

INTERIM STUDY PROPOSAL 2019-090

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

**A Bill**

SENATE BILL 473

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

8 Filed with: Senate Committee on Insurance and Commerce  
9 pursuant to A.C.A. §10-3-217.

**For An Act To Be Entitled**

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

**Subtitle**

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14  
15 TO ESTABLISH THE "ARKANSAS TELEPHONE  
16 PRIVACY PROTECTION ACT".  
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19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21  
22 SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an  
23 additional subchapter to read as follows:

24 Subchapter 11 – Arkansas Telephone Privacy Protection Act

25  
26 4-88-1101. Title.

27 This subchapter shall be known and may be cited as the "Arkansas  
28 Telephone Privacy Protection Act".

29  
30 4-88-1102. Definitions.

31 As used in this subchapter:

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

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

1                   (A) Purchase from, or transaction with, the person on  
2 whose behalf the telephone solicitation is made within the eighteen (18)  
3 months immediately preceding the solicitation date; or

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

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

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

14                   (5) "Prize promotion" means:

15                   (A) An opportunity of a sweepstakes or other game of  
16 chance; or

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

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

25                                   (i) A property;

26                                   (ii) A good; or

27                                   (iii) A service.

28                   (B) "Telephone solicitation" includes:

29                                   (i) Offering or advertising an extension of  
30 credit;

31                                   (ii) Prize promotion; and

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

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

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

3                               (a) For a purpose related to a  
4 political campaign;

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

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

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

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

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

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

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

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

26                                       (B) Includes a short message service, commonly referred to  
27 as "SMS" message and a multimedia message service, commonly referred to as  
28 "MMS"; and

29                                       (C) Does not include:

30   (i) A real-time, two-way voice or video  
31 communication; or

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

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36                   4-88-1103. Telephone solicitor.

1       A telephone solicitor shall not initiate or cause to be initiated a  
2 telephone solicitation at any time other than between the hours of 8:00 a.m.  
3 and 9:00 p.m. local time at the consumer's location, unless the telephone  
4 solicitor has obtained the prior written consent of the consumer.

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6       4-88-1104. Telephone solicitation – Disclosure.

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

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

13           (2) The purpose of the telephone solicitation;

14           (3)(A) That no purchase or payment is necessary to be able to  
15 win a prize or participate in a prize promotion if a prize promotion is  
16 offered.

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

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

22           (4)(A) The option to be added to the telephone solicitor's in-  
23 house "do not call" list.

24           (B) If the consumer requests being added to such list,  
25 confirmation that the consumer's name and telephone number will be placed on  
26 such list;

27       (b) At the time of telephone solicitation, the telephone solicitor  
28 shall further disclose:

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

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

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

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5       4-88-1105. Prohibitions.

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

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

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

22           (2) Display the consumer's telephone number on the consumer's  
23 caller identification system.

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

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

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

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

35           (B) However, it is not a violation of this subsection to  
36 substitute the name of the person on behalf of whom the telephone

1 solicitation is initiated and the customer service telephone number of that  
2 person.

3 (2) The telephone number provided under subdivision (d)(1) of  
4 this section shall permit a consumer to make a request during regular  
5 business hours not to receive telephone solicitations.

6 (e) This section does not apply to:

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

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

12

13 4-88-1106. Recordings – Opt-out procedure.

14 When a live telephone solicitor is not available to speak with the  
15 consumer answering a telephone solicitation call within two (2) seconds of  
16 the consumer’s completed greeting, the telephone solicitor shall:

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

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

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

30 (B) When the consumer elects to opt out using the  
31 automated opt-out mechanism, the automated opt-out mechanism shall  
32 automatically record the consumer’s number to the telephone solicitor’s in-  
33 house do-not-call list and immediately terminate the call.

34

35 4-88-1107. National Do Not Call Registry.

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

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

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

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

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

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24       4-88-1108. Violations.

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

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

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

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

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

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

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9        4-88-1109. Enforcement.

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

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

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

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

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

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

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30  
31 Referred requested by the Arkansas Senate

32 Prepared by: ANS/VJF