

The House Committee on Judiciary offers the following substitute to SB 364:

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:

- 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 two~~ telephone ~~solicitation~~ solicitations  
 123 within any ~~12-month~~ six-month period by or on behalf of the same person or entity in  
 124 violation of subsection (c) or (g) of this Code section may ~~either~~ bring an action against the  
 125 person or entity that made the telephone solicitations or the person or entity the telephone  
 126 solicitations were made on 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 be a defense in any action or proceeding brought under subsection (h) or (i) of~~  
 137 ~~this Code section that the defendant has established and implemented, with due care,~~  
 138 ~~reasonable practices and procedures to effectively prevent telephone solicitations in~~  
 139 ~~violation of this Code section~~ In any action or proceeding brought under subsection (h) or  
 140 subsection (i) of this Code section, the plaintiff must prove the telephone solicitation was  
 141 made with the permission of, or with the acquiescence of, the defendant. 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, it shall not be a defense in any  
 144 action or proceeding brought under subsection (h) or (i) of this Code section that the  
 145 defendant did not make the telephone solicitation or was not aware that such telephone  
 146 solicitation was in violation of this Code section.

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

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

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

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

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

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

160 **SECTION 2.**

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