

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

SENATE BILL 473

5 By: Senator T. Garner
6 By: Representative Lundstrum
7

For An Act To Be Entitled

8
9 AN ACT TO ESTABLISH THE "ARKANSAS TELEPHONE PRIVACY
10 PROTECTION ACT"; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO ESTABLISH THE "ARKANSAS TELEPHONE
15 PRIVACY PROTECTION ACT".
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an
21 additional subchapter to read as follows:

22 Subchapter 11 – Arkansas Telephone Privacy Protection Act
23

24 4-88-1101. Title.

25 This subchapter shall be known and may be cited as the "Arkansas
26 Telephone Privacy Protection Act".
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28 4-88-1102. Definitions.

29 As used in this subchapter:

30 (1) "Consumer" means a natural person who is the object of a
31 telephone solicitation;

32 (2) "Established business relationship" means a relationship
33 between the consumer and the person on whose behalf the telephone
34 solicitation is made based on the consumer's:

35 (A) Purchase from, or transaction with, the person on
36 whose behalf the telephone solicitation is made within the eighteen (18)



1 months immediately preceding the solicitation date; or

2 (B) Inquiry or application regarding a property,
3 good, or service offered by the person on whose behalf the telephone
4 solicitation is made within the three (3) months immediately preceding the
5 solicitation date;

6 (3) "Person" means any individual, corporation, partnership,
7 association, unincorporated organization, or other form of entity, however
8 organized;

9 (4) "Personal relationship" means the relationship between a
10 telephone solicitor making a telephone solicitation and a family member,
11 friend, or acquaintance of the telephone solicitor;

12 (5) "Prize promotion" means:

13 (A) An opportunity of a sweepstakes or other game of
14 chance; or

15 (B) An oral or written representation that a person
16 has won, has been selected to receive, or may be eligible to receive a prize
17 or purported prize;

18 (6)(A) "Telephone solicitation" means the initiation of a
19 telephone call, or the sending of a text or media message, to a consumer's
20 residence in this state, or to a landline or wireless telephone with an
21 Arkansas area code, for the purpose of offering or advertising for sale,
22 lease, or investment:

23 (i) A property;

24 (ii) A good; or

25 (iii) A service.

26 (B) "Telephone solicitation" includes:

27 (i) Offering or advertising an extension of
28 credit;

29 (ii) Prize promotion; and

30 (iii) Obtaining information from the consumer
31 that may be used in solicitation of any of the purposes under this
32 subdivision (6);

33 (C) "Telephone solicitation" does not include:

34 (i) The initiation of a telephone call, or the
35 sending of a text or media message, by a person or on behalf of that person:

36 (a) For a purpose related to a

1 political campaign;

2 (b) For a purpose to make a telephone
 3 solicitation to a consumer, unless the consumer previously stated a desire to
 4 not be contacted by or on behalf of the person on whose behalf the telephone
 5 solicitation is made, and who has now invited a telephone solicitation or has
 6 given express permission to be contacted for telephone solicitation, as
 7 evidenced by a signed or electronically signed written agreement that:

8 (1) States the consumer agrees
 9 to receive telephone solicitation from or on behalf of the person; and

10 (2) Includes a telephone number
 11 to which the telephone call may be made or the text or media message sent; or

12 (c) To a consumer who has an
 13 established business relationship with the person; or

14 (ii) Calls by institutions licensed and
 15 regulated under § 4-103-201 et seq.;

16 (7) "Telephone solicitor" means a person who makes or causes
 17 another person to make a telephone solicitation; and

18 (8) "Text message" means a communication consisting of text,
 19 images, sounds, or other information that is transmitted to or from a device
 20 that:

21 (A) Is identified as the receiving or transmitting by
 22 device through means of a ten-digit telephone number or N11 service code;

23 (B) Includes a short message service, commonly referred to
 24 as "SMS" message and a multimedia message service, commonly referred to as
 25 "MMS"; and

26 (C) Does not include:

27 (i) A real-time, two-way voice or video
 28 communication; or

29 (ii) A message sent over an Internet Protocol
 30 enabled messaging service to another user of the same messaging service,
 31 except a message described in subdivision (8)(A) of this section.

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 33 4-88-1103. Telephone solicitor.

34 A telephone solicitor shall not initiate or cause to be initiated a
 35 telephone solicitation at any time other than between the hours of 8:00 a.m.
 36 and 9:00 p.m. local time at the consumer's location, unless the telephone

1 solicitor has obtained the prior written consent of the consumer.

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3 4-88-1104. Telephone solicitation – Disclosure.

4 (a) At the outset of a telephone solicitation, a telephone solicitor
5 shall provide, in a clear and conspicuous manner, a first and last name to
6 identify himself or herself, the name of the person on whose behalf the
7 telephone solicitation is made, and the following information:

8 (1) A telephone number and address at which the telephone
9 solicitor may be contacted;

10 (2) The purpose of the telephone solicitation;

11 (3)(A) That no purchase or payment is necessary to be able to
12 win a prize or participate in a prize promotion if a prize promotion is
13 offered.

14 (B) The disclosure described in subdivision (a)(3)(A) of
15 this section shall be made before or in conjunction with the description of
16 the prize to the consumer.

17 (C) If requested by the consumer, the telephone solicitor
18 shall disclose an alternative entry method for the prize promotion; and

19 (4)(A) The option to be added to the telephone solicitor’s in-
20 house "do not call" list.

21 (B) If the consumer requests being added to such list,
22 confirmation that the consumer’s name and telephone number will be placed on
23 such list;

24 (b) At the time of telephone solicitation, the telephone solicitor
25 shall further disclose:

26 (1) A reasonable and good-faith estimate of the total costs to
27 purchase, receive, or use, and the quantity of, any goods or services that
28 are the subject of the telephone solicitation; and

29 (2) A verbal statement shall be provided informing the consumer
30 that the solicitor or the person on whose behalf the telephone solicitation
31 is being made has a policy of not providing refunds, cancellations,
32 exchanges, or repurchases.

33 (c) If the consumer indicates that he or she does not want to hear the
34 offer, the telephone solicitor shall immediately end the call concerning this
35 offer.

1 4-88-1105. Prohibitions.

2 (a) A solicitor shall not act with the intent to defraud or harass a
3 consumer, to cause harm, or to wrongfully obtain anything of value, including
4 without limitation financial resources or personal identifying information
5 and shall not initiate a call or text message or engage in conduct that
6 results in the display of misleading, false, or inaccurate caller
7 identification information on the receiving party's telephone or device or
8 otherwise circumvent caller identification technology that allows the
9 receiving party to identify from what phone number, location, or organization
10 the call or text message has originated or misrepresent the origin and nature
11 of the call or text message.

12 (b) A telephone solicitor shall not, with the intent described in this
13 section:

14 (1) Display an Arkansas area code on the recipient's caller
15 identification system unless the telephone solicitor making, placing, or
16 initiating the call or text message maintains a physical presence in this
17 state; or

18 (2) Display the consumer's telephone number on the consumer's
19 caller identification system.

20 (c) Subsections (a) and (b) of this section do not apply to a provider
21 of landline or wireless communications services merely by virtue of the
22 provider's involvement in delivering a call or text message initiated by or
23 on behalf of a telephone solicitor unless the provider:

24 (1) Provides substantial assistance or support to the telephone
25 solicitor initiating the call; and

26 (2) Knows or consciously avoids knowing the telephone solicitor
27 is engaged in an act or practice that violates this subchapter.

28 (d)(1)(A) A telephone solicitor who makes a telephone solicitation
29 shall transmit the telephone number and, when available from the telephone
30 solicitor's carrier, the name of the telephone solicitor.

31 (B) However, it is not a violation of this subsection to
32 substitute the name of the person on behalf of whom the telephone
33 solicitation is initiated and the customer service telephone number of that
34 person.

35 (2) The telephone number provided under subdivision (d)(1) of
36 this section shall permit a consumer to make a request during regular

1 business hours not to receive telephone solicitations.

2 (e) This section does not apply to:

3 (1) Lawfully authorized investigative, protective, or
4 intelligence activity of a law enforcement agency, a state, or a political
5 subdivision of a state, or of an intelligence agency of the United States; or

6 (2) Activity engaged in under a court order that specifically
7 authorizes the use of caller identification manipulation.

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9 4-88-1106. Recordings – Opt-out procedure.

10 When a live telephone solicitor is not available to speak with the
11 consumer answering a telephone solicitation call within two (2) seconds of
12 the consumer's completed greeting, the telephone solicitor shall:

13 (1)(A) Play a prerecorded identification and opt-out message
14 that is limited to disclosing that the call is for telephone solicitation
15 purposes, stating the name and telephone number of the person on whose behalf
16 the telephone solicitation call is being made, and providing a telephone
17 number for such person that permits the consumer to make a do-not-call
18 request during regular business hours.

19 (B) The telephone number provided under subdivision (1)(A)
20 shall not be a 900 number or any other number for which charges exceed local
21 or long distance transmission charges; and

22 (2)(A) Initiate an automated, interactive voice- and key press-
23 activated opt-out mechanism that enables the consumer to make a do-not-call
24 request before terminating the call that includes brief explanatory
25 instructions on how to use the automated opt-out mechanism.

26 (B) When the consumer elects to opt out using the
27 automated opt-out mechanism, the automated opt-out mechanism shall
28 automatically record the consumer's number to the telephone solicitor's in-
29 house do-not-call list and immediately terminate the call.

30
31 4-88-1107. National Do Not Call Registry.

32 (a)(1) A telephone solicitor may not initiate, or cause to be
33 initiated, a telephone solicitation directed to a telephone number when a
34 consumer at that telephone number previously stated a desire not to be
35 contacted again by or on behalf of the person on whose behalf the telephone
36 solicitation is made.

1 (2) A do-not-contact statement may be made to a telephone
2 solicitor or to the person on whose behalf the telephone solicitation is made
3 if that person is different from the telephone solicitor.

4 (3) Any request not to receive telephone solicitations shall be
5 honored for at least five (5) years from the time the request is made.

6 (b) A telephone solicitor may not initiate, or cause to be initiated,
7 a telephone solicitation to a telephone number on the National Do Not Call
8 Registry maintained by the federal government under the Telemarketing Sales
9 Rule, 16 C.F.R. Part 310, and 47 C.F.R. Section 64.1200.

10 (c) It is an affirmative defense in any action brought under this
11 subchapter for a violation of this section that the defendant has established
12 and implemented, with due care, reasonable practices and procedures to
13 effectively prevent telephone solicitation in violation of this section,
14 including using a version of the National Do Not Call Registry obtained from
15 the administrator of the National Do Not Call Registry, according to
16 applicable federal regulations, no more than thirty-one (31) days before the
17 date a telephone solicitation is made.

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19 4-88-1108. Violations.

20 (a) A person who is aggrieved by a violation of this subchapter may
21 initiate an action to enjoin the violation and to recover actual losses, in
22 addition to damages in the amount of one thousand dollars (\$1,000) for each
23 violation.

24 (b) If the court finds a willful violation, the court may, in its
25 discretion, increase the amount of the award to an amount not exceeding five
26 thousand dollars (\$5,000) for each violation.

27 (c) In addition to any damages awarded, the person initiating the
28 action for a violation of this subchapter may be awarded reasonable
29 attorney's fees and court costs.

30 (d)(1) An action for damages, attorney's fees, and costs brought under
31 this section may be filed in an appropriate circuit court so long as the
32 amount claimed does not exceed the jurisdictional limits as applicable.

33 (2) An action brought under this section that includes a request
34 for an injunction shall be filed in an appropriate circuit court.

35 (e) It is a defense to any action brought under this section that the
36 violation was not intentional and resulted from a bona fide error.

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2 4-88-1109. Enforcement.

3 (a)(1) The administrator of the National Do Not Call Registry, upon
4 finding a violation of this subchapter, may issue an administrative order
5 requiring the person to cease and desist or to return property or money
6 received in violation of this subchapter, or both, and impose penalties of up
7 to five thousand dollars (\$5,000) for each violation.

8 (2) The Attorney General may bring a civil action seeking
9 similar relief, including injunctive relief, under subsection (b) of this
10 section.

11 (3) Moneys received in enforcement of this subchapter shall be
12 retained by the Attorney General for administration of this subchapter.

13 (b)(1) The Attorney General shall investigate and enforce violations
14 of this subchapter.

15 (2) The Attorney General may bring an action to enjoin a
16 violation of this subchapter by any person and recover damages for an
17 aggrieved person or persons in an amount up to five thousand dollars (\$5,000)
18 per person for each violation.

19 (c) If the court finds a willful violation, the court, in its
20 discretion, may also award a civil penalty of not more than five thousand
21 dollars (\$5,000).

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