

16 "46-5-27.

17 (a) The General Assembly finds that:

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

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

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

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

26 (5) Many citizens of this state are outraged over the proliferation of nuisance calls from
27 telemarketers;

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

31 (7) It is in the public interest to establish a mechanism under which the ~~individual~~
32 citizens of this state can decide whether or not to receive telemarketing calls and can seek
33 injunctive relief and damages against those in violation of this Code section and against
34 those on whose behalf such violations were committed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 (e) The commission may provide by rule or regulation for administrative fees to be
89 imposed upon:

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

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

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

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

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

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

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

120 is authorized to issue investigative demands, issue subpoenas, administer oaths, and
121 conduct hearings in the course of investigating a violation of subsection (c) or (g) of this
122 Code section, in accordance with the provisions of Code Sections 10-1-403 and 10-1-404.

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

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

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

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

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

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

137 (j) It shall not be a defense in any action or proceeding brought under subsection (h) or (i)
138 of this Code section that the defendant ~~has established and implemented, with due care,~~
139 ~~reasonable practices and procedures to effectively prevent telephone solicitations in~~
140 ~~violation of this Code section~~ did not make the telephone solicitation or was not aware that
141 such telephone solicitation was in violation of this Code section, if such telephone
142 solicitation was made on behalf of the defendant as a result of a written or verbal
143 agreement, contract, request, or employment relationship; provided, however, that it shall
144 be a defense for consideration by the trier of fact if the defendant has, with respect to itself
145 or the person or entity that made the telephone solicitation, established policies and

146 procedures to effectively prevent telephone solicitations in violation of this Code section
147 and mandated and enforced compliance with such policies and procedures.

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

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

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

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

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

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

161 **SECTION 2.**

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