**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA DO NOT CALL ACT” BY ADDING CHAPTER 42 TO TITLE 58 SO AS TO PROVIDE A CITATION, TO PROVIDE NECESSARY DEFINITIONS, TO CREATE A DATABASE OF CERTAIN PERSONAL INFORMATION OF TELEPHONE CUSTOMERS WISHING NOT TO RECEIVE CERTAIN COMMERCIAL TELEPHONE SOLICITATIONS, TO PROVIDE RELATED RESPONSIBILITIES OF THE OFFICE OF REGULATORY STAFF, AND TO PROVIDE PENALTIES FOR VIOLATIONS, AMONG OTHER THINGS.

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

SECTION 1. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 42

The South Carolina Do Not Call Act

Section 58‑42‑110. This act must be known and may be cited as the ‘South Carolina Do Not Call Act’.

Section 58‑42‑120. The General Assembly finds:

(1) the use of the telephone to market consumer goods or services, conduct polling, and solicit political support is pervasive due to the increased use of cost‑effective telemarketing techniques;

(2) telemarketing and unsolicited telephone calls can be an intrusive and relentless invasion of the privacy and peacefulness of individuals;

(3) many citizens of this state are annoyed over the proliferation of unsolicited calls from telemarketers and others;

(4) individuals’ privacy rights and commercial freedom of speech can be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing and calling practices; and

(5) it is in the public interest to establish a mechanism under which individual citizens of this State can decide whether to receive telemarketing and other unsolicited calls.

Section 58‑42‑130. As used in this chapter:

(1) ‘Caller identification service’ means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) ‘Consumer goods or services’ means real property or tangible or intangible personal property that is normally used for personal, family, or household purposes including, but not limited to, property intended to be attached to or installed in real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and services related to the property.

(3) ‘Doing business in this State’ means businesses that conduct telephone calls from a location in this State or from other states or nations to consumers located in this State.

(4) ‘Merchant’ means a person who, directly or indirectly, offers or makes goods or services available to consumers.

(5) ‘Residential, mobile, or wireless subscriber’ means a person who has subscribed to telephone service from a local exchange company or mobile or wireless telephone service provider or other persons living or residing with the person.

(6) ‘Telephone solicitation’ means voice communication for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, but does not include communications:

(a) to a residential, mobile, or wireless subscriber with the prior express invitation or permission of the subscriber; or

(b) by or on behalf of a person with whom a residential, mobile, or wireless subscriber has a prior or current business or personal relationship.

(7) ‘Telephone solicitor’ means a person who makes or causes to be made a telephonic call including, but not limited to, calls made by use of automated dialing or recorded message devices.

(8) ‘Unsolicited telephone call’ means a consumer telephone call other than a call made:

(a) in response to an express request or with the express written agreement of the person called;

(b) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call; or

(c) to a person with whom the telephone solicitor or the telephone solicitor’s predecessor in interest has an established business relationship, unless the consumer has objected to the consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls. The telephone solicitor shall honor the request for five years from the date of the request.

Section 58‑42‑140. (A) The Office of Regulatory Staff shall provide for the operation of a database to compile a list of names, zip codes, and telephone numbers of consumers in this State who object to receiving telephone solicitation calls or other unsolicited telephone calls. The telephone numbers of residential, mobile, and wireless subscribers who object to receiving unsolicited telephone calls may be included on the list. There may be no cost to the subscriber for joining the database.

(B) The South Carolina Do Not Call List is a combined list consisting of the name and telephone numbers of each:

(1) residential, mobile, or wireless subscriber in this State who has requested pursuant to this chapter to be on that list; and

(2) person in the portion of the national do not call registry maintained by the United States government that relates to this State.

(C) The Office of Regulatory Staff also shall:

(1) make available an Internet website at which a person with a residential, wireless, or mobile telephone number in this State may request that the telephone number be placed on the South Carolina Do Not Call List; and

(2) provide a toll‑free telephone number and mailing address that a person may call or write to obtain a copy of a form to request placement of a telephone number on the South Carolina Do Not Call List.

(D) The Office of Regulatory Staff or a third party designated by it must administer the ‘Do Not Call List’.

(E) Information and records contained in the database established pursuant to this section only may be used to comply with the purposes of this chapter or in a proceeding or action pursuant to this chapter. Information and records of individual subscribers collected pursuant to this chapter is considered a public record for purposes of Chapter 4, Title 30, and the information and records collected pursuant to this chapter are subject to public inspection or disclosure under Chapter 4, Title 30.

(F) There is an annual fee of one hundred dollars for a person who wishes to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the South Carolina Do Not Call List database. The Office of Regulatory Staff shall receive these fees and use the funds to cover costs related to the creation and operation of the South Carolina Do Not Call List. The Office of Regulatory Staff annually may adjust the fees below the stated maximum.

Section 58‑42‑150. A person shall not:

(1) make or cause to be made a telephone solicitation call or an unsolicited telephone call to the telephone line of a residential, mobile, or wireless subscriber in this State who has given notice pursuant to the requirements of this chapter of his objection to receiving telephone solicitation calls or unsolicited telephone calls; or

(2) make a telephone solicitation to a number published on the South Carolina Do Not Call List more than sixty days after the date the telephone number appears on the current list.

Section 58‑42‑160. (A) An entry on the South Carolina Do Not Call List expires five years from the date on which the entry first is published on the list. An entry may be renewed for successive five‑year periods.

(B) The telephone number of a consumer on the South Carolina Do Not Call List may be deleted from the list if the:

(1) consumer makes a written request; or

(2) telephone number of the consumer changes.

Section 58‑42‑170. The Office of Regulatory Staff or its designee may:

(1) provide information from the South Carolina Do Not Call List to the administrator of the national do not call registry; and

(2) allow the names and telephone numbers on the South Carolina Do Not Call List to be placed on the national do not call registry.

Section 58‑42‑180. A private, for‑profit publisher of a directory of residential or business telephone listings that is distributed to the public in this State at minimal or no cost shall include in the directory a prominently displayed notice of the South Carolina Do Not Call List and the Internet website address, toll‑free number, and mailing address established by the Office of Regulatory Staff through which a person may request placement of a telephone number on the South Carolina Do Not Call List or order a copy of the form to make that request.

Section 58‑42‑190. A person who makes a telephone solicitation to a telephone subscriber clearly shall state his identity at the beginning of the solicitation.

Section 58‑42‑200. A person who makes a telephone solicitation to a telephone subscriber in this State may not knowingly act to block or otherwise circumvent a subscriber’s use of a caller identification service.

Section 58‑42‑210. A telephone solicitor may not initiate, or cause to be initiated, a telephone solicitation call except between 9:00 a.m. and 7:00 p.m. eastern time unless the telephone solicitor has obtained the express prior consent of the person being called.

Section 58‑42‑220. (A) The Office of Regulatory Staff may investigate a claim of a violation or a complaint arising under this chapter and may negotiate a consent agreement or other settlement to resolve an alleged violation of this chapter.

(B) The Office of Regulatory Staff also may use investigative powers provided in Sections 58‑4‑50 and 58‑4‑55 to investigate potential violations of this chapter. A person who makes or causes to be made a telemarketing or unsolicited telephone call is subject to these investigatory powers.

(C) The Office of Regulatory Staff is authorized to initiate proceedings with the Administrative Law Court related to violations of this chapter to obtain a:

(1) cease and desist order;

(2) temporary restraining order;

(3) temporary or permanent injunction; or

(4) civil penalty up to a maximum of five thousand dollars for a violation.

(D) Each telephone call found to violate this chapter is a separate violation.

(E) It is a defense in an action or proceeding brought under this chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this chapter.

(F) An action or proceeding may not be brought under this chapter more than two years after an alleged violation.

(G) A civil penalty collected under subsection (C)(4) must be remitted to the Office of Regulatory Staff, which must use the funds to implement the South Carolina Do Not Call List.

(H) A provider of telephone caller identification service may not be found liable for violations of this section committed by another person or entity.”

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

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