COMMITTEE REPORT

March 1, 2018

**H. 4628**

Introduced by Reps. Martin, B. Newton, Daning, Lucas, D.C. Moss, Willis, Caskey, Bennett, Arrington, Spires, Young, Bryant, Delleney, Magnuson, Norrell, Pope, Sandifer, Simrill, Davis, Toole and Henderson

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Read the first time January 16, 2018.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4628) to amend the Code of Laws of South Carolina, 1976, by adding Section 37‑20‑210 so as to define necessary terms, to prohibit a telemarketer or telephone, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Title 37 of the 1976 Code is amended by adding:

“Chapter 21

South Carolina Telephone Privacy Protection Act

Section 37‑21‑10. This chapter may be known and cited as the ‘South Carolina Telephone Privacy Protection Act’.

Section 37‑21‑20. As used in this chapter:

(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 call is being made based on the consumer’s:

(a) purchase from, or transaction with, the person on whose behalf the telephone solicitation is being made within the eighteen 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 being made within the three 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 that telephone solicitor.

(5) ‘Prize promotion’ means:

(a) 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) ‘Telephone solicitation’ means the initiation of a telephone call , or a text or media message sent, to a natural person’s residence in the State, or to a wireless telephone with a South Carolina area code, for the purpose of offering or advertising a property, good, or service for sale, lease, license, or investment, including offering or advertising an extension of credit, prize promotion, or for the purposes of obtaining information that will or may be used for the direct solicitation thereof. ‘Telephone solicitation’ does not mean:

(a) a political campaign‑related call made, or a text or media message sent, in compliance with the Telephone Consumer Protection Act, 47 U.S.C. Section 227;

(b) except for the purposes of Section 37‑21‑70, and unless the consumer previously stated a desire not to be contacted by or on behalf of the person on whose behalf the telephone solicitation is being made, a telephone solicitation made to a consumer with:

(i) that consumer’s prior express invitation or permission as evidenced by a signed or electronically signed, written agreement stating that the person agrees to be contacted by or on behalf of a specific party and including the telephone number to which they may be placed;

(ii) whom the person on whose behalf the telephone solicitation is made has an established business relationship; or

(iii) whom the telephone solicitor making the telephone call or sending a text message has a personal relationship; or

(c) calls by institutions licensed and regulated under Title 38.

(7) ‘Telephone solicitor’ means a person who makes, or causes another person to make, a telephone solicitation.

(8) ‘Text Message’ means a communication consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a ten‑digit telephone number or N11 service code;

(a) includes a short message service (commonly referred to as ‘SMS’) message and a multimedia message service (commonly referred to as ‘MMS’) message; and

(b) does not include‑

(i) a real‑time, two‑way voice or video communication; or

(ii) a message sent over an IP‑enabled messaging service to another user of the same messaging service, except a message described in (a).

Section 37‑21‑30. A telephone solicitor may not initiate, or cause to be initiated, a telephone solicitation at any time other than between 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.

Section 37‑21‑40. (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 and provide the name of the person on whose behalf the telephone solicitation is being made and promptly disclose to the consumer 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) 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. This disclosure must be made before or in conjunction with the description of the prize to the consumer. If requested by that person, the telephone solicitor must disclose the no purchase/no payment entry method for the prize promotion; and

(4) the option to be added to the telephone solicitor’s in‑house ‘do not call’ list. 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 solicitation or offering, 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 solicitation or offer; and

(2) if the telephone solicitor, or the person on whose behalf the telephone solicitation is being made, has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the consumer of that policy; and

(C) If the consumer indicates that he does not want to hear the offer, the telephone solicitor must immediately end the contact.

Section 37‑21‑50. (A) Notwithstanding another provision of law, a person may not, with the intent to defraud, harass, cause harm or wrongfully obtain anything of value, including, but not limited to, financial resources or personal identifying information as defined by Section 16‑13‑510, make place, or 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 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 from or misrepresent the origin and nature of the call or text message. a person may not, with the intent described in this subsection:

(1) display a South Carolina area code on the recipient’s caller identification system unless the person making, placing, or initiating the call or text message maintains a physical presence in the State; or

(2) display the receiving party’s telephone number on the contacted party’s caller identification system.

(B) the provisions of subsection (A) do not apply to a provider of landline or wireless communications services merely by virtue of its involvement in delivering a call or text message initiated by or on behalf of a third party, unless the provider provides substantial assistance or support to the telephone solicitor initiating the call when the provider knows or consciously avoids knowing such telephone solicitor is engaged in any act or practice that violates this chapter.

(C) A telephone solicitor who makes a telephone solicitation shall transmit the telephone number, and, when available by the telephone solicitor’s carrier, the name of the telephone solicitor, provided however that 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. The number provided must permit, during regular business hours, a consumer to make a request not to receive telephone solicitations.

(D) This Section shall 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 pursuant to a court order that specifically authorizes the use of caller identification manipulation.

Section 37‑21‑60. When a live telephone solicitor is not available to speak with the consumer answering a telephone solicitation call within two seconds of the completed greeting, the telephone solicitor shall:

(1) play a prerecorded identification and opt‑out message that is limited to disclosing that the call was for telephone solicitation purposes and states the name and telephone number of the person on whose behalf the telephone solicitation call is being made, and a telephone number for such person that permits the consumer to make a do‑not‑call request during regular business hours; provided that, such telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges; and

(2) an automated, interactive voice‑ and/or key press‑activated opt‑out mechanism that enables the consumer to make a do‑not‑call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When the consumer elects to opt‑out using such mechanism, the mechanism must automatically record the consumer’s number to the telephone solicitor’s in‑house do‑not‑call list and immediately terminate the call.

Section 37‑21‑70. (A) A person may not initiate, or cause to be initiated, a telephone solicitation directed to a telephone number when a person 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 being made. This statement may be made to a telephone solicitor or to the person on whose behalf the telephone solicitation is being made if that person is different from the telephone solicitor. Any request not to receive telephone solicitations must be honored for at least five 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 pursuant to 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 pursuant to Section 37‑21‑80 or Section 37‑21‑90 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 in accordance with applicable federal regulations a version of the National Do Not Call Registry obtained from the administrator of the registry no more than thirty‑one days prior to the date a telephone solicitation is made.

Section 37‑21‑80. (A) A person who is aggrieved by a violation of this chapter is entitled to initiate an action to enjoin the violation and to recover actual losses in addition to damages in the amount of one thousand dollars for each violation.

(B) If the court finds a wilful violation, the court may, in its discretion, increase the amount of the award to an amount not exceeding five thousand dollars for each violation.

(C) Notwithstanding another provision of law, in addition to any damages awarded, the person initiating the action for a violation of this chapter may be awarded reasonable attorneys’ fees and court costs.

(D) An action for damages, attorneys’ fees, and costs brought pursuant to this section may be filed in an appropriate circuit court or municipal or magistrate’s court so long as the amount claimed does not exceed the jurisdictional limits as applicable. An action brought pursuant to this section that includes a request for an injunction must be filed in an appropriate circuit court.

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

Section 37‑21‑90. (A) The Administrator, upon finding a violation of this chapter, may issue an administrative order requiring the person to cease and desist, to return property or money received in violation of this chapter and imposing penalties of up to five thousand dollars for each violation. The department may bring a civil action seeking similar relief, including injunctive relief, pursuant to subsection (B). Monies received in enforcement of this chapter shall be retained by the department for administration of this Title.

(B)(1) The Attorney General may investigate and enforce violations of this Chapter. The Attorney General, may bring an action to enjoin a violation of this chapter by any person and to recover damages for an aggrieved person or persons in the amount of five thousand dollars for each violation.

(2) If the court finds a wilful violation, the court, in its discretion, also may award a civil penalty of not more than five thousand dollars for each violation. Civil penalties awarded pursuant to this section in an action brought in the name of the State by the Attorney General must be paid to the general fund.

(3) In an action brought pursuant to this section, the Attorney General may recover reasonable expenses incurred by the State or local government agency or department in investigating and preparing the case, and attorneys’ fees.

Section 37‑21‑100. Nothing in this chapter must be construed to limit any remedies, causes of action, or penalties available to a person or governmental agency under another federal or state law.”

SECTION 2. Title 16, Chapter 17 is amended by deleting section 16‑17‑445 in its entirety.

SECTION 3. This act takes effect upon approval by the Governor.

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Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 37‑20‑210 SO AS TO DEFINE NECESSARY TERMS, TO PROHIBIT A TELEMARKETER OR TELEPHONE SOLICITOR FROM MAKING A CONSUMER TELEPHONE CALL WITH A SPOOFED TELEPHONE NUMBER THAT DISPLAYS A SOUTH CAROLINA AREA CODE ON THE RECIPIENT’S CALLER IDENTIFICATION SYSTEM UNLESS THE TELEMARKETER OR TELEPHONE SOLICITOR MAINTAINS A PHYSICAL PRESENCE IN THE STATE, TO PROVIDE REMEDIES FOR VIOLATIONS, AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 20, Title 37 of the 1976 Code is amended by adding:

“Section 37‑20‑210. (A) As used in this section:

(1) ‘Consumer telephone call’ means a call made by a telephone solicitor for the purpose of soliciting a sale of consumer goods or services to the person called, or for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for these purposes.

(2) ‘Physical presence in the State’ means owning, leasing, subleasing, or by any other means occupying a physical space or location within South Carolina for the purpose of engaging in or transacting business, commercial, or economic activity for financial profit or gain.

(3) ‘Spoof’, ‘spoofed’, or ‘spoofing’ means falsifying the name or phone number appearing on caller identification systems.

(4) ‘Telemarketer’ or ‘telephone solicitor’ means an individual, business, firm or organization, partnership, association, or corporation who makes or causes to be made a consumer telephone call.

(B) Notwithstanding another provision of law, a telemarketer or a telephone solicitor may not make, place, or initiate a consumer telephone call with a spoofed telephone number that displays a South Carolina area code on the recipient’s caller identification system unless the telemarketer or telephone solicitor making, placing, or initiating the consumer telephone call maintains a physical presence in the State.

(C) In addition to other available civil remedies:

(1) the proper issuing authority may revoke the business license of a telemarketer or telephone solicitor who violates the provisions of this section; and

(2) a person who suffers damages or loss pursuant to a violation of subsection (B) may bring a civil action against the offending telemarketer or telephone solicitor for compensatory damages and injunctive relief or other equitable relief.

(D) The provisions of this section do not apply to:

(1) the legitimate law enforcement use of this procedure by the South Carolina Law Enforcement Division or another South Carolina state or local law enforcement agency;

(2) a person or entity that places a call and blocks or otherwise prevents the delivery of a telephone number to a call recipient’s caller identification display;

(3) a person or entity that places an authorized call on behalf of another person or entity and inserts a telephone number identified with the person or entity on behalf of whom the call is being placed; or

(4) a communications service provider that delivers a communication originated by another person or entity.”

SECTION 2. This act takes effect upon approval by the Governor.

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