

Senate Bill 379

By: Senators Johnson of the 1st, Hooks of the 14th, Meyer von Bremen of the 12th, Pearson of the 51st, Smith of the 52nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to
2 telephone and telegraph service, so as to prohibit the use of automatic dialing and recorded
3 message equipment; to provide for certain exceptions; to provide for definitions; to provide
4 requirements for disclosure of information by live operators; to provide for the time of day
5 during which automatic dialing and recorded message equipment may be used; to provide
6 for the issuance of permits for connecting any automatic dialing and recorded message
7 equipment; to provide for the suspension and revocation of such permits; to provide for
8 penalties; to provide identification requirements for any person or entity making a telephone
9 solicitation; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and
13 telegraph service, is amended by revising Code Section 46-5-23, relating to use of automatic
14 dialing and recorded message (ADAD) equipment, in its entirety as follows:

15 "46-5-23.

16 (a) As used in this Code section, the term:

17 (1) 'ADAD equipment' means any device or system of devices which is used, whether
18 alone or in conjunction with other equipment, for the purpose of automatically selecting
19 or dialing telephone numbers and disseminating prerecorded messages to the numbers so
20 selected or dailed.

21 (2) 'Caller' means a person, corporation, firm, partnership, association, or legal or
22 commercial entity that attempts to contact, or that contacts, a subscriber in this state by
23 using a telephone or a telephone line.

24 (3) 'Caller identification service' means a telephone service that permits telephone
25 subscribers to see the telephone number of incoming telephone calls.

1 (4) 'Established business relationship' means a relationship between a seller and consumer
2 based on a free trial newspaper subscription, the consumer's purchase, rental, or lease of
3 the seller's goods or services, or a financial transaction between the consumer and seller
4 within the 24 months immediately preceding the date of a telemarketing call.

5 (5) 'Message' means any telephone call, including voice, text, or other electronic
6 communication, regardless of its content.

7 (6) 'Subscriber' means a person who has subscribed to a residential telephone line or the
8 other persons living or residing with the subscribing person.

9 (7) 'Telephone line' means a telephone service to a subscriber regardless of the
10 technology used to provide such service, including traditional wireline or cable telephone
11 service; cellular, broadband personal communications service, or other wireless telephone
12 service; microwave, satellite, or other terrestrial telephone service; and voice over
13 Internet protocol telephone service.

14 (8) 'Telephone solicitation' means any voice, text, or other electronic communication
15 over a telephone line for the purpose of encouraging charitable contributions or the
16 purchase or rental of, or investment in, property, real estate, commodities, intangibles,
17 objects, goods, services, merchandise, or wares, whether the communication is made by
18 a live operator, through the use of an automatic dialing-announcing device, or by other
19 means. Telephone solicitation does not include communications:

20 (A) To any subscriber with that subscriber's prior express written request, consent,
21 invitation, or permission;

22 (B) By or on behalf of any person with whom the subscriber has an established
23 personal or business relationship;

24 (C) By or on behalf of a charitable organization which has filed a registration statement
25 pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs
26 (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such
27 registration as a religious organization or agency referred to in paragraph (2) of Code
28 Section 43-17-2, but only if the following applies:

29 (i) The telephone call is made by a volunteer or employee of the charitable
30 organization; and

31 (ii) The person who makes the telephone call immediately discloses the following
32 information upon making contact with the consumer:

33 (I) The person's true first and last name; and

34 (II) The name, address, and telephone number of the charitable organization;

35 (D) By or on behalf of any person whose exclusive purpose is to poll or solicit the
36 expression of ideas, opinions, or votes, unless the communication is made through an

1 automatic dialing-announcing device in a manner prohibited by subsection (b) of this
2 Code section;

3 (E) By the individual soliciting without the intent to complete, and who does not in fact
4 complete, the sales presentation during the call, but who will complete the sales
5 presentation at a later face-to-face meeting between the individual solicitor or person
6 who makes the initial call and the prospective purchaser; or

7 (F) By or on behalf of a candidate as such term is defined in Code Section 21-5-3; a
8 political party, political body, or political organization as such terms are defined in
9 Code Section 21-2-2; or any other group with a political purpose.

10 (b) A caller shall not use or connect to a telephone line any ADAD equipment unless the
11 subscriber has knowingly and expressly requested, consented to, permitted, or authorized
12 receipt of the message or the message is immediately preceded by a live operator who
13 obtains the subscriber's express consent before the message is delivered. This subsection
14 and subsection (e) of this Code section shall not apply to a message from a public safety
15 agency notifying a person of an emergency; a message from a school district to a student,
16 a parent, or an employee; a message to a subscriber with whom the caller has an established
17 business relationship; or a message advising an employee of a work schedule.

18 (c) When the message is immediately preceded by a live operator, the operator must
19 disclose at the outset of the message:

20 (1) The name of the business, firm, organization, association, partnership, or entity for
21 which the message is being made;

22 (2) The purpose of the message;

23 (3) The identity or kinds of goods or services the message is promoting; and

24 (4) If applicable, the fact that the message intends to solicit payment or commitment of
25 funds.

26 (d) A caller may not use any ADAD equipment unless the device is designed and operated
27 so as to disconnect within ten seconds after termination of the telephone call by the
28 subscriber. A caller may not use an automatic dialing-announcing device that uses a
29 random or sequential number generator unless the equipment excludes calls to the
30 following telephone numbers:

31 (1) Emergency telephone numbers, including 9-1-1, of any hospital, medical physician,
32 health care facility, ambulance or emergency medical provider, fire protection facility,
33 or law enforcement agency;

34 (2) Any guest room or patient room of a hospital, health care facility, elderly care home,
35 or similar establishment;

36 (3) A paging service, a cellular telephone service, a specialized mobile radio service, or
37 any service for which the called party is charged for the call; and

- 1 (4) The telephone numbers maintained on the list established pursuant to Code Section
2 46-5-27.
- 3 (e) A caller may not use any ADAD equipment nor make any telephone solicitation before
4 8:00 A.M. or after 9:00 P.M. at the subscriber's location.
- 5 (f) Pursuant to Code Section 46-5-24, a caller making use of a 976 number shall not use
6 any ADAD equipment.
- 7 (g) The Governor's Office of Consumer Affairs shall be authorized and empowered to
8 receive complaints regarding the use of ADAD equipment in violation of this Code section.
9 The administrator appointed pursuant to subsection (g) of Code Section 10-1-395 shall
10 have the authority to investigate any complaints regarding the use of ADAD equipment in
11 violation of this Code section and to initiate proceedings, pursuant to Code Section
12 10-1-397, relating to a knowing violation or threatened knowing violation of this Code
13 section. Such proceedings include without limitation proceedings to issue a cease and desist
14 order, to issue an order imposing a civil penalty up to a maximum of \$2,000.00 for each
15 knowing violation, and to seek additional relief in any superior court of competent
16 jurisdiction. Such actions shall be brought in the name of the state. The provisions of Code
17 Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings initiated by the
18 administrator under this subsection. The administrator is authorized to issue investigative
19 demands, issue subpoenas, administer oaths, and conduct hearings in the course of
20 investigating a violation of this Code section in accordance with the provisions of Code
21 Sections 10-1-403 and 10-1-404.
- 22 (h) Any person who has received more than one call using ADAD equipment within any
23 12 month period by or on behalf of the same person or entity in violation of this Code
24 section may bring an action to enjoin such violation; bring an action to recover for actual
25 monetary loss from such knowing violation or to receive up to \$2,000.00 in damages for
26 each such knowing violation, whichever is greater; or bring both such actions.
- 27 (i) No action or proceeding may be brought under subsection (g) or (h) of this Code
28 section:
- 29 (1) More than two years after the person bringing the action knew or should have known
30 of the occurrence of the alleged violation; or
- 31 (2) More than two years after the termination of any proceeding or action by the State
32 of Georgia, whichever is later.
- 33 (j) A court of this state may exercise personal jurisdiction over any nonresident or his or
34 her executor or administrator as to an action or proceeding authorized by this Code section
35 in accordance with the provisions of Code Section 9-10-91.
- 36 (k) Any person who violates any provision of this Code section shall be guilty of a
37 misdemeanor."

