Senate Bill 272

By: Senators Seabaugh of the 28th, Thomas of the 2nd and Shafer of the 48th

**AS PASSED**

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 revise provisions regulating telemarketing to residential telephone subscribers to include telemarketing to mobile and wireless subscribers; to revise legislative findings, definitions, and the prohibition of telephone solicitation to certain subscribers; to revise provisions relating to a data base of subscribers who object to telephone solicitations and fees in connection therewith; to provide a penalty for unlawful compilation or dissemination of information from such data base; to revise procedures for persons making telephone solicitations; 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 in Code Section 46-5-27, relating to telephone solicitations, by striking subsections (a) through (g) and inserting in lieu thereof the following:

"(a) The General Assembly finds that:

(1) The use of the telephone to market goods and services ~~to the home~~ is pervasive now due to the increased use of cost-effective telemarketing techniques;

(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers;

(3) Every day, over 300,000 solicitors place calls to more than 18 million Americans, including citizens of this state;

(4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy and peacefulness of ~~the home~~ individuals;

(5) Many citizens of this state are outraged over the proliferation of nuisance calls ~~to their homes~~ from telemarketers;

(6) Individuals´ privacy rights and commercial freedom of speech can be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices; and

(7) It is in the public interest to establish a mechanism under which the individual citizens of this state can decide whether or not to receive telemarketing calls ~~in their homes~~.

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

(1) 'Caller identification service' means a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) 'Residential, mobile, or wireless subscriber' means a person who has subscribed to ~~residential~~ telephone service from a local exchange company or mobile or wireless telephone service provider, or ~~the~~ other persons living or residing with such person.

(3) 'Telephone solicitation' means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, but does not include communications:

(A) To any residential, mobile, or wireless subscriber with that subscriber´s prior express invitation or permission;

(B) By or on behalf of any person or entity with whom a residential, mobile, or wireless subscriber has a prior or current business or personal relationship; or

(C) By or on behalf of a charitable organization which has filed a registration statement pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such registration as a religious organization or agency referred to in paragraph (2) of Code Section 43-17-2.

Such communication may be from a live operator, through the use of ADAD equipment as defined in Code Section 46-5-23, or by other means.

(c) No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential, mobile, or wireless subscriber in this state who has given notice to the commission, in accordance with regulations promulgated under subsection (d) of this Code section, of such subscriber´s objection to receiving telephone solicitations.

(d)(1) The commission shall establish and provide for the operation of a data base to compile a list of telephone numbers of residential, mobile, and wireless subscribers who object to receiving telephone solicitations. It shall be the duty of the commission to have such data base in operation no later than January 1, 1999.

(2) Such data base may be operated by the commission or by another entity ~~under contract with~~ selected by and awarded a contract by the commission.

(3) No later than January 1, 1999, the commission shall promulgate regulations which:

(A) Require each local exchange company to inform its residential, mobile, or wireless subscribers of the opportunity to provide notification to the commission or its contractor that such subscriber objects to receiving telephone solicitations;

(B) Specify the methods by which each residential, mobile, or wireless subscriber may give notice to the commission or its contractor of his or her objection to receiving such solicitations ~~or~~ and methods for revocation of such notice;

(C) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;

(D) Specify the methods by which such objections and revocations shall be collected and added to the data base;

(E) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base as required to avoid calling the telephone numbers of residential, mobile, or wireless subscribers included in the data base; and

(F) Specify such other matters relating to the data base that the commission deems desirable.

(4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications Commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the commission shall include the part of such single national data base that relates to Georgia in the data base established under this Code section.

(e) ~~A residential subscriber shall be charged a fee of $5.00, payable to the commission, for each notice for inclusion in the data base established under this Code section. A person or entity desiring to make telephone solicitations shall be charged a fee of $10.00 per year payable to the commission for access to or for paper or electronic copies of the data base established under this Code section.~~ The commission may provide by rule or regulation for administrative fees to be imposed upon:

(1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data base established under this Code section; provided, however, that the commission shall not set this fee in an amount greater than $5.00; and

(2) A person or entity desiring to make telephone solicitations for access to or for electronic copies of the data base established under this Code section.

(f)(1) Information contained in the data base established under this Code section shall be used only for the purpose of compliance with this Code section or in a proceeding or action under subsection (h) or (i) of this Code section. Such information shall not be subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.

(2) No person shall knowingly compile or disseminate or compile and disseminate information obtained from the data base for any reason other than those legitimate purposes established by law. Any person found guilty of violating this subsection shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00. Each instance of an unauthorized disclosure of information from the data base shall constitute a separate offense.

(g)(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.

(2) No person or entity who makes a telephone solicitation to the telephone line of a residential, mobile, or wireless subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber´s use of a caller identification service.″

**SECTION 2.**

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