

WITHDRAWN

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to SB 73:

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

15 (a) The General Assembly finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

93 (f)(1) Information contained in the data base established under this Code section shall
94 be used only for the purpose of compliance with this Code section or in a proceeding or

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

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

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

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

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

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

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

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

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

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

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

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

146 (j.1) It shall be a defense for consideration by the trier of fact in any action or proceeding
147 brought under subsection (h) or (i) of this Code section that the telephone solicitation was

148 made to a residential, mobile, or wireless subscriber whose telephone number was provided
149 in error by another subscriber so long as the defendant to such action did not know, or have
150 reason to know, that the telephone number was provided in error.

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

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

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

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

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

162 (n) No provider of telephone caller identification service, local exchange telephone
163 service, wireless service, or Voice over Internet Protocol service shall be held liable for
164 providing such service for violations of this Code section committed by other persons or
165 entities while using such provider's service."

166 **SECTION 2.**

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