

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas *As Engrossed: H2/25/99 H3/9/99 H3/18/99 S4/2/99 S4/6/99*

2 82nd General Assembly

A Bill

3 Regular Session, 1999

HOUSE BILL 1564

4

5 By: Representatives Sheppard, Prater, Creekmore, Laverty, Broadway, Lynn, *Harris, Teague, P.*

6 *Malone, Hathorn, Faris*

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For An Act To Be Entitled

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

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20

Subtitle

21 "TO CREATE THE ARKANSAS CONSUMER
22 TELEPHONE PRIVACY ACT. "

23

24

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

26

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

29

30 SECTION 2. Legislative findings and intent. The Arkansas General
31 Assembly finds that:

32 (a) The use of the telephone to market goods and services to the home
33 and other businesses is now pervasive due to the increased use of cost-
34 effective telemarketing techniques.

35 (b) Unrestricted telemarketing, however, can be an intrusive invasion
36 of privacy.

1 (c) Many consumers are outraged over the proliferation of intrusive
2 nuisance calls to their homes from telemarketers.

3 (d) In addition, the proliferation of unsolicited telemarketing calls,
4 especially during the evening hours, creates a disturbance upon the home and
5 family life of Arkansas consumers during a time of day used by many families
6 for traditional family activities.

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

10 (f) Individuals' privacy rights, public safety interests, and
11 commercial freedom of speech and trade must be balanced in a way that protects
12 the privacy of individuals and permits legitimate telemarketing practices.

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

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

27
28 SECTION 3. Definitions. As used in this act, unless the context
29 requires otherwise:

30 (a) The term "consumer" means any person to whom has been assigned in
31 the state of Arkansas any residential telephone line and corresponding
32 telephone number.

33 (b) The term "telephone solicitation" means the initiation of a
34 telephone call or message for the purpose of encouraging the purchase or
35 rental of, or investment in, property, goods, or services, or the initiation
36 of a telephone call or message for the purpose of encouraging a charitable

1 contribution by or on behalf of any charitable organization, which telephone
2 call or message is transmitted to any consumer; but, such term does not
3 include a call or message to any person made with that person's prior written
4 express invitation or permission, nor a call or message to any consumer with
5 whom the telephone solicitor has a prior or existing business relationship.
6 Also, such term does not include a telephone call by any person to a consumer
7 who has placed upon his or her real property a "for sale" sign which lists a
8 telephone number and invites inquiries regarding the property. Also, such
9 term does not include a telephone call made solely in connection with an
10 existing debt or contractual obligation, payment or performance of which has
11 not been completed at the time of such call.

12 (c) The term "person" means any individual, group, unincorporated
13 association, limited or general partnership, limited liability corporation,
14 corporation, professional fund raiser, charitable organization, or other
15 business entity.

16 (d) The term "charitable organization" means any person who is or holds
17 himself out to be established for any benevolent, educational, philanthropic,
18 humane, scientific, patriotic, social welfare or advocacy, public health,
19 environmental conservation, civic or other eleemosynary purpose or for the
20 benefit of law enforcement personnel, firefighters, or other persons who
21 protect the public safety, or any person who in any manner employs a
22 charitable appeal as the basis of any solicitation or an appeal which has a
23 tendency to suggest there is a charitable purpose to any such solicitation;
24 however, it does not include those charitable organizations that are not
25 required to register with the Attorney General's Office pursuant to those
26 statutes governing the solicitation of charitable contributions.

27 (e) The term "prior or existing business relationship" means a
28 relationship in which some financial transaction has transpired between the
29 consumer and the telephone solicitor or its affiliates within the thirty-six
30 (36) months immediately preceding the contemplated telephone solicitation.
31 The term does not include the situation wherein the consumer has merely been
32 subject to a telephone solicitation by or at the behest of the telephone
33 solicitor within the thirty-six (36) months immediately preceding the
34 contemplated telephone solicitation.

35 (f) The term "affiliates" means a person or persons wholly owned and
36 operated by a parent entity which parent entity claims a prior or existing

1 business relationship with a consumer, or a parent company whose wholly owned
2 subsidiary claims a prior existing business relationship with the consumer.

3
4 SECTION 4. No later than January 1, 2000, the Attorney General shall:

5 (a) Establish and thereafter operate a single statewide database
6 comprised of a list of telephone numbers of consumers who object to receiving
7 telephone solicitations.

8 (b) Specify the methods by which such objections to telephone
9 solicitations shall be collected and added to the database. Any consumer
10 wishing to be placed in the database may notify the Attorney General and be
11 placed in the database upon receipt by the Attorney General of an initial
12 listing charge which shall not exceed ten dollars (\$10). The listing shall be
13 renewed by the Attorney General annually for each consumer upon the receipt of
14 a renewal notice and an annual assessment not to exceed five dollars (\$5).

15 (c) Specify the methods by which such objections may be withdrawn from
16 the database.

17 (d) Specify the methods by which any person desiring to make or
18 transmit telephone solicitations may obtain access to the database as required
19 to avoid calling the telephone numbers of the consumers included in such
20 database.

21 (e) Specify the methods for recovering the costs involved in
22 identifying, collecting, updating, and disseminating the database, and other
23 activities related to the Attorney General's duties under this act.

24 (f) Specify the frequency with which such database will be updated and
25 specify the method by which such updating will take effect for the purposes of
26 compliance with this act, allowing no less than ten (10) calendar days for
27 affected persons to update their databases after the Attorney General's
28 database has been updated.

29
30 SECTION 5. Prohibitions. It shall be a violation of this act for any
31 person to:

32 (a) Make or transmit a telephone solicitation to the telephone number
33 of any consumer included in the then current database maintained by the
34 Attorney General pursuant to this act.

35 (b) Make or transmit a telephone solicitation without having first
36 accessed, in the manner specified by the Attorney General, the then current

1 database maintained by the Attorney General pursuant to this act.

2
3 SECTION 6. The provisions of this act shall not apply to:

4 (a) Any person who is a licensee as defined by Arkansas Code 17-42-103,
5 who is a resident of the State of Arkansas and whose telephone call to the
6 consumer is for the sole purpose of selling, exchanging, purchasing, renting,
7 listing for sale of rent or leasing real estate in accordance with the
8 provisions for which they were licensed and not in conjunction with any other
9 offer.

10 (b) Any motor vehicle dealer as that term is defined in Arkansas Code
11 23-112-103, who is a resident of the State of Arkansas and who maintains a
12 current motor vehicle dealer's license issued by the Arkansas Motor Vehicle
13 Commission, whose call to the consumer is for the sole purpose of selling,
14 offering to sell, soliciting or advertising the sale of motor vehicles in
15 accordance with the provisions for which they were licensed and not in
16 conjunction with any other offer.

17 (c) Any agent as that term is defined in Arkansas Code 23-64-102(2) who
18 maintains a current license as an insurance agent whose call to the consumer
19 is for the purpose of soliciting, consulting, advising, or adjusting in the
20 business of insurance.

21 (d) Any broker-dealer, agent, or investment advisor registered by the
22 Arkansas Securities Commissioner pursuant to the provisions of Arkansas Code
23 Title 23, Chapter 42, Subchapter 3, whose telephone call to the consumer is
24 for the purpose of effecting or attempting to effect the purchase or sale of
25 securities or has the purpose of providing or seeking to provide investment or
26 financial advice.

27 (e) Any person calling on behalf of a charitable organization as that
28 term is defined in Section 3(d), whose call to the consumer is for the sole
29 purpose of soliciting for the charitable organization and who receives no
30 compensation as a result of their solicitation activities on behalf of the
31 charitable organization.

32 (f) Any person calling on behalf of a newspaper of general circulation
33 whose call to the consumer is for the purpose of soliciting a subscription to
34 the newspaper from the consumer or soliciting advertising from the consumer.

35 (g) Telephone calls made on behalf of any federally chartered or state
36 chartered bank if the call to the consumer relates to banking services other

1 than credit card offers. In no event shall the telephone calls made pursuant
2 to this subsection reference any form of credit card offer.

3 (h) Telephone calls made on behalf of a funeral establishment properly
4 licensed pursuant to Arkansas Code 17-29-304 et seq., if the purpose of the
5 telephone call relates to services provided by the funeral establishment in
6 their ordinary course of business.

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8 SECTION 7. Enforcement by the Attorney General.

9 (a) Any violation by any person of the prohibitions set out in Section
10 5 of this act shall constitute an unfair or deceptive act or practice as
11 defined by the Deceptive Trade Practices Act, Arkansas Code Annotated § 4-88-
12 101 through 115.

13 (b) All authority granted to the Attorney General and all remedies
14 available to the Attorney General under the Deceptive Trade Practices act
15 shall be granted to and available to the Attorney General for the enforcement
16 of this act, after the time period referred to in Section 4(f) has been
17 provided for affected persons to update their databases.

18
19 SECTION 8. All moneys derived from the listing charge described in
20 section 4 shall be deposited into the State Treasury to the credit of the
21 State Central Services Fund as a direct revenue to be used exclusively to
22 defray the cost associated with the creation and maintenance of the data base
23 required by this act and the enforcement of this act.

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

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

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

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/s/ Sheppard