

Senate Bill 73

By: Senators Tillery of the 19th, Brass of the 28th, Hatchett of the 50th, Dugan of the 30th,
Moore of the 53rd and others

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Titles 10 and 46 of the Official Code of Georgia Annotated, relating to commerce
2 and trade and public utilities and public transportation, respectively, so as to revise
3 provisions concerning advertisements and solicitations of certain professions and businesses;
4 to provide for requirements for advertisements for legal services; to revise provisions
5 concerning telephone solicitations; to provide remedies for violations of provisions relating
6 to telephone solicitations; to provide for legislative findings; to provide for actions and
7 damages against persons and entities on whose behalf such provisions were violated; to
8 provide for and prohibit certain defenses in such actions; to provide for related matters; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 10 of the Official Code of Georgia, relating to commerce and trade, is amended in Code
13 Section 10-1-424.1, relating to false solicitation in media of legal services, by new
14 subsections to read as follows:

15 "(c) The State Bar of Georgia shall promulgate rules and regulations relative to soliciting
16 in any media regarding the provision of legal services. Such rules and regulations shall
17 include, but shall not be limited to, the following:

18 (1) Prohibitions against and penalties for false representations, misrepresentations, and
19 misleading claims covered by this Code section;

20 (2) A requirement that each solicitation include the disclosure of the location of the
21 principal place of business of the soliciting person, firm, association, or corporation;

22 (3) A prohibition against depicting an individual who is not employed by the soliciting
23 person, firm, association, or corporation as being so employed or in such a manner that
24 a reasonable person could believe such individual is so employed; provided, however,
25 that such prohibition shall not apply to depictions of individuals who are immediate
26 family members of the soliciting person or immediate family members of individuals
27 employed by the soliciting firm, association, or corporation;

28 (4) A prohibition against depicting an individual who is not a client of the soliciting
29 person, firm, association, or corporation as being such a client or in such a manner that
30 a reasonable person could believe such individual is such a client; provided, however,
31 that such prohibition shall not preclude sponsorships with local organizations or the
32 depictions of such sponsorships by the soliciting person, firm, association, or corporation;
33 and

34 (5) A requirement that disclosures provided for in such rules and regulations shall
35 comprise no less than 10 percent of the total composition of the solicitation.

36 (d)(1) The State Bar of Georgia, any member of the State Bar of Georgia in good
37 standing, such member's firm, association, or corporation, or any individual who sees or
38 hears a solicitation that violates this Code section or any rule or regulation of the State
39 Bar of Georgia promulgated pursuant to this Code section, shall have a cause of action
40 against the soliciting person, firm, association, or corporation for violating this Code

section or any rule or regulation of the State Bar of Georgia promulgated pursuant to this Code section.

(2) A soliciting person, firm, association, or corporation found by a court of competent jurisdiction to have violated this Code section or any rule or regulation of the State Bar of Georgia promulgated pursuant to this Code section shall be liable for a civil penalty in the amount of \$10,000.00 per violation.

(3) A successful petitioner shall be entitled to reasonable attorney's fees, expert witness costs, and other costs necessary to bring a cause of action under this subsection.

(e) For purposes of this Code section, the term 'soliciting person, firm, association, or corporation' shall mean only the individual or entity seeking to market legal services and not the owner of any media that displays or otherwise publishes such solicitation."

SECTION 2.

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

"46-5-27.

(a) The General Assembly finds that:

(1) The use of the telephone to market goods and services 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 individuals;

(5) Many citizens of this state are outraged over the proliferation of nuisance calls 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 and can seek injunctive relief and damages against those in violation of this Code section and against those on whose behalf such violations were committed.

(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 telephone service from a local exchange company or mobile or wireless telephone service provider or 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 on behalf of any person or entity 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 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 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) 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 or entity 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 or entity 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~~ that 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~~ that 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.

(h) The Attorney General shall have authority to initiate proceedings, pursuant to Code Section 10-1-397, relating to a ~~knowing~~ violation or threatened ~~knowing~~ violation of subsection (c) or (g) 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 Attorney General under this subsection. The Attorney General is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of subsection (c) or (g) of this Code section, in accordance with the provisions of Code Sections 10-1-403 and 10-1-404.

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

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

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

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

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

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

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

(j.1) It shall be a defense in any action or proceeding brought under subsection (h) or (i) of this Code section that the telephone solicitation was made to a residential, mobile, or wireless subscriber whose telephone number was provided in error by another subscriber so long as the defendant to such action did not know, or have reason to know, that the telephone number was provided in error.

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

(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~~.

(l) 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.

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

(n) No provider of telephone caller identification service, local exchange telephone service, wireless service, or voice over internet protocol service shall be held liable for providing such service for violations of this Code section committed by other persons or entities while using such provider's service."

SECTION 3.

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