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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"46-5-23. (a) As used in this Code section, the term:

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

(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) 'Established business relationship' means a relationship between a seller and consumer based on a free trial newspaper subscription, 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 24 months immediately preceding the date of a telemarketing call.

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

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

(6) '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 personal communications service, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over Internet protocol telephone service.

(b) A caller shall not use or connect to a telephone line any ADAD equipment unless the subscriber has knowingly and expressly 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 express consent before the message is delivered. This subsection and subsection (e) of this Code section shall not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district, or a school, to a student, a parent, or an employee; a message to a subscriber with whom the caller has an established business relationship; or a message advising an employee of a work schedule.

(c) 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 person, business, firm, organization, association, partnership, or entity for which the message is being made;

(2) The purpose of the message;

(3) If applicable, 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.

(d) A caller may not use any ADAD equipment 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 ADAD equipment that uses a random or sequential number generator unless the device is designed and operated so as to exclude calls to the following telephone numbers:
(1) Emergency telephone numbers, including 9-1-1, 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; and

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

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

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

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

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

(i) No action or proceeding may be brought under subsection (g) or (h) of this Code 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 by the State
of Georgia, whichever is later.

(j) 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 Code section
in accordance with the provisions of Code Section 9-10-91.

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

SECTION 2.

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

“46-5-23.1.

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

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

SECTION 3.

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

“(1) Any person or entity who makes a telephone solicitation to the telephone line of any
residential, mobile, or wireless subscriber in this state shall, at the beginning of such call,
state clearly the identity of the person or entity initiating the call the true first and last name, telephone number, and city and state of location of the person initiating the call and the name of the entity on whose behalf the telephone solicitation is made.

SECTION 4.

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