

Senate Bill 364

By: Senators Tillery of the 19th, Brass of the 28th, Dugan of the 30th, Cowsert of the 46th, Hatchett of the 50th and others

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 2 of Title 46 of the Official Code of Georgia Annotated, relating
2 to general provisions relative to telephone service, so as to provide for class action suits and
3 for damages against certain persons for violating provisions relating to telephone
4 solicitations; to provide for legislative findings; to provide for actions and damages against
5 persons and entities on whose behalf such provisions were violated; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 1 of Article 2 of Title 46 of the Official Code of Georgia Annotated, relating to general
10 provisions relative to telephone service, is amended by revising Code Section 46-5-27,
11 relating to telephone solicitations to residential, mobile, or wireless subscribers, Public
12 Service Commission to establish and maintain list of certain subscribers, authorization for
13 imposition of administrative fees, confidential nature of data base, and required
14 identification, as follows:

15 "46-5-27.

16 (a) The General Assembly finds that:

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- 17 (1) The use of the telephone to market goods and services is pervasive now due to the
18 increased use of cost-effective telemarketing techniques;
- 19 (2) Over 30,000 businesses actively telemarket goods and services to business and
20 residential customers;
- 21 (3) Every day, over 300,000 solicitors place calls to more than 18 million Americans,
22 including citizens of this state;
- 23 (4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy
24 and peacefulness of individuals;
- 25 (5) Many citizens of this state are outraged over the proliferation of nuisance calls from
26 telemarketers;
- 27 (6) Individuals' privacy rights and commercial freedom of speech can be balanced in a
28 way that accommodates both the privacy of individuals and legitimate telemarketing
29 practices; and
- 30 (7) It is in the public interest to establish a mechanism under which the ~~individual~~
31 citizens of this state can decide whether or not to receive telemarketing calls and can seek
32 injunctive relief and damages against those in violation of this Code section and against
33 those on whose behalf such violations were committed.
- 34 (b) As used in this Code section, the term:
- 35 (1) 'Caller identification service' means a type of telephone service which permits
36 telephone subscribers to see the telephone number of incoming telephone calls.
- 37 (2) 'Residential, mobile, or wireless subscriber' means a person who has subscribed to
38 telephone service from a local exchange company or mobile or wireless telephone service
39 provider or other persons living or residing with such person.
- 40 (3) 'Telephone solicitation' means any voice communication over a telephone line for the
41 purpose of encouraging the purchase or rental of, or investment in, property, goods, or
42 services, but does not include communications:

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

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

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

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

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

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

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

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

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

- 69 (B) Specify the methods by which each residential, mobile, or wireless subscriber may
70 give notice to the commission or its contractor of his or her objection to receiving such
71 solicitations and methods for revocation of such notice;
- 72 (C) Specify the length of time for which a notice of objection shall be effective and the
73 effect of a change of telephone number on such notice;
- 74 (D) Specify the methods by which such objections and revocations shall be collected
75 and added to the data base;
- 76 (E) Specify the methods by which any person or entity desiring to make telephone
77 solicitations will obtain access to the data base as required to avoid calling the
78 telephone numbers of residential, mobile, or wireless subscribers included in the data
79 base; and
- 80 (F) Specify such other matters relating to the data base that the commission deems
81 desirable.
- 82 (4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications
83 Commission establishes a single national data base of telephone numbers of subscribers
84 who object to receiving telephone solicitations, the commission shall include the part of
85 such single national data base that relates to Georgia in the data base established under
86 this Code section.
- 87 (e) The commission may provide by rule or regulation for administrative fees to be
88 imposed upon:
- 89 (1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data
90 base established under this Code section; provided, however, that the commission shall
91 not set this fee in an amount greater than \$5.00; and
- 92 (2) A person or entity desiring to make telephone solicitations for access to or for
93 electronic copies of the data base established under this Code section.
- 94 (f)(1) Information contained in the data base established under this Code section shall
95 be used only for the purpose of compliance with this Code section or in a proceeding or

96 action under subsection (h) or (I) of this Code section. Such information shall not be
97 subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.

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

104 (g)(1) Any person or entity ~~who~~ that makes a telephone solicitation to the telephone line
105 of any residential, mobile, or wireless subscriber in this state shall, at the beginning of
106 such call, state clearly the identity of the person or entity initiating the call.

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

111 (h) The Attorney General shall have authority to initiate proceedings, pursuant to Code
112 Section 10-1-397, relating to a ~~knowing~~ violation or threatened ~~knowing~~ violation of
113 subsection (c) or (g) of this Code section. Such proceedings include without limitation
114 proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up
115 to a maximum of \$2,000.00 for each ~~knowing~~ violation, and to seek additional relief in any
116 superior court of competent jurisdiction. Such actions shall be brought in the name of the
117 state. The provisions of Code Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to
118 proceedings initiated by the Attorney General under this subsection. The Attorney General
119 is authorized to issue investigative demands, issue subpoenas, administer oaths, and
120 conduct hearings in the course of investigating a violation of subsection (c) or (g) of this
121 Code section, in accordance with the provisions of Code Sections 10-1-403 and 10-1-404.

122 (i) Any person ~~who~~ that has received more than one telephone solicitation within any 12
123 month period by or on behalf of the same person or entity in violation of subsection (c) or
124 (g) of this Code section may ~~either~~ bring an action against the person or entity that made
125 the telephone solicitation or the person or entity the telephone solicitation was made on
126 behalf of, or both. Such an action may seek to:

127 (1) ~~Enjoin~~ enjoin such violation;

128 (2) ~~Bring~~ bring an action to recover for reasonable attorney's fees and costs plus
129 damages:

130 (A) ~~In the amount of~~ actual monetary loss from such ~~knowing~~ violation or ~~to receive~~
131 ~~up to \$2,000.00~~ \$1,000.00 in damages for each such ~~knowing~~ violation, whichever is
132 greater; or ~~bring both such actions~~

133 (B) As part of a class action pursuant to Code Section 9-11-23, for which the damages
134 limitation in subparagraph (A) of this paragraph shall not apply; or

135 (3) Enjoin such violation and bring an action for attorney's fees, costs, and damages.

136 (j) It shall not be a defense in any action or proceeding brought under subsection (h) or (i)
137 of this Code section that the defendant ~~has established and implemented, with due care,~~
138 ~~reasonable practices and procedures to effectively prevent telephone solicitations~~ did not
139 make the telephone solicitation or was not aware that such telephone solicitation was in
140 violation of this Code section, if such telephone solicitation was made on behalf of the
141 defendant as a result of a written or verbal agreement, contract, request, or employment
142 relationship.

143 (k) No action or proceeding may be brought under subsection (h) or (i) of this Code
144 section the later of:

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

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

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

152 (m) The remedies, duties, prohibitions, and penalties of this Code section are not exclusive
153 and are in addition to all other causes of action, remedies, and penalties provided by law.

154 (n) No provider of telephone caller identification service shall be held liable for providing
155 such service for violations of this Code section committed by other persons or entities."

156

SECTION 2.

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