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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 457*
133rd General Assembly

Occupational Regulation Report

[Click here for H.B. 457's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Rep. Ginter

Impacted Profession: Professional solicitors

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

SUMMARY OF PROPOSED REGULATIONS

Professional solicitors

The Ohio Charitable Solicitation Law (R.C. Chapter 1716) provides for regulation of charitable organizations and professional solicitors. Professional solicitors generally perform, for compensation, services related to soliciting contributions that benefit charitable organizations. Under the law, professional solicitors must register annually with the Attorney General before engaging in any solicitation. Registrants must pay a \$200 application fee and post a \$25,000 bond.²

* This report addresses the "As Introduced" version of H.B. 457. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 1716.07(A), (B), and (C).

Collection receptacles

H.B. 457 requires a person operating a collection receptacle to register as a professional solicitor if the receptacle purports, either through language appearing on the receptacle itself or otherwise, to be collecting items to benefit a charitable purpose or charitable organization.³ A collection receptacle is an attended or unattended container used to collect donations of clothing, books, personal or household items, or other goods.

In addition to the registration requirement, the bill requires the operator of a collection receptacle to display a conspicuous and permanent sign or label on every side of the receptacle with the following information:

1. The name, address, and telephone number of the charitable organization that will receive the goods collected;
2. If the receptacle is operated by a professional solicitor:
 - a. The professional solicitor's name, address, and telephone number; and
 - b. A statement that the contract disclosing the financial arrangement between the professional solicitor and the charitable organization is on file with and available from the Attorney General.⁴

Audio recordings

In addition, H.B. 457 requires professional solicitors to maintain audio recordings of phone solicitations for up to three years.⁵ Under continuing law, the Attorney General can investigate any alleged violation of the law. For this purpose, the Attorney General can examine any person or any documentary material that is relevant to an alleged violation or false or misleading information. The bill specifies that this includes a professional solicitor's pitch sheets, solicitation scripts, and recordings.⁶

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated

³ R.C. 1716.01 and 1716.07.

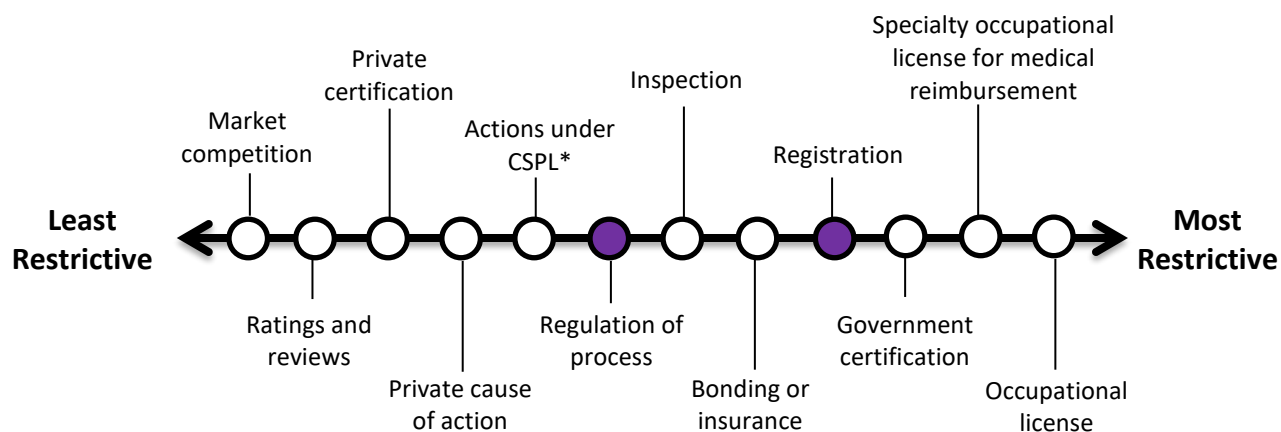
⁴ R.C. 1716.06.

⁵ R.C. 1716.07(G)(1)(i).

⁶ R.C. 1716.15(A)(1).

harms that threaten health, safety, or welfare,” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”⁷

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



*CSPL – The Consumer Sales Practices Law

Necessity of regulations

Representative Ginter, the bill’s primary sponsor, testified that the purpose of H.B. 457 is to increase transparency and accountability for professional solicitors. He noted that they raise millions of dollars in Ohio each year on behalf of charities, and he provided two examples of misleading practices that the bill seeks to address. First, in some instances, the percentage of donated dollars derived from solicitations that are actually received by the intended charity is minimal or zero. Second, operators sometimes deceptively design collection receptacles to resemble those of legitimate charities and place them in parking lots to obtain donations. The ultimate goal of the bill appears to be enhancing protection of legitimate charities and those who donate to them.⁸

Restrictiveness of regulations

The state’s general policy specifies that a registration requirement is an appropriate means of protecting consumers against potential damages from transient service providers.⁹ The bill’s extension of an existing registration requirement (for professional solicitors) to the operators of certain collection receptacles would seemingly assist contributors to those receptacles who are victimized by fraudulent or misleading practices in locating the perpetrator

⁷ Section 3 of the bill and R.C. 4798.01 and 4798.02, neither in the bill.

⁸ Representative Tim Ginter, [Sponsor Testimony for House Bill 457](#), February 5, 2020.

⁹ R.C. 4798.02(B)(4), not in the bill.

and remedying their damages. There is no indication in the bill or in Representative Ginter's sponsor testimony that transient solicitors are of particular concern. However, the potential harms addressed by the bill are, at least, analogous to those anticipated by the state's policy. Therefore, the registration requirement appears to be appropriate under that policy.

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state's Consumer Sales Practices Law do not provide sufficient protection. The bill's process regulations require: (1) professional solicitors to maintain audio recordings of phone solicitations for up to three years, and (2) operators of collection receptacles to display a conspicuous and permanent sign or label on every side of the receptacle with specified information. The regulations would seemingly assist the Attorney General in investigating misconduct, contributors in pursuing actions under the state's Consumer Sales Practices Law, and potential contributors in assessing the credibility of a particular collection receptacle. Whether that assistance is a necessary addition to the protections afforded by current law is a policy decision.

IMPACT STATEMENT

Opportunities for employment

As of July 2020, 82 professional solicitors were registered with the Attorney General. It is unknown how many charitable collection receptacles are operating through solicitors not registered with the state. The bill's requirement that operators of these receptacles register as professional solicitors imposes a small barrier to employment, mainly from the \$200 annual registration fee as well as a \$25,000 bonding requirement. The audio recording retention requirement imposes administrative costs on professional solicitors, which may result in a reduction in opportunities for employment.

Consumer choice and cost

To the extent that the bill restricts the number of charitable collection receptacle operators or increases the costs for these operators, it may reduce the choice and increase the costs to charitable organizations that contract with these operators.

Market competition

Again the bill could deter persons currently operating collection receptacles for charitable organizations from continuing to do so due to the increased regulatory requirements they become subject to under the Charitable Solicitation Law.¹⁰ On the other hand, to the

¹⁰ R.C. 1716.07.

extent receptacles are already being operated by professional solicitors, the bill may even the playing field for these operators by requiring all operators to bear the costs of registration.

Cost to government

An official with the Attorney General's office reports that the office expects an increase in costs from the bill, because the office does not currently track collection receptacles. The office, however, does not have an estimate of the magnitude of the increase. Similarly, the office expects some increase in revenue received from registration fees, but does not have an estimate of the magnitude of such an increase.

STATE-BY-STATE COMPARISON

Two of the five states that neighbor Ohio require an operator of a collection receptacle to obtain a license or to register with a state agency. These states, Kentucky and Michigan, also require certain disclosures to be placed on collection receptacles. The disclosures must identify the operator of the collection receptacle and provide information concerning the associated charitable organization, if one exists. Michigan is the only state that includes audio recordings in its record retention requirements. Both Michigan and Pennsylvania permit the state's Attorney General to examine the professional solicitor or professional fund raiser's solicitation materials.

State	Collection receptacle operator registration	Collection receptacle disclosure requirements	Professional solicitor audio recording retention	Government agency authorized to examine sales pitch sheets, solicitation scripts, and audio recordings
Indiana	No. Operators of collection receptacles (or persons described by similar language) are not specifically mentioned in Indiana law.	None.	No, record retention requirements only apply to fiscal records (Burns Ind. Code Ann. 23-7-8-5(a)).	No, the law permits the Indiana Attorney General to inspect fiscal records only (Burns Ind. Code Ann. 23-7-8-5(b)).
Kentucky	Yes, an operator must register with the Kentucky Attorney General as a professional solicitor and must: <ul style="list-style-type: none"> pay \$300 for registration, valid for one year; post a \$25,000 surety bond. (KRS 367.652)	Yes. If the collection receptacle is for a charitable purpose and the professional solicitor places or maintains a receptacle in public view for the purpose of collecting contributions in the form of clothing, household items, and other items, the receptacle must contain a sign or label that includes: <ol style="list-style-type: none"> The professional solicitor's name, 	No. A professional solicitor must maintain fiscal records concerning charitable solicitations in Kentucky. These records must be kept on file during each solicitation campaign and for at least three years after completion of the solicitation campaign. (KRS 367.666(2))	No. The law requires the fiscal records to be made available to the Kentucky Attorney General. (KRS 367.666(4))

State	Collection receptacle operator registration	Collection receptacle disclosure requirements	Professional solicitor audio recording retention	Government agency authorized to examine sales pitch sheets, solicitation scripts, and audio recordings
		<p>telephone number or email address, and the fact that the professional solicitor is being paid for providing services;</p> <p>2. The name of the charitable organization the professional solicitor represents and a description of how the contributions raised by the solicitation will be used for a charitable or civic purpose;</p> <p>3. A statement that reads as follows: "Items donated here support, in part, a for-profit professional solicitor." The statement's lettering must be not less than two inches in height and one-half inch in width and placed immediately below the opening in the receptacle used to deposit donations.</p> <p>(KRS 367.668)</p>		

State	Collection receptacle operator registration	Collection receptacle disclosure requirements	Professional solicitor audio recording retention	Government agency authorized to examine sales pitch sheets, solicitation scripts, and audio recordings
		<p>If the collection receptacle is not for a charitable purpose, it must state the following:</p> <ol style="list-style-type: none"> 1. The name, address, telephone number, and email address of the person who places or maintains the receptacle or establishes or maintains the drop-off site; 2. A statement that reads as follows: "Donations do not qualify as a charitable contribution for federal tax purposes." <p>(KRS 367.664)</p>		
Michigan	<p>Yes, a person that operates a "clothing donation box" is a professional fund raiser and must obtain a license from the Michigan Attorney General. The person is subject to:</p> <ul style="list-style-type: none"> ▪ An annual registration requirement; 	<p>The operator of the clothing donation box is prohibited from:</p> <ol style="list-style-type: none"> 1. Marking the box or any sign near it in any manner that represents or implies that personal property placed in the box, or the proceeds of that personal property, is donated to one or more charitable 	<p>Yes, licensees must retain, for six years, soliciting materials, which include recordings used to solicit money from the public.</p> <p>(MCLS 400.272(i), 400.274, and 400.278)</p>	<p>Yes, materials that are used to solicit money from the public, including scripts and recordings, must be open to inspection at all reasonable times by the Michigan Attorney General or the Michigan Attorney General's authorized representative.</p> <p>(MCLS 400.272, 400.274, and 400.278)</p>

State	Collection receptacle operator registration	Collection receptacle disclosure requirements	Professional solicitor audio recording retention	Government agency authorized to examine sales pitch sheets, solicitation scripts, and audio recordings
	<ul style="list-style-type: none"> A \$10,000 bond requirement. (MCLS 400.272(c) and (f), 400.287, and 400.289)	<p>organizations if it is not;</p> <ol style="list-style-type: none"> Displaying the name, logo, trademark, or service mark of a charitable organization on a clothing donation box or on any sign near it if that charitable organization does not receive any of the personal property placed in the box or any of the proceeds of that personal property; 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, failing to clearly and conspicuously disclose this on the donation box or on a sign at the box. The disclosure must include the name, address, and telephone number of each charitable organization that receives any of that 		

State	Collection receptacle operator registration	Collection receptacle disclosure requirements	Professional solicitor audio recording retention	Government agency authorized to examine sales pitch sheets, solicitation scripts, and audio recordings
		property or those proceeds and the name, address, and telephone number of any other person that receives any of that property or those proceeds. (MCLS 400.289)		
Pennsylvania	No. Operators of collection receptacles (or persons described by similar language) are not specifically mentioned in Pennsylvania law.	None.	No, audio recordings are not included in record retention requirements, but each charitable organization required to register must maintain records, books, and reports for at least three years. (10 P.S. 162.5)	Yes, all records, books and reports must be made available for inspection upon demand by the Pennsylvania Department of State and the Office of Attorney General. (10 P.S. 162.5)
West Virginia	No. Operators of collection receptacles (or persons described by similar language) are not specifically mentioned in West Virginia law.	None.	No, only fiscal records must be retained. (W. Va. Code 29-19-11)	No, only the West Virginia Attorney General and Secretary of State may inspect fiscal records. (W. Va. Code 29-19-11)



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H.B. 457
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Ginter

Carla Napolitano, Attorney

SUMMARY

- Adds collection receptacles, which are containers used for the collection of donations of clothing, books, personal or household items, or other goods, and those who operate them under the regulation of the Ohio Charitable Solicitation Law.
- Requires the operator of a collection receptacle to display a conspicuous and permanent sign or label on every side of the collection receptacle providing identifying and contact information for the charitable organization and professional solicitor, and where to locate any public financial disclosures.
- Limits all charitable solicitation subject to the Ohio Charitable Solicitation Law to three years.
- Permits the contract between the professional solicitor and the charitable organization to include the required information relating to the benefit the charitable organization will receive based on the amount of dollars per pound of goods collected.
- Requires a professional solicitor to maintain audio recordings of each phone solicitation the solicitor makes for up to three years after the completion of the solicitation campaign.
- Prohibits a charitable solicitation or charitable sales promotion to violate a federal regulation that prohibits initiating an outbound telephone call that delivers a prerecorded message.
- Permits the Attorney General to examine professional solicitor's pitch sheets, solicitation scripts, and recordings when investigating any alleged violation of the law.

DETAILED ANALYSIS

General overview

The Ohio Charitable Solicitation Law (R.C. Chapter 1716) provides regulation of charitable organizations and professional solicitors. The law requires any charitable organization that intends to solicit contributions or have contributions solicited on its behalf to file a registration statement with the Attorney General. The law also requires each professional solicitor to register with the Attorney General.¹ The bill adds collection receptacles and those who operate them under the regulation of the Ohio Charitable Solicitation Law and makes other changes to this law, such as filing requirements with the Attorney General, limitations on the duration of solicitations, and record requirements.

Collection receptacles

The bill adds collection receptacles and persons who operate collection receptacles to regulation under the Ohio Charitable Solicitation Law. “**Collection receptacles**” are attended or unattended containers used to collect donations of clothing, books, personal or household items, or other goods. They are not used to collect monetary donations. As defined in existing law, unchanged by the bill, a “**professional solicitor**” means any person who, for compensation, performs on behalf of or for the benefit of a charitable organization any service in connection with which contributions are or will be solicited in Ohio by the compensated person or by any person it engages to solicit contributions.

Under the bill, a person operating a collection receptacle that purports, either through language appearing on the collection receptacle itself or otherwise, to be collecting items for the purpose of benefiting a charitable purpose or charitable organization is considered a professional solicitor under the law and is required to register with the Attorney General. However, a person removing or delivering donations placed in a collection receptacle for a fixed fee is not subject to the law, if the person does not otherwise directly or indirectly receive any of the proceeds of the sale of donations or derive any other benefit from it. Under existing law, unchanged by the bill, a professional solicitor must register with the Attorney General before engaging in any solicitation, which includes an application in a form prescribed by the Attorney General and bonding requirement of \$25,000.²

Required sign or label on collection receptacle

The bill requires the operator of a collection receptacle to display a conspicuous and permanent sign or label on every side of the collection receptacle with the following information:

¹ R.C. 1716.02, not in the bill, and 1716.07.

² R.C. 1716.01(D), (K), and (L) and 1716.07(A), (B), and (C).

1. The name, address, and telephone number of the charitable organization that will receive the goods collected;
2. If the collection receptacle is operated by a professional solicitor, then the name, address, and telephone number of the professional solicitor;
3. If the collection receptacle is operated by a professional solicitor, a statement that the contract disclosing the financial arrangement between the professional solicitor and the charitable organization is on file with and available from the Attorney General.³

Filings with the Attorney General

Existing law requires the professional solicitor to file with the Attorney General a “Solicitation Notice,” a copy of the contract between the solicitor and any charitable organization contracting with the solicitor, and a sworn statement by the charitable organization on whose behalf the professional solicitor is acting certifying the materials filed are true and correct. The bill permits the Attorney General to publish all of the above information.

The Solicitation Notice includes details about the manner in which the solicitor intends to fundraise, and other information. The bill requires the Solicitation Notice to include the location of each collection receptacle used in connection with the solicitation. In addition, while existing law requires the Solicitation Notice to include the projected dates when the solicitation will commence and terminate, the bill limits the duration of the solicitation to three years.

Existing law also requires that no later than 90 days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional solicitor must provide to the charitable organization and file with the Attorney General a financial report of the campaign, including the gross revenue received, and an itemization of all expenses incurred. The bill adds that the report must also include the total weight of items collected in each collection receptacle if a collection receptacle was used and the value received for the sale of the items.⁴

The bill defines “**solicitation campaign**” for the purposes of the Ohio Charitable Solicitation Law as a series of solicitations that are made by the same person for the same charitable organization and that are similar in content or are based on a similar pitch or sales approach, which series leads up to or is represented to lead up to an event or lasts or is intended to last for a definite period of time.⁵

³ R.C. 1716.06.

⁴ R.C. 1716.07(D) and (E).

⁵ R.C. 1716.01(M).

Contract between professional solicitor and charitable organization

Existing law lays out specific requirements for the contracts between a charitable organization and a solicitor. For example, the contract between the parties must be in writing, must state the obligations of both parties, and must contain the percentage of gross revenue from the solicitation campaign that the charitable organization is to receive. The percentage can be either a fixed percentage of the gross revenue or a reasonable estimate.

The bill provides another option. Instead of the requirement for the percentage of gross revenue, the bill requires the contract to contain a clear statement of the benefit the charitable organization will receive which may be stated as a fixed percentage of the gross revenue, a reasonable estimate of the percentage of the gross revenue, *or as any other amount such as dollars per pound of goods collected*. The bill also permits that the number and value of goods collected to be used for determining compensation of the professional solicitor or for calculating the percentage of gross revenue the charitable organization will receive.⁶

Audio records

The bill adds a requirement that during each solicitation campaign and for not less than three years after its completion, the professional solicitor maintain an audio record of each telephone solicitation the professional solicitor makes.⁷

Prohibition

The bill explicitly prohibits a charitable solicitation or charitable sales promotion to violate the federal Telemarketing Sales Rule that prohibits initiating an outbound telephone call that delivers a prerecorded message.⁸

Investigation by the Attorney General

Under existing law, the Attorney General can investigate any alleged violation of the law. For this purpose, the Attorney General can examine any person or any documentary material that is relevant to the alleged violation or false or misleading information. The bill adds that this includes a professional solicitor's pitch sheets, solicitation scripts, and recordings.⁹

⁶ R.C. 1716.07(D) and 1716.08(A).

⁷ R.C. 1716.07(G)(1)(i).

⁸ R.C. 1716.14(A)(12) and 16 Code of Federal Regulations 310.4(b)(1)(v).

⁹ R.C. 1716.15(A)(1).

HISTORY

Action	Date
Introduced	12-23-19
