

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4
5 By: Senator Ross

A Bill

SENATE BILL 610

For An Act To Be Entitled

9 "AN ACT TO CREATE THE ARKANSAS CONSUMER TELEPHONE PRIVACY
10 ACT; TO ESTABLISH A STATEWIDE DATA BASE OF TELEPHONE
11 NUMBERS OF RESIDENTIAL AND BUSINESS SUBSCRIBERS WHO OBJECT
12 TO RECEIVING TELEPHONE SOLICITATIONS; TO PROHIBIT ANY
13 PERSON FROM MAKING OR TRANSMITTING A TELEPHONE
14 SOLICITATION TO THE TELEPHONE NUMBER OF ANY SUBSCRIBER
15 INCLUDED IN SUCH DATA BASE; TO PROVIDE FOR THE ENFORCEMENT
16 OF THIS ACT; AND FOR OTHER PURPOSES."

Subtitle

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19 "TO CREATE THE ARKANSAS CONSUMER
20 TELEPHONE PRIVACY ACT"

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Short title. This act shall be known as the "Arkansas
25 Consumer Telephone Privacy Act."

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27 SECTION 2. Legislative findings and intent. The Arkansas General
28 Assembly finds that:

29 (1) The use of the telephone to market goods and services to the home
30 and other businesses is now pervasive due to the increased use of
31 cost-effective telemarketing techniques.

32 (2) Unrestricted telemarketing, however, can be an intrusive invasion
33 of privacy.

34 (3) Many consumers are outraged over the proliferation of intrusive
35 nuisance calls to their homes and businesses from telemarketers.

36 (4) In addition, the proliferation of unsolicited telemarketing calls,

1 especially during the evening hours, creates a disturbance upon the home and
2 family life of Arkansas consumers during a time of day used by many families
3 for traditional family activities.

4 (5) In addition, some consumers maintain phone service primarily for
5 emergency medical situations, and unrestricted telemarketing calls to these
6 consumers may create a health and safety risk for these consumers.

7 (6) Individuals privacy rights, public safety interests, and
8 commercial freedom of speech and trade must be balanced in a way that protects
9 the privacy of individuals and permits legitimate telemarketing practices.

10 (7) Many consumers enjoy and benefit from unsolicited telemarketing
11 contacts from legitimate telemarketers; however, other consumers object to
12 these contacts as an invasion of that individuals right of privacy, and have
13 expressed an intention to refuse to respond to such telemarketing contacts;
14 thus, even legitimate telemarketers have no further legitimate interest in
15 continuing to invade the privacy of those consumers who have affirmatively
16 expressed their objections to such contact and, in fact, legitimate
17 telemarketers can make their telemarketing efforts even more cost effective by
18 avoiding calling those consumers who have affirmatively expressed an objection
19 to any such contact.

20 The Arkansas General Assembly intends that this act protect the privacy
21 of Arkansas consumers who have affirmatively expressed an objection to
22 unsolicited telephone solicitations, and the General Assembly intends that
23 this act be liberally construed to effectuate that goal.

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25 SECTION 3. Definitions. As used in this act, unless the context
26 requires otherwise:

27 (1) The term "consumer" means any person to whom has been assigned in
28 the state of Arkansas any residential or business telephone line and
29 corresponding telephone number.

30 (2) The term "telephone solicitation" means the initiation of a
31 telephone call or message for the purpose of encouraging the purchase or
32 rental of, or investment in, property, goods, or services, or the initiation
33 of a telephone call or message for the purpose of encouraging a charitable
34 contribution by or on behalf of any charitable organization, which is
35 transmitted to any consumer, but such term does not include a call or message
36 to any person made with that persons prior written express invitation or

1 permission.

2 (3) The term "person" means any individual, group, unincorporated
3 association, limited or general partnership, limited liability corporation,
4 corporation, professional fund raiser, charitable organization, or other
5 business entity.

6 (4) The term "charitable organization" means any charitable
7 organization as that term is defined by Arkansas Code Annotated § 4-28-402(2),
8 but does not include any charitable organization qualifying for an exemption
9 pursuant to the terms of Arkansas Code Annotated § 4-28-408.

10 (5) The term "prior or existing business relationship" means a
11 relationship in which some financial transaction has transpired between the
12 consumer and the telephone solicitor within the twelve (12) months immediately
13 preceding the contemplated telephone solicitation. The term does not include
14 the situation wherein the consumer has merely been subject to a telephone
15 solicitation by or at the behest of the telephone solicitor within the twelve
16 (12) months immediately preceding the contemplated telephone solicitation.

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18 SECTION 4. No later than January 1, 1998, the Attorney General shall:

19 (1) Establish and thereafter operate a single statewide data base
20 comprised of a list of telephone numbers of consumers who object to receiving
21 telephone solicitations.

22 (2) Specify the methods by which such objections to telephone
23 solicitations shall be collected and added to the data base.

24 (3) Specify the methods by which such objections may be withdrawn from
25 the data base.

26 (4) Specify the methods by which any person desiring to make or
27 transmit telephone solicitations may obtain access to the data base as
28 required to avoid calling the telephone numbers of the consumers included in
29 such data base.

30 (5) Specify the methods for recovering from persons accessing such data
31 base the costs involved in identifying, collecting, updating, and
32 disseminating the data base, and other activities related to the Attorney
33 Generals duties under this act.

34 (6) Specify the frequency with which such data base will be updated and
35 specify the method by which such updating will take effect for the purposes of
36 compliance with this act.

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2 SECTION 5. Prohibitions. It shall be a violation of this act for any
3 person to:

4 (1) Make or transmit a telephone solicitation to the telephone number
5 of any consumer included in the then current data base maintained by the
6 Attorney General pursuant to this act.

7 (2) Use the data base, or information in the data base, for any purpose
8 other than compliance with the requirements of this act.

9 (3) Make or transmit a telephone solicitation without having first
10 accessed, and paid for in the manner specified by the Attorney General, the
11 then current data base maintained by the Attorney General pursuant to this
12 act.

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14 SECTION 6. Enforcement by the Attorney General.

15 (a) Any violation by any person of the prohibitions set out in
16 Section 5 of this act shall constitute an unfair or deceptive act or practice
17 as defined by the Deceptive Trade Practices Act, Arkansas Code Annotated
18 § 4-88-101, et seq.

19 (b) All authority granted to the Attorney General and all remedies
20 available to the Attorney General under the Deceptive Trade Practices act
21 shall be granted to and available to the Attorney General for the enforcement
22 of this act.

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24 SECTION 7. Private right of action.

25 Any consumer who is subject to a telephone solicitation made in
26 violation of this act may bring an action based upon such violation to recover
27 actual damages suffered on account of each such violation, or statutory
28 damages of five hundred dollars (\$500) for each such violation, whichever is
29 greater, in addition to reasonable attorneys fees. If the court finds that
30 the defendant willfully or knowingly violated the provisions of this act, the
31 court may, in its discretion, increase the amount of the award to the consumer
32 to an amount equal to not more than three times the consumers actual monetary
33 loss, or three times five hundred dollars (\$500), whichever is greater.

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35 SECTION 8. No charge to consumers.

36 No consumer shall be charged for giving or revoking his or her request

1 to have his or her telephone number included in the data base.

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3 SECTION 9. All provisions of this act of a general and permanent nature
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
5 Revision Commission shall incorporate the same in the Code.

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7 SECTION 10. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

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13 SECTION 11. All laws and parts of laws in conflict with this act are
14 hereby repealed.

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