

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

SENATE BILL 473

By: Senator T. Garner  
By: Representative Lundstrum

## For An Act To Be Entitled

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

### Subtitle

TO ESTABLISH THE "ARKANSAS TELEPHONE PRIVACY PROTECTION ACT".

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

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

Subchapter 11 – Arkansas Telephone Privacy Protection Act

4-88-1101. Title.

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

4-88-1102. Definitions.

As used in this subchapter:

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

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

(A) Purchase from, or transaction with, the person on whose behalf the telephone solicitation is made within the eighteen (18)



months immediately preceding the solicitation date; or

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

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

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

(5) "Prize promotion" means:

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

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

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

(i) A property;

(ii) A good; or

(iii) A service.

(B) "Telephone solicitation" includes:

(i) Offering or advertising an extension of credit;

(ii) Prize promotion; and

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

(C) "Telephone solicitation" does not include:

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

(a) For a purpose related to a

political campaign;

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

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

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

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

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

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

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

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

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

(C) Does not include:

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

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

4-88-1103. Telephone solicitor.

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

solicitor has obtained the prior written consent of the consumer.

4-88-1104. Telephone solicitation – Disclosure.

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

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

(2) The purpose of the telephone solicitation;

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

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

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

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

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

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

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

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

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

4-88-1105. Prohibitions.

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

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

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

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

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

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

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

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

(B) However, it is not a violation of this subsection to substitute the name of the person on behalf of whom the telephone solicitation is initiated and the customer service telephone number of that person.

(2) The telephone number provided under subdivision (d)(1) of this section shall permit a consumer to make a request during regular

business hours not to receive telephone solicitations.

(e) This section does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4-88-1108. Violations.

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

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

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

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

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

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

4-88-1109. Enforcement.

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

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

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

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

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

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