confirmation that complies with ORC Ann. 4719.06 divisions (F) and (G) and discloses in full the terms of the agreement is legal and binding. See ORC Ann. 4719.07(A). This section also deals with the refund or cancellation right of the purchaser when the conditions are met. See ORC Ann. 4719.07.

8. Investigation, Civil Remedies, Criminal Remedies

The Attorney General of Ohio has the power to investigate any violation of ORC Ann. § 4719.01 to 4719.18. See ORC Ann. 4719.11. After the attorney general brings an action in a court of common pleas to enjoin the alleged violation of any provision of the Solicitor's Act, the court shall grant a temporary restraining order, preliminary injunction, or permanent injunction without bond. ORC Ann. 4719.12(A). The court is given power to 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 section 4719.12. *Id.* 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 brought by the attorney general a civil penalty of not less than one thousand nor more than twenty-five thousand dollars may be imposed. ORC Ann. 4719.12(B). Moneys awarded to the attorney general are deposited in the consumer protection enforcement fund created by section 1345.51 of the Revised Code. ORC Ann. 4719.12.

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 Solicitor's Act is guilty of a felony of the fifth degree.

9. Miscellaneous

a. Telemarketing fraud enforcement fund

A Telemarketing fraud enforcement fund is created in the Ohio state treasury. ORC Ann. § 4719.17. The treasurer of state deposits into the fund registration fees paid pursuant to divisions (A) and (D) of section 4719.02 of the Solicitor's Act. *Id.* The consumer protection section of the office of the attorney general uses the moneys in the fund for the administration and enforcement of the program of registration established in sections 4719.01 to 4719.18 of the Revised Code and also for educational activities that advance the purposes of sections 4719.01 to 4719.18 of the Solicitor's Act as set forth in section 4719.18 of the Revised Code. *Id.*

b. Purchaser has no right to waiver of his right

“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.” ORC Ann. 4719.09. “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 State of Ohio and is void and unenforceable.” *Id.*