

9-1-2003

PUBLIC UTILITIES AND PUBLIC TRANSPORTATION Telephone and Telegraph Service: Revise Provisions Regulating Telemarketing to Residential Telephone Subscribers to Include Telemarketing to Mobile and Wireless Subscribers; Revise Legislative Findings, Definitions, and the Prohibition of Telephone Solicitation to Certain Subscribers; Revise Provisions Relating to a Database of Subscribers Who Object to Telephone Solicitations and Fees in Connection Therewith; Provide a Penalty for Unlawful Compilation or Dissemination of Information from this Database;

Recommended Citation

Derrick Bingham, *PUBLIC UTILITIES AND PUBLIC TRANSPORTATION Telephone and Telegraph Service: Revise Provisions Regulating Telemarketing to Residential Telephone Subscribers to Include Telemarketing to Mobile and Wireless Subscribers; Revise Legislative Findings, Definitions, and the Prohibition of Telephone Solicitation to Certain Subscribers; Revise Provisions Relating to a Database of Subscribers Who Object to Telephone Solicitations and Fees in Connection Therewith; Provide a Penalty for Unlawful Compilation or Dissemination of Information from this Database; Revise Procedures for Persons Making Telephone Solicitations*, 20 GA. ST. U. L. REV. (2003).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol20/iss1/8>

Revise Procedures for Persons Making Telephone Solicitations

Derrick Bingham

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Telephone and Telegraph Service: Revise Provisions Regulating Telemarketing to Residential Telephone Subscribers to Include Telemarketing to Mobile and Wireless Subscribers; Revise Legislative Findings, Definitions, and the Prohibition of Telephone Solicitation to Certain Subscribers; Revise Provisions Relating to a Database of Subscribers Who Object to Telephone Solicitations and Fees in Connection Therewith; Provide a Penalty for Unlawful Compilation or Dissemination of Information from this Database; Revise Procedures for Persons Making Telephone Solicitations

CODE SECTION:	O.C.G.A. § 46-5-27 (amended)
BILL NUMBER:	SB 272
ACT NUMBER:	211
GEORGIA LAWS:	2003 Ga. Laws 562
SUMMARY:	The Act allows mobile or wireless telephone subscribers to add their numbers to the state's "no-call" list, which under certain circumstances prohibits telemarketers from contacting those numbers. The Act also allows the Public Service Commission to set the fee of up to, and including, \$5 for placing numbers on the list. Further, it provides the Public Service Commission discretion to establish an appropriate fee for access to the list by persons or businesses wishing to make telephone solicitations. Finally, the Act makes unauthorized disclosure of the information a misdemeanor, punishable by a fine of up to \$1000.
EFFECTIVE DATE:	July 1, 2003

History

On April 2, 1998, the Georgia General Assembly passed HB 71, enacting Code section 46-5-27.¹ The new Code section created a “no-call list.”² Those individuals who do not want to receive solicitation calls at home place their personal home telephone numbers on this list.³ Through the creation of the no-call list, the General Assembly sought to balance the individual’s privacy interests in his home and the telemarketer’s commercial free speech rights.⁴ Consequently, with few exceptions, telemarketers cannot call a subscriber to the list to solicit business.⁵ These exceptions include: (1) persons or entities that have the subscriber’s permission, (2) persons or entities that have a prior or current business or personal relationship with the subscriber, and (3) charities.⁶

The Code section only applied to “residential subscribers.”⁷ Noticeably missing from the Code section was any reference to mobile or wireless telephones.⁸ Yet, with the growing popularity of these telephones, telemarketers are increasingly targeting them.⁹ No-call lists in various states have made this practice even more popular.¹⁰ The practice of specifically targeting mobile telephones is highly controversial, even within the telemarketing industry itself, because subscribers pay for the costly minutes used up by unwanted, unsolicited telephone calls.¹¹

1. See 1998 Ga. Laws 505, §§ 1, 3 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)).

2. See 1998 Ga. Laws 505, § 1 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)).

3. See *id.* This Code section required the PSC to establish this list by January 1, 1999 and to maintain it. *Id.*

4. See 1998 Ga. Laws 505, § 1, at 506 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)).

5. See 1998 Ga. Laws 505, § 1, at 507 (formerly found at O.C.G.A. § 46-5-27(c) (Supp. 2002)).

6. See 1998 Ga. Laws 505, § 1, at 506-07 (formerly found at O.C.G.A. § 46-5-27(b)(3) (Supp. 2002)).

7. See 1998 Ga. Laws 505, § 1, at 507 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)).

8. See *id.*

9. See Jennifer Bayot, *Now, That Ringing Cellphone May Be a Telemarketer's Call*, N.Y. TIMES, July 5, 2002, at A1; Andy Vuong, *Telemarketers Tap Cellphones: Complaints on the Rise as Solicitors Dial Into No-Call Exemption*, DENVER POST, July 30, 2002, at A-01, available in LEXIS, News Library, Combined Papers File [hereinafter *Telemarketers Tap Cellphones*].

10. *Telemarketers Tap Cellphones*, *supra* note 9.

11. See Bayot, *supra* note 9; Scott Hovanyetz, *Strategies Key to New Technology, Telemarketers Told*, DIAL AM. NEWS, June 28, 2001, available at <http://www.dialamerica.com/mediaroom/Articles/TelemaketersTold.htm> (reporting on a panel discussion at the Direct Marketing Association’s Telephone Marketing Conference and quoting panel member Paul Glancy as saying, “I think the idea of going out to cell phones is the dumbest idea I’ve ever heard”); Ray Schultz, *DMA Offers 'Interim' Wireless Service*, DIRECT, Nov. 15, 2002, available at http://www.directmag.com/ar/marketing_dma_offers_interim/ (quoting Direct Marketing Association

Georgia citizens complained about this practice to the Georgia Public Service Commission.¹² In response to these complaints, Public Service Commissioner H. Doug Everett worked with Georgia legislators to draft and pass SB 272.¹³

SB 272

Senators Mitch Seabaugh of the 28th district, Regina Thomas of the 2nd district, and David Shafer of the 48th district sponsored SB 272, which was assigned to the Senate Regulated Industries and Utilities Committee on March 24, 2003.¹⁴ As originally drafted, the bill referred to mobile and wireless telephones collectively as “cellular” telephones.¹⁵ At the Senate Committee hearing, representatives of the mobile telephone industry testified that “mobile or wireless” were the more accurate terms.¹⁶ The Senate Committee proposed and adopted an amendment to the bill that changed every reference of “cellular” telephone to “mobile and wireless” telephone.¹⁷ The Senate Committee favorably reported the bill on March 27, 2003.¹⁸

On April 7, 2003, Senator Seabaugh presented the bill to the full Senate.¹⁹ The Senate adopted the Committee amendment and then, with very little discussion, unanimously passed the bill by a vote of 48 to 0.²⁰ The bill was introduced in the House on April 8, 2003, and submitted to the Public Utilities and Telecommunications Committee,

President H. Robert Wientzen as saying, “We don’t think Americans are going to be tolerant of calls to cell phones”).

12. See Telephone Interview with H. Doug Everett, Georgia Public Service Commissioner (May 26, 2003).

13. See *id.*; Electronic Mail Interview with Sen. Mitch Seabaugh, Senate District No. 28 (Apr. 22, 2003) [hereinafter Seabaugh Interview].

14. See SB 272, as introduced, 2003 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 272, Apr. 25, 2003.

15. See SB 272, as introduced, 2003 Ga. Gen. Assem.

16. See Audio Recording of Senate Proceedings, Apr. 7, 2003 (remarks by Sen. Mitch Seabaugh), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter Senate Audio]; Seabaugh Interview, *supra* note 13.

17. Compare SB 272, as introduced, 2003 Ga. Gen. Assem., with SB 272 (SCA), 2003 Ga. Gen. Assem.

18. See State of Georgia Final Composite Status Sheet, SB 272, Apr. 25, 2003.

19. See Senate Audio, *supra* note 16 (remarks by Sen. Mitch Seabaugh).

20. See Audio Recording of Senate Proceedings, Apr. 7, 2003 (remarks by Sen. Mitch Seabaugh), at <http://www.state.ga.us/services/leg/audio/2003archive>; Georgia Senate Voting Record, SB 272 (Apr. 7, 2003).

from which it was favorably reported, without amendment, on April 11, 2003.²¹ On April 22, 2003, Representative Carl W. Rogers, Sr. of the 20th district presented the bill on the House floor, and it passed by a vote of 160 to 0.²² There was no significant opposition to the bill.²³ The Governor signed the bill into law on June 2, 2003.²⁴

The Act

The Act amends Code section 46-5-27 by making it possible to add mobile and wireless telephone numbers to the Georgia no-call list.²⁵ The Act strikes subsections (a) through (g) and replaces them with new subsections (a) through (g).²⁶

In new subsection (a), the General Assembly recognized a right of privacy in individuals, striking the language that limited the right of privacy to “the home.”²⁷ To achieve the bill’s purpose, the General Assembly inserted the words “mobile” and “wireless” in every necessary place in subsections (b), (c), (d), (e), and (g).²⁸

The Act strikes old subsection (e) in its entirety and replaces it with new subsection (e), which is further divided into paragraphs (1) and (2).²⁹ Previously, the subsection mandated that the Public Service Commission charge a \$5 fee to individuals who wished to have their home telephone numbers added to the list.³⁰ Further, it mandated that the Commission charge telemarketers \$10 per year for access to the list.³¹ The new language gives the Commission discretion in the

21. See State of Georgia Final Composite Status Sheet, SB 272, Apr. 25, 2003.

22. See Audio Recording of House Proceedings, Apr. 7, 2003 (remarks by Rep. Carl W. Rogers), at <http://www.state.ga.us/services/leg/audio/2003archive> [hereinafter House Audio]; Georgia House of Representatives Voting Record, SB 272 (Apr. 7, 2003).

23. See House Audio, *supra* note 22.

24. 2003 Ga. Laws 562.

25. Compare 1998 Ga. Laws 505, § 1, at 506-09 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27 (Supp. 2003).

26. Compare 1998 Ga. Laws 505, § 1, at 506-09 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27 (Supp. 2003).

27. Compare 1998 Ga. Laws 505, § 1, at 506 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27 (Supp. 2003).

28. Compare 1998 Ga. Laws 505, § 1, at 506 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27 (Supp. 2003).

29. Compare 1998 Ga. Laws 505, § 1, at 508 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27(e) (Supp. 2003).

30. See 1998 Ga. Laws 505, § 1, at 508 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)).

31. See *id.*

amount of the fees imposed.³² Under new subsection (e), the Commission may charge individual subscribers any fee up to \$5 and may charge telemarketers any fee for access.³³

The Act also splits subsection (f) into paragraphs (1) and (2).³⁴ New paragraph (1) preserves the old subsection (f) in its entirety.³⁵ New paragraph (2) makes it a misdemeanor to “knowingly compile or disseminate or compile and disseminate information obtained from the [database] for any reason other than those legitimate purposes established by law.”³⁶ This subsection further provides that the punishment for each offense is “a fine not to exceed [\$1000]” and that “[e]ach instance of an unauthorized disclosure of information from the [database] shall constitute a separate offense.”³⁷

Derrick Bingham

32. Compare 1998 Ga. Laws 505, § 1, at 508 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27(e) (Supp. 2003).

33. Compare 1998 Ga. Laws 505, § 1, at 508 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27(e) (Supp. 2003).

34. Compare 1998 Ga. Laws 505, § 1, at 508 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27(f) (Supp. 2003).

35. Compare 1998 Ga. Laws 505, § 1, at 508 (formerly found at O.C.G.A. § 46-5-27 (Supp. 2002)), with O.C.G.A. § 46-5-27(f)(1) (Supp. 2003).

36. O.C.G.A. § 46-5-27(f)(2) (Supp. 2003).

37. *Id.*