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## PUBLIC UTILITIES AND PUBLIC TRANSPORTATION Telephone Solicitations: Regulate '976' Numbers

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## PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

*Telephone Solicitations: Regulate '976' Numbers*

|                 |  |
|-----------------|--|
| CODE SECTION:   | O.C.G.A. § 46-5-24 (new)   |
| BILL NUMBER:    | HB 1284  |
| ACT NUMBER:     | 1320   |
| SUMMARY:        | The Act adds a new Code section prohibiting the use of automatic dialing equipment or the use of the United States mail to solicit telephone calls to '976' telephone numbers. |
| EFFECTIVE DATE: | April 7, 1988  |

*History*

The Act adds a new Code section to regulate the use of automatic dialing and recorded message equipment (ADAD).<sup>1</sup> Although prior law enacted in 1987 addressed consumer concerns regarding the use of ADAD equipment generally,<sup>2</sup> legislators continued to receive complaints from consumers regarding advertisements for certain telephone numbers.<sup>3</sup> Advertising companies were using ADAD equipment and the United States mail to entice consumers to call '976' numbers.<sup>4</sup> These telephone numbers usually begin with 976 and require a per-call charge.<sup>5</sup>

Consumers expressed specific concerns over the use of '976' numbers. Often, the wording of a telephone or mail solicitation did not clearly explain the cost of a call.<sup>6</sup> Children and some adults were unknowingly running up large telephone bills which, in some cases, included '976' charges as high as ten dollars per call.<sup>7</sup> Also, some consumers expressed opposi-

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1. O.C.G.A. § 46-5-24 (Supp. 1988).

2. O.C.G.A. § 46-5-23 (Supp. 1988). For an extensive discussion of the history leading to legislation regulating use of automatic dialing equipment, see *Selected 1987 Georgia Legislation, Automatic Telephone Dialing Equipment: Establish Regulations*, 3 GA. ST. U.L. REV. 485 (1987) [hereinafter *Regulations*]. This legislative history also discusses similar legislation in other states and the constitutional issues of equal protection and freedom of speech.

3. Telephone interview with Senator Arthur B. Edge, Senate District No. 28 (Apr. 5, 1988) [hereinafter *Edge Interview*]; telephone interview with Representative Cathey W. Steinberg, House District No. 46 (Apr. 6, 1988) [hereinafter *Steinberg Interview*].

4. *Steinberg Interview*, *supra* note 3.

5. O.C.G.A. § 46-5-24(a)(2) (Supp. 1988).

6. *New Restrictions on '976' Services Clears House*, Atlanta J., Feb. 18, 1988, at 5C, col. 1.

7. *Id.*

tion to "a small number of the approximately 100 dial-it-services because of the sexual or suggestive nature of the subject matter."<sup>8</sup> Many parents were concerned that the solicitations exposed their children to adult subject matter.<sup>9</sup>

The sponsor of HB 1284 introduced this legislation after learning that advertising companies were using ADAD equipment to circumvent the regulations put in place by the 1987 Act.<sup>10</sup> After attending hearings, the sponsor of the bill and a sponsor of a related Senate bill<sup>11</sup> saw the need to work jointly with the Public Service Commission (PSC) to close loopholes in both the 1987 Act and related PSC regulations.<sup>12</sup>

Aware that some '976' calls come from out-of-state, the legislators sought to regulate only the intrastate calls in an effort to avoid interference with interstate commerce.<sup>13</sup> The legislators intended to create regulations closely tailored to a substantial governmental regulatory interest in order to avoid constitutional challenges based on the first amendment.<sup>14</sup>

### HB 1284

After HB 1284 was introduced in the House, the House Committee on Rules decided to await the outcome of previously scheduled PSC hearings that would address the use of '976' numbers before taking action.<sup>15</sup> The committee delayed because the administrative regulatory measures handed down by the PSC could indicate the type of legislative measures needed to complement the PSC's actions.<sup>16</sup>

During testimony before the PSC, concern was expressed over solicitations made by mail as well as by telephone.<sup>17</sup> The PSC hearings took place on February 3, 1988, coinciding with mass advertising for the romantically suggestive "Monique" in areas of the state including Augusta and Savannah.<sup>18</sup> Several legislators, influenced by the consumer response

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8. *Secret, PSC Offers '976' Blocking, Limits Calls to \$2*, Atlanta Const., Feb. 3, 1988, at 8C, col. 1.

9. *Id.*

10. Steinberg Interview, *supra* note 3; see 1987 Ga. Laws 1159. HB 1284 and the 1987 Act were sponsored by Representative Cathey W. Steinberg.

11. SB 454 was designed to require the PSC to adopt regulatory measures which would authorize telephone customers to restrict or block access to 976 exchanges. Edge Interview, *supra* note 3.

12. *Id.*

13. *Id.*

14. *Regulations*, *supra* note 2, at 488 (referring to Letter from Michael J. Henry, Assistant Attorney General, to Jim Hammock, Commissioner of PSC, (May 5, 1986)).

15. Interview with Rachel Blackstone, Administrative Aide to Representative Steinberg, in Atlanta (Jan. 20, 1988).

16. *Id.*

17. Steinberg Interview, *supra* note 3.

18. *Id.* Representative Steinberg testified before the PSC.

to this advertisement, continued their efforts for passage of the bill rather than leaving regulation entirely up to the PSC.<sup>19</sup>

HB 1284, as introduced, only made it unlawful to access and solicit use of '976' numbers with ADAD equipment.<sup>20</sup> However, complaints regarding United States mail solicitations were becoming as vociferous as complaints about telephone solicitations.<sup>21</sup> Thus, the final version prohibited solicitation of '976' users through the United States mail.<sup>22</sup> Legislators felt that if regulation of '976' numbers succeeded in eliminating telephone solicitations, then promoters might resort to more frequent use of mailings.<sup>23</sup> In either case, customers still would be inundated with uninvited solicitations.

Another distinction between the original and final versions of the bill relates to enforcement.<sup>24</sup> Initially, although enforcement was the PSC's responsibility, telephone exchange companies were to implement the penalties by the immediate withdrawal of access to '976' numbers.<sup>25</sup> Also, the telephone exchange company was authorized to disconnect '976' service if the prohibited use did not cease within ten days of notification by the telephone exchange company.<sup>26</sup> This language created an ambiguity concerning the enforcement power and responsibilities of the PSC; it appeared to place responsibility for enforcement on the telephone exchange company. Thus, the telephone exchange company would be required to operate against its own profit-making interests.<sup>27</sup>

In its final form, the Act more specifically defines the PSC's enforcement responsibilities.<sup>28</sup> Upon the order of the PSC, a telephone exchange company must withdraw access to a '976' number when such access is used in conjunction with solicitation by ADAD equipment or through the United States mail.<sup>29</sup> The Act further authorizes the PSC to determine whether any violation has occurred and to issue an order directing the telephone exchange company to disconnect '976' number service if a violation is found.<sup>30</sup> As a result, the PSC functions as a watchdog and protector of consumer interests.

19. *Id.*

20. HB 1284, as introduced, 1988 Ga. Gen. Assem.

21. Steinberg Interview, *supra* note 3.

22. O.C.G.A. § 46-5-24(b)(2) (Supp. 1988).

23. Steinberg Interview, *supra* note 3.

24. The final version of the bill is identical to the substitute offered by the Senate Committee on Public Utilities, HB 1284 (SCS), 1988 Ga. Gen. Assem.

25. HB 1284, as introduced, 1988 Ga. Gen. Assem.

26. *Id.*

27. Steinberg Interview, *supra* note 3.

28. O.C.G.A. § 46-5-24(d) (Supp. 1988).

29. O.C.G.A. § 46-5-24(c) (Supp. 1988).

30. O.C.G.A. § 46-5-24(d) (Supp. 1988).

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According to the sponsor, HB 1284 virtually eliminated computer solicitation and '976' calls in Georgia.<sup>31</sup>

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31. Telephone interview with Representative Cathey W. Steinberg, House District No. 46 (Nov. 28, 1988).