

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

AS PASSED SENATE

**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 prescribe the manner in which automatic dialing and
3 recorded message equipment shall be used; to provide for definitions; to provide for certain
4 exceptions; to provide requirements for disclosure of information by live operators; to
5 provide for the time of day during which automatic dialing and recorded message equipment
6 may be used; to provide for the issuance of permits for connecting any automatic dialing and
7 recorded message equipment; to provide for the suspension and revocation of such permits;
8 to provide for penalties; to provide identification requirements for any person or entity
9 making a telephone solicitation; to provide for related matters; to repeal conflicting laws; and
10 for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

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

16 "46-5-23.

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

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

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

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

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

7 (5) '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 (6) '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 (b) A caller shall not use or connect to a telephone line any ADAD equipment unless the
15 subscriber has knowingly and expressly requested, consented to, permitted, or authorized
16 receipt of the message or the message is immediately preceded by a live operator who
17 obtains the subscriber's express consent before the message is delivered. This subsection
18 and subsection (e) of this Code section shall not apply to a message from a public safety
19 agency notifying a person of an emergency; a message from a school district, or a school,
20 to a student, a parent, or an employee; a message to a subscriber with whom the caller has
21 an established business relationship; or a message advising an employee of a work
22 schedule.

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

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

27 (2) The purpose of the message;

28 (3) If applicable, the identity or kinds of goods or services the message is promoting; and

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

31 (d) A caller may not use any ADAD equipment unless the device is designed and operated
32 so as to disconnect within ten seconds after termination of the telephone call by the
33 subscriber. A caller may not use ADAD equipment that uses a random or sequential
34 number generator unless the device is designed and operated so as to exclude calls to the
35 following telephone numbers:

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

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

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

8 (4) The telephone numbers maintained on the list established pursuant to Code Section
9 46-5-27.

10 (e) A caller may not use any ADAD equipment before 8:00 A.M. or after 9:00 P.M. at the
11 subscriber's location.

12 (f) Pursuant to Code Section 46-5-24, a caller making use of a 976 number shall not use
13 any ADAD equipment.

14 (g) The Governor's Office of Consumer Affairs shall be authorized and empowered to
15 receive complaints regarding the use of ADAD equipment in violation of this Code section.

16 The administrator appointed pursuant to subsection (g) of Code Section 10-1-395 shall
17 have the authority to investigate any complaints regarding the use of ADAD equipment in
18 violation of this Code section and to initiate proceedings, pursuant to Code Section
19 10-1-397, relating to a knowing violation or threatened knowing violation of this Code
20 section. Such proceedings include without limitation proceedings to issue a cease and desist
21 order, to issue an order imposing a civil penalty up to a maximum of \$2,000.00 for each
22 knowing violation, and to seek additional relief in any superior court of competent
23 jurisdiction. Such actions shall be brought in the name of the state. The provisions of Code
24 Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings initiated by the
25 administrator under this subsection. The administrator is authorized to issue investigative
26 demands, issue subpoenas, administer oaths, and conduct hearings in the course of
27 investigating a violation of this Code section in accordance with the provisions of Code
28 Sections 10-1-403 and 10-1-404.

29 (h) Any person who has received more than one call using ADAD equipment within any
30 12 month period by or on behalf of the same person or entity in violation of this Code
31 section may bring an action to enjoin such violation; bring an action to recover for actual
32 monetary loss from such knowing violation or to receive up to \$2,000.00 in damages for
33 each such knowing violation, whichever is greater; or bring both such actions.

34 (i) No action or proceeding may be brought under subsection (g) or (h) of this Code
35 section:

36 (1) More than two years after the person bringing the action knew or should have known
37 of the occurrence of the alleged violation; or

1 (2) More than two years after the termination of any proceeding or action by the State
2 of Georgia, whichever is later.

3 (j) A court of this state may exercise personal jurisdiction over any nonresident or his or
4 her executor or administrator as to an action or proceeding authorized by this Code section
5 in accordance with the provisions of Code Section 9-10-91.

6 (k) Any person who violates any provision of this Code section shall be guilty of a
7 misdemeanor."

8 SECTION 2.

9 Said chapter is further amended by adding a new Code section to read as follows:

10 "46-5-23.1.

11 (a) It shall be unlawful for any person to connect any ADAD equipment, as that term is
12 defined in Code Section 46-5-23, to any telephone line in this state for the purpose of
13 making telephone calls to persons in this state through the use of ADAD equipment unless
14 a permit has been issued for such ADAD equipment by the commission. Any person
15 desiring to use ADAD equipment in this state shall make application for a permit to the
16 commission on forms prescribed by the commission and shall pay a fee as prescribed by
17 the commission for such permit. Permits shall be renewed biennially as prescribed by the
18 commission and upon payment of a renewal fee. The fees charged shall cover the
19 administrative cost for the issuance of such permits. Permits shall be subject to suspension
20 or revocation for any violation of Code Section 46-5-22, 46-5-23, 46-5-24, 46-5-25, or
21 46-5-27.

22 (b) The commission shall enforce this Code section, and the commission shall require local
23 exchange companies to file with the commission appropriate tariff revisions to implement
24 this subsection. Any person who operates or utilizes ADAD equipment in violation of the
25 provisions of this Code section or Code Section 46-5-22, 46-5-23, 46-5-24, 46-5-25, or
26 46-5-27 shall be subject to disconnection of telephone service if the violation does not
27 cease within ten days from the date of notification to such person by the local exchange
28 company. The tariff revisions filed by local exchange companies shall provide for the
29 giving of such notification by local exchange companies and for such disconnection of
30 service."

31 SECTION 3.

32 Said chapter is further amended by revising paragraph (1) of subsection (g) of Code Section
33 46-5-27, relating to telephone solicitations and required identification, as follows:

34 "(1) Any person or entity who makes a telephone solicitation to the telephone line of any
35 residential, mobile, or wireless subscriber in this state shall, at the beginning of such call,

1 state clearly ~~the identity of the person or entity initiating the call~~ the true first and last
2 name, telephone number, and city and state of location of the person initiating the call and
3 the name of the entity on whose behalf the telephone solicitation is made."

4 **SECTION 4.**

5 All laws and parts of laws in conflict with this Act are repealed.