

House Bill 472 (COMMITTEE SUBSTITUTE)

By: Representatives Powell of the 23<sup>rd</sup>, Howell of the 92<sup>nd</sup>, and Parham of the 94<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and  
 2 businesses, so as to revise the "Georgia Charitable Solicitations Act of 1988"; to revise the  
 3 short title; to revise certain definitions; to require background checks prior to registration of  
 4 paid solicitors; to provide for the conditions upon which the Secretary of State will approve  
 5 the registration of an applicant to be a paid solicitor; to establish a filing fee for each  
 6 solicitation notice submitted to the Secretary of State; to provide for a penalty to be imposed  
 7 for failure of a paid solicitor to submit an end of campaign report within the allotted time;  
 8 to repeal Code Section 43-17-3.1, relating to application for registration as a solicitor agent;  
 9 to require criminal background checks of executive officers of charitable organizations prior  
 10 to registration; to provide for the conditions upon which the Secretary of State will approve  
 11 the registration of an applicant as a charitable organization; to provide for restrictions on the  
 12 use of charitable donations received by a charitable organization; to authorize the Secretary  
 13 of State to adopt rules and regulations regarding Internet solicitations by charitable  
 14 organizations; to expand the grounds for denial, suspension, or revocation of registration for  
 15 fundraising activities; to change certain provisions relating to disclosures required of  
 16 charitable organizations, paid solicitors, and solicitor agents; to change certain provisions  
 17 relating to exemptions from the "Georgia Charitable Solicitations Act of 1988"; to change  
 18 certain provisions relating to the administration of the "Georgia Charitable Solicitations Act  
 19 of 1988"; to provide for the appointment of an investigative agent or examiner by the  
 20 Secretary of State and related procedures; to provide for general investigative hearings  
 21 conducted by the Secretary of State; to change certain provisions relating to uniform  
 22 interpretation of the "Georgia Charitable Solicitations Act of 1988" and cooperation with  
 23 state law enforcement and other agencies; to provide that the records of charitable  
 24 organizations and paid solicitors are subject to review by the Secretary of State; to change  
 25 certain provisions relating to prohibited acts; to change certain provisions relating to  
 26 penalties; to change certain provisions relating to hearings and notice; to change certain  
 27 provisions relating to violations of the "Georgia Charitable Solicitations Act of 1988"; to

1 provide for editorial changes; to provide for related matters; to repeal conflicting laws; and  
 2 for other purposes.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

4 **SECTION 1.**

5 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,  
 6 is amended by striking Chapter 17, relating to charitable solicitations, in its entirety and  
 7 inserting in lieu thereof the following:

8 "CHAPTER 17

9 43-17-1.

10 This chapter shall be known and may be cited as the 'Georgia Charitable Solicitations Act  
 11 of 1988, as amended.'

12 43-17-2.

13 As used in this chapter, the term:

14 (1) 'Administrator' means the office created in subsection (a) of Code Section 10-1-395.

15 (2) 'Charitable organization' means any benevolent, philanthropic, patriotic, or  
 16 eleemosynary (of, relating to, or supported by charity or alms) person, as that term is  
 17 defined in this Code section, who solicits or obtains contributions solicited from the  
 18 general public, any part of which contributions is used for charitable purposes; and any  
 19 person who or which falsely represents himself, herself, or itself to be a charitable  
 20 organization as defined by this paragraph. The term charitable organization shall not  
 21 include a religious organization as defined in paragraph ~~(12)~~ (14) of this Code section.

22 (3) 'Charitable purpose' means any charitable, benevolent, philanthropic, patriotic, or  
 23 eleemosynary purpose for religion, health, education, social welfare, arts and humanities,  
 24 environment, civic, or public interest; and any purpose which is falsely represented to be  
 25 a charitable purpose as defined by this paragraph.

26 (4) 'Charitable sales promotion' means an advertising or sales campaign, conducted by  
 27 a commercial coventurer, which represents that the purchase or use of goods or services  
 28 offered by the commercial coventurer will benefit, in whole or in part, a charitable  
 29 organization or purpose.

30 (5) 'Commercial coventurer' means a person who for profit is regularly and primarily  
 31 engaged in trade or commerce other than in connection with soliciting for charitable  
 32 organizations or purposes and who conducts a charitable sales promotion.

1 (6) 'Contribution' means the promise or grant of any money or property of any kind or  
2 value.

3 (7) 'Educational institution' means an entity organized and operated exclusively for  
4 educational purposes and which generally maintains a regular faculty and curriculum and  
5 generally has a regularly enrolled body of pupils or students in attendance at the place  
6 where its educational activities are regularly carried on.

7 ~~(7)~~(8) 'Executive officer' means the chief executive officer, the president, the principal  
8 financial officer, the principal operating officer, each vice president with responsibility  
9 involving policy-making functions for a significant aspect of a person's business, ~~the~~  
10 ~~secretary~~, the treasurer, or any other person performing similar functions with respect to  
11 any organization, whether incorporated or unincorporated.

12 ~~(8)~~(9) 'Fundraising counsel' means any person who, for compensation, plans, manages,  
13 advises, consults, or prepares material for, or with respect to, the solicitation ~~in~~ within or  
14 from this state of contributions for a charitable organization, but who does not solicit  
15 contributions and who does not employ, procure, or engage any compensated person to  
16 solicit contributions. A lawyer, accountant, investment counselor, or banker who, solely  
17 incidental to his or her profession, renders professional services to a charitable  
18 organization, paid solicitor, or fundraising counsel or advises a person to make a  
19 contribution or holds charitable funds subject to an escrow or trust agreement shall not  
20 be deemed, as a result of such actions, to be a fundraising counsel. A bona fide salaried  
21 officer, employee, or volunteer of a charitable organization shall not be deemed to be a  
22 fundraising counsel.

23 (10) 'General public' or 'public' means any individual residing in the State of Georgia  
24 without a membership in or other bona fide relationship with a charitable organization.

25 ~~(9)~~(11) 'Membership' or 'member' means a status by which, for the payment of fees, dues,  
26 assessments, and other similar payments, an organization provides services to the payor  
27 and confers on the payor a bona fide right, privilege, professional standing, honor, or  
28 other direct benefit other than the right to vote, elect officers, or hold offices. The term  
29 'membership' or 'member' shall not be construed to apply to a person on whom an  
30 organization confers a membership solely as a consideration for making a contribution.

31 ~~(10)~~(12) 'Paid solicitor' means a person other than a commercial coventurer or charitable  
32 organization who, for compensation, performs for a charitable organization any service  
33 in connection with which contributions are, or will be, solicited within or from this state  
34 by such compensated person or by any compensated person he or she employs, procures,  
35 or engages, directly or indirectly, to solicit. A paid solicitor shall also include any  
36 fundraising counsel who at any time has custody of contributions from a solicitation as  
37 defined by this chapter. An attorney, investment counselor, accountant, or banker who,

1 solely incidental to his or her profession, advises a person to make a charitable  
 2 contribution or who holds funds subject to an escrow or trust agreement shall not be  
 3 deemed, as the result of such actions, to be a paid solicitor. A bona fide salaried officer,  
 4 employee, or volunteer of a charitable organization or commercial coventurer shall not  
 5 be deemed to be a paid solicitor.

6 ~~(11)~~(13) 'Person' means an individual, a corporation, a partnership, a limited liability  
 7 company, an association, a joint-stock company, a trust, or any unincorporated  
 8 organization.

9 ~~(12)~~(14) 'Religious organization' means an entity which:

10 (A) Conducts regular worship services; or

11 (B) Is qualified as a religious organization under Section 501(c)(3) of the Internal  
 12 Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS  
 13 Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ,  
 14 Short Form Return of Organization Exempt From Income Tax, under any  
 15 circumstances, and that is not primarily supported by funds solicited outside its own  
 16 membership or congregation.

17 ~~(13)~~(15) 'Solicitation,' 'solicitation of funds,' or 'solicit' means the request or acceptance  
 18 directly or indirectly of money, credit, property, financial assistance, or any other thing  
 19 of value to be used for any charitable purpose; and such act shall be a consumer act or  
 20 practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title  
 21 10, the 'Fair Business Practices Act of 1975.'

22 ~~(14)~~(16) 'Solicitor agent' means any person, other than a charitable organization, paid  
 23 solicitor, or commercial coventurer, who or which solicits charitable contributions for  
 24 compensation. The term 'solicitor agent' shall not include any person who is an employee  
 25 of a charitable organization which is either registered or exempt from registration under  
 26 this chapter and who is neither supervised by, nor whose activities are directed by, any  
 27 paid solicitor or its agent.

28 ~~(15)~~(17) 'State' means any state, territory, or possession of the United States, the District  
 29 of Columbia, Puerto Rico, and the Virgin Islands.

30 43-17-3.

31 (a) No paid solicitor shall solicit contributions on behalf of a charitable organization within  
 32 or from this state, unless such paid solicitor is a registered paid solicitor pursuant to this  
 33 Code section.

34 (b) A fundraising counsel who at any time has custody of contributions from a charitable  
 35 solicitation on behalf of a charitable organization required to be registered pursuant to Code  
 36 Section 43-17-5 must be registered as a paid solicitor and comply with the provisions of

1 this Code section. Registration is not required for attorneys, accountants, investment  
2 counselors, and bankers who, solely incidental to their profession have custody of such  
3 funds pursuant to an escrow or trust agreement.

4 (c)(1) A paid solicitor shall register with the Secretary of State prior to engaging in any  
5 solicitation. Each registration shall expire on December 31 of each year and may be  
6 renewed for additional one-year periods upon application and the payment of the fee.

7 (2) Applications for registration may be made by any person and shall be accompanied  
8 by the registration fee set forth in subsection (d) of this Code section. Such application  
9 for registration shall be made in a manner prescribed by the Secretary of State, which  
10 may include, in whole or in part, electronic filing, shall be verified by the applicant, shall  
11 be filed with the Secretary of State, and shall contain the information and documents set  
12 forth in this paragraph and such other information as may be prescribed by rules and  
13 regulations promulgated by the Secretary of State:

14 (A) The name of the applicant;

15 (B) The address of the principal place of business of the applicant and the addresses  
16 of all branch offices of the applicant in this state;

17 (C) The form of business organization; the date of organization of the applicant; and  
18 if the business entity is a corporation or limited partnership, the date it qualified to do  
19 business in Georgia;

20 (D) The names and business addresses of all general partners, limited partners,  
21 directors, affiliates, or executive officers of the applicant; if the applicant is a limited  
22 liability company, the names and business addresses of all members of the limited  
23 liability company; a statement of the limitations, if any, of the liability of any general  
24 partner, limited partner, director, member, affiliate, or executive officer; and a  
25 statement setting forth in chronological order the occupational activities of each such  
26 general partner, limited partner, director, member, affiliate, or executive officer during  
27 the preceding ten years;

28 (E) A brief description of the general character of the business conducted or proposed  
29 to be conducted by the applicant;

30 (F) A list of any other states in which the applicant is registered as a paid solicitor and,  
31 if registration of the applicant as a paid solicitor has ever been denied, revoked,  
32 suspended, or withdrawn or if such a proceeding is pending in any state, full details  
33 with respect thereto;

34 (G) Whether the applicant or any general partner, limited partner, director, member,  
35 affiliate, or executive officer of such applicant has ever been subject to any injunction  
36 or disciplinary proceeding by any state agency involving any aspect of fund raising or  
37 solicitation, has ever been convicted of or charged with a misdemeanor of which fraud

1 is an essential element or which involved charitable fund raising, or has ever been  
 2 convicted of or charged with a felony and, if so, all pertinent information with respect  
 3 to such injunction, disciplinary proceeding, conviction, or charge; and

4 (H) Whether the applicant or any general partner, limited partner, director, member,  
 5 affiliate, solicitor agent, or executive officer of such applicant has ever been subject to  
 6 an order, consent order, or any other disciplinary or administrative proceeding pursuant  
 7 to the unfair and deceptive acts and practices law of any state and, if so, all pertinent  
 8 information with respect to such order or proceedings; ~~and~~

9 ~~(I) Written consent to a criminal background investigation for the purpose of~~  
 10 ~~verification by the Secretary of State of information provided in the application.~~

11 (3) Each executive officer of the applicant filing an application to register under this  
 12 Code section shall submit a complete set of his or her fingerprints taken by an authorized  
 13 law enforcement agency to the Georgia Bureau of Investigation, the Federal Bureau of  
 14 Investigation, or a state or local law enforcement agency for processing a criminal history  
 15 records check on the applicant. The Secretary of State and his or her staff are authorized  
 16 to review the criminal history records information generated by the processing of the  
 17 fingerprints. The Secretary of State may promulgate rules and regulations for the  
 18 administration of this paragraph.

19 (4) When an applicant has fully complied with the provisions of this Code section, the  
 20 Secretary of State shall register such applicant as a paid solicitor, unless he or she finds  
 21 that such applicant is not of good business reputation or does not appear to be qualified  
 22 by training, experience, or knowledge to act as a paid solicitor. When the Secretary of  
 23 State has registered an applicant as a paid solicitor, he or she shall notify the applicant of  
 24 such registration.

25 ~~(3)~~(5) If the paid solicitor will have physical possession or legal control over any  
 26 contributions collected by it in or from this state on behalf of any charitable organization,  
 27 the applicant shall attach to the application for registration as a paid solicitor a financial  
 28 statement for the fiscal year of the applicant which ended within one year prior to the date  
 29 of filing unless the fiscal year of the applicant has ended within 90 days prior to the date  
 30 of filing, in which case the financial statement may be dated as of the end of the fiscal  
 31 year preceding such last fiscal year. Such financial statement shall be prepared in  
 32 accordance with generally accepted accounting principles.

33 ~~(4)~~(6) Within 15 business days after an applicant has fully complied with this subsection,  
 34 the Secretary of State shall examine each paid solicitor's registration application,  
 35 solicitation notice, and contract to determine whether the applicable requirements of this  
 36 chapter relating to the same are satisfied and shall register such applicant as a paid  
 37 solicitor unless he or she shall find that there are grounds for denial as provided in Code

1 Section 43-17-7. When the Secretary of State has registered an applicant as a paid  
2 solicitor, he or she shall immediately notify the applicant of such registration. In the event  
3 the Secretary of State has not notified the applicant of deficiencies or grounds for denial  
4 of the application within such period, the applicant may conduct himself or herself in a  
5 manner as if registered until and unless such applicant is so notified.

6 ~~(5)~~(7) If the Secretary of State finds that there are sufficient grounds to deny the  
7 registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an  
8 order refusing to register the applicant. The order shall state specifically the grounds for  
9 its issuance. A copy of the order shall be mailed to the applicant at his or her business  
10 address and to any charitable organization who proposes to employ such applicant.

11 ~~(6)~~(8) Every registration under this Code section shall expire on December 31 of each  
12 year. The registration of a paid solicitor must be renewed each year by the submission of  
13 a renewal application containing the information required in an application for  
14 registration, except to the extent that the Secretary of State ~~by rule~~ does not require the  
15 resubmission of such information which has previously been included in an application  
16 or renewal application previously filed; by the payment of the proper registration fee;  
17 and, if it would be required in the event of an initial application, by the filing of a  
18 financial statement as of a date within one year prior to the date of filing unless the fiscal  
19 year of the applicant has ended within 90 days prior to the date of filing, in which case  
20 the financial statement may be dated as of the end of the preceding fiscal year. Such  
21 financial statements shall be prepared in accordance with generally accepted accounting  
22 principles.

23 ~~(7)~~(9) The registration of a paid solicitor shall be amended within 30 days to reflect a  
24 change of name, address, principals, state of incorporation, or other changes which  
25 materially affect the business of the paid solicitor. Such amendments shall be filed in a  
26 manner which the Secretary of State may prescribe by rule or regulation.

27 (d) The fee for the initial registration of a paid solicitor shall be \$250.00. The fee to amend  
28 the registration shall be \$15.00. The annual renewal fee for a paid solicitor shall be  
29 \$100.00.

30 (e)(1) There shall be a contract between a paid solicitor and a charitable organization  
31 which shall be in writing, shall clearly state the respective obligations of the paid solicitor  
32 and the charitable organization, and shall state the amount of the gross revenue from the  
33 solicitation campaign that the charitable organization will receive. Such amount shall be  
34 expressed as a fixed percentage of the gross revenue or as a reasonable estimate of the  
35 gross revenue, subject to and in accordance with the provisions of paragraphs (2), (3), and  
36 (4) of this subsection.

1 (2) If the compensation of the paid solicitor is contingent upon the number of  
2 contributions or the amount of revenue received from the solicitation campaign, the stated  
3 amount shall be expressed as a fixed percentage of the gross revenue.

4 (3) If the compensation of the paid solicitor is not contingent upon the number of  
5 contributions or the amount of revenue received, the stated amount shall be a reasonable  
6 estimate, expressed as a percentage of the gross revenue, and the contract shall clearly  
7 disclose the assumptions upon which the estimate is based. The stated assumptions shall  
8 be based upon all the relevant facts known to the paid solicitor regarding the solicitation  
9 to be conducted as well as the past performance of solicitations conducted by the paid  
10 solicitor. ~~If the stated amount is a reasonable estimate, rather than a fixed percentage of~~  
11 ~~the gross revenue, the contract shall also provide that the charitable organization is~~  
12 ~~guaranteed a percentage of the gross revenue which is no less than the reasonable~~  
13 ~~estimate less 10 percent of the gross revenue.~~

14 (4) The stated percentages required by this subsection shall exclude any amount which  
15 the charitable organization is to pay as expenses of the solicitation campaign, including  
16 the cost of merchandise or services sold or events staged.

17 (f) Prior to the commencement of each solicitation campaign the paid solicitor shall file  
18 with the Secretary of State a completed 'solicitation notice' on forms prescribed by the  
19 Secretary of State. The Secretary of State may provide that said filing be made, in whole  
20 or in part, through electronic means. The solicitation notice shall include a copy of the  
21 contract described in subsection (e) of this Code section, the projected dates when  
22 soliciting will commence and terminate, the location and telephone number from which the  
23 solicitation will be conducted, the campaign solicitation scripts utilized by employees, the  
24 name and residence address of each person responsible for directing and supervising the  
25 conduct of the campaign, a statement as to whether the paid solicitor will at any time have  
26 custody of contributions, and a full and fair description of the charitable program for which  
27 the solicitation campaign is being carried out. The fee for filing such solicitation notice  
28 shall be \$15.00. The Secretary of State may impose a late penalty of \$50.00 for the failure  
29 to file a solicitation notice prior to the commencement of each solicitation campaign.

30 (g) Within ~~30~~ 90 days after a solicitation campaign has been completed, and on the  
31 anniversary of the commencement of a solicitation campaign lasting more than one year,  
32 the paid solicitor shall account to the charitable organization with whom it has contracted  
33 and to the Secretary of State for all contributions collected and expenses paid. The  
34 accounting shall be in writing, shall be retained by the charitable organization for three  
35 years, and shall contain the following information:

36 (1) The total gross receipts;

1 (2) A description of how the gross receipts were distributed, including an itemized list  
 2 of all expenses, commissions, and other costs of the fundraising campaign and the net  
 3 amount paid to the charitable organization for its charitable purposes after payment of all  
 4 fundraising expenses, commissions, and other costs; and

5 (3) The signature of the charitable organization and such other information as the  
 6 Secretary of State by rule may require.

7 The original of the report shall be ~~forwarded to the charitable organization~~ filed with the  
 8 Secretary of State within the time prescribed above, ~~and a copy shall be filed~~  
 9 ~~simultaneously with the Secretary of State.~~ The Secretary of State may impose a late  
 10 penalty not to exceed \$500.00 for the failure to file an end of campaign report within the  
 11 time prescribed above.

12 (h) Each contribution collected by the paid solicitor shall, in its entirety and within ten  
 13 days of its receipt, be deposited in an account at a bank or other federally insured financial  
 14 institution. The account shall be in the name of the charitable organization with whom the  
 15 paid solicitor has contracted and the charitable organization shall have sole control of all  
 16 withdrawals from the account.

17 (i)(1) The paid solicitor shall maintain during each solicitation campaign and for not less  
 18 than three years after its completion, the following records:

19 (A) The name and, if known to the paid solicitor, the address of each person pledging  
 20 to contribute together with the date and amount of the pledge;

21 (B) The name and residence address of each employee, agent, or other person, however  
 22 styled, involved in the solicitation;

23 (C) A record of all contributions at any time in the custody of the paid solicitor;

24 (D) A record of all expenses incurred by the paid solicitor for which the charitable  
 25 organization is liable for payment;

26 (E) The location and account number of all bank or other financial institution accounts  
 27 in which the paid solicitor has deposited revenue from the solicitation campaign; and

28 (F) Such other records as may be prescribed by the Secretary of State by rule and  
 29 regulation.

30 (2) If the paid solicitor sells tickets to an event and represents that tickets will be donated  
 31 for use by another, the paid solicitor shall also maintain for the same period as specified  
 32 in paragraph (1) of this subsection:

33 (A) The name and address of those contributors donating tickets and the number of  
 34 tickets donated by each contributor; and

35 (B) The name and address of all organizations receiving donated tickets for use by  
 36 others, including the number of tickets received by each organization.

1 (3) All records of such paid solicitor are subject to such reasonable periodic, special, or  
 2 other examinations by representatives of the Secretary of State, within or outside this  
 3 state, as the Secretary of State deems necessary or appropriate in the public interest or for  
 4 the protection of the public, provided that the Secretary of State shall not disclose this  
 5 information except to the extent he or she reasonably deems necessary for investigative  
 6 or law enforcement purposes.

7 (j) Not later than ~~30~~ 90 days following the end of each solicitation campaign, the paid  
 8 solicitor shall provide to the charitable organization, at no cost, a copy of all records  
 9 described in subsection (i) of this Code section. ~~In the event any such campaign exceeds~~  
 10 ~~six months in length, such records shall be provided, in addition, not less than 30 days~~  
 11 ~~following the end of each six-month period.~~

12 (k) The Secretary of State shall have the authority to adopt rules and regulations regarding  
 13 the registration of paid solicitors conducting Internet solicitations.

14 ~~43-17-3.1.~~

15 ~~(a) No solicitor agent shall solicit contributions on behalf of a charitable organization~~  
 16 ~~within or from this state, unless such solicitor agent is a registered solicitor agent pursuant~~  
 17 ~~to this Code section and is affiliated through employment or as an independent contractor~~  
 18 ~~pursuant to a written agreement with a paid solicitor or charitable organization which is~~  
 19 ~~either registered or exempt from registration.~~

20 ~~(b)(1) A solicitor agent shall register with the Secretary of State prior to engaging in any~~  
 21 ~~solicitation. Each registration shall expire on December 31 of each year and may be~~  
 22 ~~renewed for additional one-year periods upon application and the payment of the fee.~~

23 ~~(2) Applications for registration may be made by any person and shall be accompanied~~  
 24 ~~by the registration fee set forth in subsection (c) of this Code section. Such application~~  
 25 ~~for registration shall be made in a manner prescribed by the Secretary of State, which~~  
 26 ~~may include, in whole or in part, electronic filing, shall be verified by the applicant, shall~~  
 27 ~~be filed with the Secretary of State, and shall contain the information and documents set~~  
 28 ~~forth in this paragraph and such other information as may be prescribed by rules and~~  
 29 ~~regulations promulgated by the Secretary of State:~~

30 ~~(A) The name of the applicant;~~

31 ~~(B) The address of each place of business of the applicant;~~

32 ~~(C) The name and address of the paid solicitor or charitable organization with which~~  
 33 ~~the solicitor agent will be affiliated by employment or as an independent contractor;~~

34 ~~(D) If the solicitor agent is to be an independent contractor, a copy of the contract~~  
 35 ~~setting forth the terms and conditions thereof;~~

1 ~~(E) A list of any other states in which the applicant is registered as a paid solicitor~~  
2 ~~agent and, if any registration of the applicant under the charitable solicitation law of any~~  
3 ~~state has ever been denied, revoked, suspended, or withdrawn or if such a proceeding~~  
4 ~~is pending in any state, full details with respect thereto;~~

5 ~~(F) Whether the applicant has ever been subject to any injunction or disciplinary~~  
6 ~~proceeding by any state agency involving any aspect of fund raising or solicitation, has~~  
7 ~~ever been convicted of or charged with a misdemeanor of which fraud is an essential~~  
8 ~~element or which involved charitable fund raising, or has ever been convicted of or~~  
9 ~~charged with a felony and, if so, all pertinent information with respect to such~~  
10 ~~injunction, disciplinary proceeding, conviction, or charge;~~

11 ~~(G) Whether the applicant has ever been subject to an order, consent order, or any~~  
12 ~~other disciplinary or administrative proceeding pursuant to the unfair and deceptive acts~~  
13 ~~and practices law of any state and, if so, all pertinent information with respect to such~~  
14 ~~order or proceedings; and~~

15 ~~(H) Written consent to a criminal background investigation for the purpose of~~  
16 ~~verification by the Secretary of State of information provided in the application.~~

17 ~~(3) Within 15 business days after an applicant has fully complied with this subsection,~~  
18 ~~the Secretary of State shall register such applicant as a solicitor agent unless he or she~~  
19 ~~shall find that there are grounds for denial as provided in Code Section 43-17-7. When~~  
20 ~~the Secretary of State has registered an applicant, he or she shall immediately notify the~~  
21 ~~applicant of such registration. In the event the Secretary of State has not notified the~~  
22 ~~applicant of deficiencies or grounds for denial of the application within such period, the~~  
23 ~~applicant may conduct itself in a manner as if registered until and unless it is so notified.~~

24 ~~(4) If the Secretary of State finds that there are sufficient grounds to deny the registration~~  
25 ~~of the applicant as provided in Code Section 43-17-7, he or she shall issue an order~~  
26 ~~refusing to register the applicant. The order shall state specifically the grounds for its~~  
27 ~~issuance. A copy of the order shall be mailed to the applicant at his or her business~~  
28 ~~address and to any charitable organization or paid solicitor who proposes to employ such~~  
29 ~~applicant.~~

30 ~~(5) Every registration under this Code section shall expire on December 31 of each year.~~  
31 ~~The registration of a solicitor agent must be renewed each year by the submission of a~~  
32 ~~renewal application containing the information required in an application for registration,~~  
33 ~~except to the extent that the Secretary of State by rule does not require the resubmission~~  
34 ~~of such information which has previously been included in an application or renewal~~  
35 ~~application previously filed, and by the payment of the proper registration fee.~~

36 ~~(6) The registration of a solicitor agent shall be promptly amended to reflect a change of~~  
37 ~~name or address or other changes in the information previously provided to the Secretary~~

1 ~~of State. Such amendments shall be filed in a manner which the Secretary of State may~~  
2 ~~prescribe by rule or regulation.~~

3 ~~(c) The fee for the initial registration of a solicitor agent shall be \$50.00. The fee to amend~~  
4 ~~the registration shall be \$15.00. The annual renewal fee for a paid solicitor shall be \$50.00.~~

5 43-17-4.

6 (a) An applicant for registration as a paid solicitor who will have physical possession or  
7 legal control over any contributions collected by it in or from this state on behalf of any  
8 charitable organizations shall file with the Secretary of State a bond satisfactory to the  
9 Secretary of State in the sum of \$10,000.00 payable to the State of Georgia for the use of  
10 all interested persons and conditioned upon the faithful compliance by the principal with  
11 any and all provisions of this chapter and any regulations and orders issued by the  
12 Secretary of State. Such an applicant for renewal of registration as a paid solicitor shall also  
13 file such bond. Except as otherwise provided in subsection (b) of this Code section, the  
14 Secretary of State shall not register such an applicant or renew the registration of such an  
15 applicant until such bond is filed as provided in this subsection. Any such bond may be  
16 canceled by the principal or surety by giving notice to the Secretary of State, but such  
17 cancellation shall not affect any cause of action accruing thereon prior to cancellation and  
18 such cancellation shall result in automatic cancellation of the principal's registration until  
19 a new bond satisfactory to the Secretary of State is filed. Any action on such bond must be  
20 brought within two years after accrual of the cause of action. The amount prescribed in this  
21 subsection for the bond required of a paid solicitor shall be construed as being the  
22 aggregate liability recoverable against such bond, regardless of the number of claimants,  
23 and shall not be construed as individual liability.

24 (b) The requirement for filing of such bond by an applicant for registration or renewal of  
25 registration as a paid solicitor shall not be applicable if the applicant for registration or  
26 renewal of registration as a paid solicitor has deposited in trust with the Secretary of State:

27 (1) A certificate of deposit or letter of credit evidencing a deposit with a financial  
28 institution satisfactory to the Secretary of State in the amount of \$10,000.00 payable to  
29 the applicant and assigned to the Secretary of State;

30 (2) An irrevocable letter of credit addressed to the Secretary of State in the amount of  
31 \$10,000.00, issued by a bank which is a member of the Federal Reserve System and  
32 conditioned only upon the rendering of a judgment by a court of competent jurisdiction  
33 in which the applicant is found liable for damages under this chapter; or

34 (3) Obligations of the United States, an agency thereof, or the State of Georgia which  
35 mature in not more than two years and which have a market value as of the date of  
36 deposit of at least \$10,000.00.

1 (c) Such deposits shall be held for the benefit of all persons to whom the applicant is liable  
2 for damages under this chapter for a period of two years after such applicant's registration  
3 has expired or been revoked; provided, however, such deposits shall not be released at any  
4 time while there is pending against the applicant an action (including any direct appeal of  
5 such action or an appeal based on a petition for certiorari jurisdiction), of which the  
6 Secretary of State has notice, in a court of competent jurisdiction in which it is alleged that  
7 the applicant is liable for damages under this chapter. Such deposits shall not be released  
8 except upon application to and the written order of the Secretary of State. The Secretary  
9 of State shall have no liability for any such release of any deposit or part thereof made by  
10 him or her in good faith. The Secretary of State may designate any regularly constituted  
11 state depository having trust powers domiciled in this state as a depository to receive and  
12 hold any such deposit. Any such deposit so held shall be at the expense of the applicant.  
13 Such depository shall give to the Secretary of State a proper trust and safekeeping receipt  
14 upon which the Secretary of State shall give an official receipt to the applicant. The State  
15 of Georgia shall be responsible for the safekeeping and return of all deposits made pursuant  
16 to this Code section. So long as the applicant complies with this chapter, the applicant may  
17 demand, receive, bring an action for, and recover the income from the securities deposited  
18 or may exchange and substitute for the letter of credit or securities deposited or a part  
19 thereof, with the approval of the Secretary of State, a letter of credit or securities of the  
20 kinds specified in subsection (b) of this Code section of equivalent or greater value. No  
21 judgment creditor or other claimant of the applicant shall levy upon any deposit held  
22 pursuant to this Code section or upon any part thereof, except as specified in this  
23 subsection. Whenever any person shall file an action in a court of competent jurisdiction  
24 in which it is alleged that the applicant is liable for damages under this chapter, such  
25 person, in order to secure his or her recovery, may give notice to the Secretary of State of  
26 such alleged liability and of the amount of damages claimed, after which notice the  
27 Secretary of State shall be bound to retain, subject to the order of the Superior Court of  
28 Fulton County, as provided in subsection (d) of this Code section, a sufficient amount of  
29 the deposit to pay the judgment in the action.

30 (d) In the event that the applicant prevails in such action and in the event that such deposits  
31 have been held by the Secretary of State for a period of at least two years after the  
32 applicant's registration has expired or been revoked, then such deposits shall be released  
33 to the applicant; provided, however, such deposits shall not be released at any time while  
34 there is pending against the applicant an action (including any direct appeal of such action  
35 or an appeal based on a petition for certiorari jurisdiction), of which the Secretary of State  
36 has notice, in a court of competent jurisdiction in which it is alleged that the applicant is  
37 liable for damages under this chapter. If a judgment is rendered in such action by which it

1 is determined that the applicant is liable for damages under this chapter and the applicant  
2 has not paid the judgment within ten days of the date the judgment became final or if the  
3 applicant petitions the Supreme Court of the United States to take certiorari jurisdiction  
4 over such action and the applicant has not paid the judgment within ten days of the date the  
5 Supreme Court of the United States denies certiorari jurisdiction or within ten days of the  
6 date the Supreme Court of the United States affirms the judgment, then such person may  
7 petition the Superior Court of Fulton County for an order directing the Secretary of State  
8 to reduce such deposit or a portion thereof sufficient to pay the judgment to cash or its  
9 equivalent and to pay such judgment to the extent the judgment may be satisfied with the  
10 proceeds of the deposit. If there shall remain any residue from the deposit and if at least  
11 two years have passed since the expiration or revocation of the applicant's registration, the  
12 Secretary of State shall pay such residue to the applicant, taking his or her receipt for the  
13 residue, which shall be filed and recorded with the other papers of the case, unless there is  
14 pending against the applicant an action (including any direct appeal of such action or an  
15 appeal based on a petition for certiorari jurisdiction), of which the Secretary of State has  
16 notice, in a court of competent jurisdiction in which it is alleged that the applicant is liable  
17 for damages under this chapter, in which case the Secretary of State shall hold or dispose  
18 of such residue in accordance with the provisions of this subsection relating to the holding  
19 or disposing of the entire deposit. If more than one final judgment is rendered against the  
20 applicant for violation of this chapter, the judgment creditors shall be paid in full from such  
21 deposit or residue thereof, to the extent the deposit or residue is sufficient to pay the  
22 judgments, in the order in which the judgment creditors petitioned the Superior Court of  
23 Fulton County.

24 (e) Anything in this Code section to the contrary notwithstanding, the Secretary of State  
25 shall comply with any order of a Georgia or United States court of competent jurisdiction  
26 to turn over any deposit held by him or her pursuant to subsection (a) of this Code section  
27 or the proceeds from any bond held by him or her pursuant to subsection (a) of this Code  
28 section to a trustee or receiver for the use and sole benefit of persons on whose behalf the  
29 Secretary of State holds such deposit or proceeds.

30 43-17-5.

31 (a) It shall be unlawful for any person to solicit or accept charitable contributions from any  
32 person in this state unless the charitable organization on whose behalf such contributions  
33 are being solicited is:

- 34 (1) Subject to an effective registration statement under this chapter; or
- 35 (2) Exempt from registration pursuant to Code Section 43-17-9.

1 (b)(1) Every charitable organization, except those exempt from registration pursuant to  
2 Code Section 43-17-9, which intends to solicit in this state or have contributions solicited  
3 in this state on its behalf by other charitable organizations, commercial coventurers, or  
4 paid solicitors shall, prior to any solicitation, file a registration statement with the  
5 Secretary of State upon a form prescribed by the Secretary of State. No charitable  
6 organization required to be registered under this Code section shall solicit prior to  
7 registration.

8 (2) A registration statement, which the Secretary of State may require to be in whole or  
9 in part an electronic filing, shall be signed by an authorized executive officer of the  
10 charitable organization and shall contain the following information:

11 (A) The name under which the charitable organization intends to solicit contributions;

12 (B) The names and addresses of officers, directors, trustees, and executive personnel  
13 and, in the case of a state-wide parent organization, the communities in which the  
14 chapters, branches, or affiliates are located and their directors;

15 (C) The names and addresses of any fundraising counsel or paid solicitor who acts or  
16 will act on behalf of the charitable organization, together with a statement setting forth  
17 the terms of the arrangements for salaries, bonuses, commissions, or other remuneration  
18 to be paid to the fundraising counsel or paid solicitor;

19 (D) The general purposes for which the charitable organization is organized;

20 (E) The purposes for which the contributions to be solicited will be used;

21 (F) The period of time during which the solicitation will be made;

22 (G) The method of solicitation; and

23 (H) Such other information as the Secretary of State may require.

24 (3) There shall be filed with such application an irrevocable written consent of the  
25 applicant to the service of process upon the Secretary of State in actions against such  
26 applicant in the manner and form provided in Code Section 43-17-18.

27 (4) There shall be filed with such application a financial statement of the charitable  
28 organization or a consolidated financial statement of the charitable organization and its  
29 subsidiaries as of a date within one year prior to the filing of the registration statement.

30 If the charitable organization has received or collected more than \$1 million during its  
31 preceding fiscal year, the financial statement shall be prepared by an independent  
32 certified public accountant and shall be a certified financial statement of the charitable  
33 organization or a certified consolidated financial statement of the charitable organization  
34 and its subsidiaries prepared in accordance with generally accepted accounting principles  
35 as of a date within one year prior to the date of filing unless the last fiscal year of the  
36 charitable organization has ended within 90 days prior to the date of filing, in which case  
37 such certified financial statement may be as of the end of the fiscal year preceding such

1 last fiscal year. If the charitable organization has received or collected more than  
 2 \$500,000.00 but not more than \$1 million during its preceding fiscal year, the financial  
 3 statement shall be reviewed by an independent certified public accountant and such  
 4 certified public accountant's review report, prepared in accordance with generally  
 5 accepted accounting principles as of a date within one year prior to the date of filing,  
 6 shall be filed with the financial statement. If the charitable organization has received or  
 7 collected any charitable contributions during its preceding fiscal year, the financial  
 8 statement shall have attached thereto a copy of the Form 990, Return of Organization  
 9 Exempt From Income Tax, or the Form 990EZ, Short Form Return of Organization  
 10 Exempt From Income Tax, which the organization filed for the previous taxable year  
 11 pursuant to the United States Internal Revenue Code. In the event a charitable  
 12 organization did not file a Form 990 or 990EZ, such charitable organization shall be  
 13 required to file, with such financial statement, such form as may be prescribed by rule  
 14 and regulation of the Secretary of State which requires information substantially similar  
 15 to that required to be provided on Form 990 or 990EZ.

16 (5) Each executive officer of the applicant filing an application to register under this  
 17 Code section shall submit a complete set of his or her fingerprints taken by an authorized  
 18 law enforcement agency to the Georgia Bureau of Investigation, the Federal Bureau of  
 19 Investigation, or a state or local law enforcement agency for processing a criminal history  
 20 records check on the applicant. The Secretary of State and his or her staff are authorized  
 21 to review the criminal history records information generated by the processing of the  
 22 fingerprints. The Secretary of State may promulgate rules and regulations for the  
 23 administration of this paragraph.

24 (6) When an applicant has fully complied with the provisions of this Code section, the  
 25 Secretary of State shall register such applicant as a charitable organization, unless he or  
 26 she finds that such applicant is not of good business reputation or does not appear to be  
 27 qualified by training, experience, or knowledge to act as a charitable organization. When  
 28 the Secretary of State has registered an applicant as a charitable organization, he or she  
 29 shall notify the applicant of such registration.

30 ~~(5)~~(7) Every charitable organization registered with the Secretary of State shall file with  
 31 the Secretary of State copies of any federal or state tax exemption determination letters  
 32 received after the initial registration within 30 days after receipt and shall file any  
 33 amendments to its organizational instrument within 30 days after adoption.

34 ~~(6)~~(8) The Secretary of State may waive the furnishing of any information required by  
 35 this subsection and may require such additional information as to the previous history,  
 36 records, or association of the applicant, general partners, limited partners, directors,  
 37 affiliates, or executive officers or members in the case of a limited liability company as

1 he or she may deem necessary to establish whether or not the applicant should be  
2 registered as a charitable organization under this chapter.

3 ~~(7)~~(9) When an applicant has fully complied with this subsection, the Secretary of State  
4 shall register such applicant as a charitable organization unless he or she shall find that  
5 there are grounds for denial as provided in Code Section 43-17-7. When the Secretary of  
6 State has registered an applicant as a charitable organization, he or she shall immediately  
7 notify the applicant of such registration.

8 ~~(8)~~(10) If the Secretary of State finds that there are sufficient grounds to deny the  
9 registration of the applicant as provided in Code Section 43-17-7, he or she shall issue an  
10 order refusing to register the applicant. The order shall state specifically the grounds for  
11 its issuance. A copy of the order shall be mailed to the applicant at its business address  
12 and to any paid solicitor who proposes to solicit contributions on behalf of the charitable  
13 organization.

14 ~~(9)~~(11) Every registration under this Code section shall be valid for a period of 12  
15 months from its date of effectiveness. The registration must be renewed on or before the  
16 expiration date each year by the submission of a renewal application containing the  
17 information required in an application for registration, to the extent that such information  
18 has not previously been included in an application or renewal application previously  
19 filed, by the payment of the proper registration fee, and by the filing of a financial  
20 statement as of a date within one year prior to the date of filing. If the charitable  
21 organization has received or collected more than \$1 million during its preceding fiscal  
22 year, the financial statement shall be prepared by an independent certified public  
23 accountant and shall be a certified financial statement of the charitable organization or  
24 a certified consolidated financial statement of the charitable organization and its  
25 subsidiaries as of a date within one year of the date of filing unless the fiscal year of the  
26 applicant has ended within 90 days prior to the date of filing, in which case the financial  
27 statement may be dated as of the end of the preceding fiscal year. If the charitable  
28 organization has received or collected more than \$500,000.00 but not more than \$1  
29 million during its preceding fiscal year, the financial statement shall be reviewed by an  
30 independent certified public accountant and such certified public accountant's review  
31 report, prepared in accordance with generally accepted accounting principles as of a date  
32 within one year prior to the date of filing, shall be filed with the financial statement. If  
33 the charitable organization has received or collected any charitable contributions during  
34 its preceding fiscal year, the financial statement shall have attached thereto a copy of the  
35 Form 990, Return of Organization Exempt From Income Tax, or the Form 990EZ, Short  
36 Form Return of Organization Exempt From Income Tax, which the organization filed for  
37 the previous taxable year pursuant to the United States Internal Revenue Code. In the

1 event a charitable organization did not file a Form 990 or 990EZ, such charitable  
2 organization shall be required to file, with such financial statement, such form as may be  
3 prescribed by rule and regulation of the Secretary of State which requires information  
4 substantially similar to that required to be provided on Form 990 or 990EZ. Such  
5 financial statements shall be prepared in accordance with generally accepted accounting  
6 principles and, if required to be certified, shall be certified by an independent public  
7 accountant duly registered and in good standing as such under the laws of the place of his  
8 or her residence or principal office.

9 ~~(10)~~(12) The registration of a charitable organization shall be amended within 30 days  
10 to reflect a change of name, address, principals, state of incorporation, corporate forms  
11 (including a merger of two charitable organizations), or other changes which materially  
12 affect the business of the charitable organization. Such amendments shall be filed in a  
13 manner which the Secretary of State may prescribe by rule or regulation.

14 (c) The fee for the initial registration of a charitable organization shall be \$25.00. The fee  
15 for filing amendments to the registration shall be \$15.00. The annual renewal fee for a  
16 charitable organization shall be \$10.00.

17 (d) A charitable organization shall maintain for not less than three years a record of all  
18 contributions including, but not limited to, the name and address of each contributor giving  
19 \$25.00 or more directly or indirectly to the charitable organization, the date and amount of  
20 the contribution, and the location and account number of all bank or other financial  
21 institution accounts in which the charitable organization has deposited contributions.

22 (e) All records of charitable organizations which relate to charitable solicitations or  
23 charitable contributions are subject to such reasonable periodic, special, or other  
24 examinations by representatives of the Secretary of State, within or outside this state, as the  
25 Secretary of State deems necessary or appropriate in the public interest or for the protection  
26 of the public, provided that the Secretary of State shall not disclose this information except  
27 to the extent he or she deems reasonably necessary for investigative or law enforcement  
28 purposes.

29 (f) A charitable organization shall maintain for not less than three years at an office located  
30 in Georgia or, if it has no office in Georgia, its principal office all records provided to it by  
31 any paid solicitor relating to any solicitation campaign. The charitable organization shall  
32 notify the Secretary of State of the address of the office at which such records are kept.

33 (g) Funds received as charitable donations shall not be invested in or loaned to any  
34 individual, any business venture controlled by the charity's paid solicitor, or an affiliate of  
35 any of these persons or entities.

36 (h) The Secretary of State shall have the authority to adopt rules and regulations regarding  
37 the registration of charitable organizations conducting Internet solicitations.

1 43-17-6.

2 (a) Every charitable organization which agrees to permit a charitable sales promotion to  
3 be conducted ~~in~~ on its behalf shall obtain, prior to the commencement of the charitable  
4 sales promotion within this state, a written agreement from the commercial coventurer  
5 which shall be available to the Secretary of State upon request. The agreement shall be  
6 signed by an authorized representative of the charitable organization and the commercial  
7 coventurer and it shall include, at a minimum, the following:

8 (1) The goods or services to be offered to the public;

9 (2) The geographic area where, and the starting and final date when, the offering will be  
10 made;

11 (3) The manner in which the charitable organization's name will be used, including the  
12 representation to be made to the public as to the actual or estimated dollar amount or  
13 percent per unit of goods or services purchased or used that will benefit the charitable  
14 organization;

15 (4) If applicable, the maximum dollar amount that will benefit the charitable  
16 organization;

17 (5) The estimated number of units of goods or services to be sold or used;

18 (6) A provision for a final accounting on a per unit basis to be given by the commercial  
19 coventurer to the charitable organization and the date by which it will be made;

20 (7) A statement that the charitable sales promotion is subject to the requirements of this  
21 chapter; and

22 (8) The date by when, and the manner in which, the benefit will be conferred on the  
23 charitable organization.

24 (b) The final accounting for the charitable sales promotion shall be kept by the commercial  
25 coventurer for three years after the final accounting date.

26 (c) All records of charitable organizations and commercial coventurers pertaining to such  
27 sales promotion are subject to such reasonable periodic, special, or other examinations by  
28 representatives of the Secretary of State, within or outside this state, as the Secretary of  
29 State deems necessary or appropriate in the public interest or for the protection of the  
30 public, provided that the Secretary of State shall not disclose this information except to the  
31 extent necessary for investigative or law enforcement purposes.

32 43-17-7.

33 (a) The Secretary of State, by order, may deny, suspend, or revoke a registration, limit the  
34 fundraising activities that an applicant or registered person may perform ~~in~~ within or from  
35 this state, bar an applicant or registered person from association with a paid solicitor or  
36 charitable organization, or bar a person who is a partner, officer, director, or employee of,

1 or a member of a limited liability company which is, an applicant or registered person from  
 2 employment with a paid solicitor or charitable organization if the Secretary of State finds  
 3 that the order is in the public interest and that the applicant, registered person, or such other  
 4 person:

5 (1) Has filed an application for registration with the Secretary of State which, as of its  
 6 effective date or any date after filing in the case of an order denying effectiveness, was  
 7 incomplete in a material respect or contained a statement that was, in light of the  
 8 circumstances under which it was made, false or misleading with respect to a material  
 9 fact;

10 (2) Has willfully violated or failed to comply with this chapter, a prior enactment, or a  
 11 rule promulgated by the Secretary of State under this chapter or a prior enactment;

12 (3) Is the subject of an adjudication or determination, after notice and opportunity for  
 13 hearing, within the last five years by a state or federal agency or a court of competent  
 14 jurisdiction that the person has violated the charitable organizations regulatory act or the  
 15 unfair and deceptive acts and practices law of any state, but only if the acts constituting  
 16 the violation of that state's law would constitute a violation of this chapter had the acts  
 17 occurred in this state;

18 (4) Within the last ten years has been convicted of a felony or misdemeanor which the  
 19 Secretary of State finds:

20 (A) Involves the solicitation or acceptance of charitable contributions or the making  
 21 of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to  
 22 commit any of the foregoing offenses;

23 (B) Arises out of the conduct of solicitation of contributions for a charitable  
 24 organization;

25 (C) Involves ~~the~~ larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent  
 26 concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

27 (D) Involves murder or rape; or

28 (E) Involves assault or battery if such person proposes to be engaged in counseling,  
 29 advising, housing, or sheltering individuals;

30 (5) Has knowingly employed a solicitor agent who within the last ten years has been  
 31 convicted of a felony or misdemeanor which the Secretary of State finds:

32 (A) Involves the solicitation or acceptance of charitable contributions or the making  
 33 of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to  
 34 commit any of the foregoing offenses;

35 (B) Arises out of the conduct of solicitation of contributions for a charitable  
 36 organization;

1 (C) Involves larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent  
 2 concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

3 (D) Involves murder or rape; or

4 (E) Involves assault or battery if such person proposes to be engaged in counseling,  
 5 advising, housing, or sheltering individuals;

6 ~~(5)~~(6) Is permanently or temporarily enjoined by a court of competent jurisdiction from  
 7 acting as a charitable organization, paid solicitor, or as an affiliated person or employee  
 8 of such;

9 ~~(6)~~(7) Is the subject of an order of the Secretary of State denying, suspending, or  
 10 revoking the person's registration as a charitable organization or paid solicitor;

11 ~~(7)~~(8) Has violated a law or any rule or regulation of this state, any other state, the  
 12 United States, or any other lawful authority (without regard to whether the violation is  
 13 criminally punishable), which law or rule or regulation relates to or in part regulates  
 14 charitable organizations or paid solicitors regulated under this chapter, when the  
 15 charitable organization or paid solicitor knows or should know that such action is in  
 16 violation of such law, rule, or regulation; ~~or~~

17 ~~(8)~~(9) Has failed to pay the proper filing fee within 30 days after being notified by the  
 18 Secretary of State of a deficiency, but the Secretary of State may provide for the  
 19 reinstatement of the registration or the suspension of a fine or penalty at such time as the  
 20 deficiency is corrected; or

21 (10) Has failed to comply with a subpoena or order issued by the Secretary of State.

22 ~~(b) The Secretary of State may not begin a proceeding solely on the basis of a fact or~~  
 23 ~~transaction known to the Secretary of State when the registration became effective unless~~  
 24 ~~the proceeding is begun within 90 days after effectiveness of the registration Except in a~~  
 25 ~~proceeding where fraud or deceit is alleged, the Secretary of State may not begin a~~  
 26 ~~proceeding under this Code section based solely on material facts actually known by the~~  
 27 ~~Secretary of State unless an investigation or the proceeding is instituted within one year~~  
 28 ~~after the Secretary of State actually acquires knowledge of the material facts.~~

29 (c) If the Secretary of State finds that an applicant or registered person is no longer in  
 30 existence; has ceased to do business as a paid solicitor or charitable organization; is  
 31 adjudicated mentally incompetent or subjected to the control of a committee, conservator,  
 32 or guardian; or cannot be located after reasonable search, the Secretary of State, by order,  
 33 may deny the application or revoke the registration.

34 (d) The Secretary of State may at any time require a charitable organization or paid  
 35 solicitor to file with him or her a financial statement showing its financial condition as of  
 36 the most recent practicable date, but such financial statement need not be certified.

1 43-17-8.

2 Every charitable organization, ~~paid solicitor, or solicitor agent~~ or paid solicitor required to  
3 be registered under this Code section and soliciting in this state or any solicitor agent  
4 soliciting within or from this state shall include the following disclosures at the point of  
5 solicitation:

6 (1) The name and location of the paid solicitor and solicitor agent, if any;

7 (2) The name and location of the charitable organization for which the solicitation is  
8 being made;

9 (3) That the following information will be made available upon request:

10 (A) A full and fair description of the charitable program for which the solicitation  
11 campaign is being carried out and, if different, a full and fair description of the  
12 programs and activities of the charitable organization on whose behalf the solicitation  
13 is being carried out; and

14 (B) A financial statement or summary which shall be consistent with the financial  
15 statement required to be filed with the Secretary of State pursuant to Code Section  
16 43-17-5; and

17 (4) If made by a solicitor agent or paid solicitor, that the solicitation is being made by a  
18 paid person on behalf of the charitable organization and not by a volunteer.

19 43-17-9.

20 (a) The following persons are exempt from the provisions of Code Sections 43-17-5,  
21 43-17-6, and 43-17-8:

22 (1) Educational institutions and those organizations, foundations, associations,  
23 corporations, charities, and agencies operated, supervised, or controlled by or in  
24 connection with a nonprofit educational institution, provided that any such institution or  
25 organization is qualified under Section 501(c) of the Internal Revenue Code of 1986, as  
26 amended;

27 (2) Business, professional, and trade associations and federations which do not solicit  
28 members or funds from the general public;

29 (3) Fraternal, civic, benevolent, patriotic, and social organizations, when solicitation of  
30 contributions is carried on by persons without any form of compensation and which  
31 solicitation is confined to their membership;

32 (4) Persons requesting any contributions for the relief of any other individual who is  
33 specified by name at the time of the solicitation if all of the contributions collected,  
34 without any deductions whatsoever, are turned over to the named beneficiary; provided,  
35 however, that any such person who collects contributions in excess of \$5,000.00 in order  
36 to claim benefit of this exemption shall file with the Secretary of State a written

1 accounting of funds so collected on forms prescribed by the Secretary of State at the end  
 2 of the first 90 days of solicitation and, thereafter, at the end of every subsequent 90 day  
 3 period until said solicitation is concluded;

4 (5) Any charitable organization whose total ~~gross revenue has~~ contributions received  
 5 from contributors residing in the State of Georgia have been less than \$25,000.00 for both  
 6 the immediately preceding and current calendar years ~~or which is exempt from filing a~~  
 7 ~~federal annual information return pursuant to Section 6033(a)(2)(A)(i) and (iii) of the~~  
 8 ~~Internal Revenue Code and Section 6033(a)(2)(C)(i) of the Internal Revenue Code;~~

9 (6) Any local or state-wide organization of hunters, fishermen, and target shooters which  
 10 has been recognized as an organization described in Section 501(c)(3) or Section  
 11 501(c)(4) of the Internal Revenue Code, as amended, or the corresponding provisions of  
 12 any future federal revenue law;

13 (7) Religious organizations; or

14 (8) Political parties, candidates for federal or state office, and political action committees  
 15 required to file financial information with federal or state elections commissions.

16 (b) ~~Local community~~ Community, local, and state-wide organizations ~~or local fundraising~~  
 17 ~~campaign managers~~ affiliated with or acting ~~for a~~ on behalf of a registered or exempt  
 18 state-wide or national parent organization by contract or agreement need not register  
 19 separately with the Secretary of State; provided, however, that all records of such  
 20 organizations which relate to charitable solicitations or charitable contributions shall be  
 21 subject to such reasonable periodic, special, or other examinations by the Secretary of  
 22 State, within or outside this state, as the Secretary of State deems necessary or appropriate  
 23 for the protection of the public. The single registration of the state-wide or national parent  
 24 organization shall be considered all inclusive of all of its chapters, branches, or affiliates  
 25 and individuals, which will be identified by listing the communities in which they are  
 26 located and their directors, as provided in Code Section 43-17-5.

27 (c) National charitable organizations having a Georgia affiliate registered under this  
 28 chapter need not register separately with the Secretary of State; provided, however, that all  
 29 records of such national organizations which relate to charitable solicitations or charitable  
 30 contributions shall be subject to such reasonable periodic, special, or other examinations  
 31 by the Secretary of State, within or outside this state, as the Secretary of State deems  
 32 necessary or appropriate for the protection of the public. ~~The Secretary of State shall not~~  
 33 ~~disclose this information except to the extent necessary for investigative or law~~  
 34 ~~enforcement purposes.~~

35 (d) Charitable organizations which do not solicit or receive contributions from the general  
 36 public other than through affiliated organizations registered under this chapter need not  
 37 register separately with the Secretary of State; provided, however, that all records of such

1 organizations which relate to charitable solicitations or charitable contributions shall be  
 2 subject to such reasonable periodic, special, or other examinations by the Secretary of  
 3 State, within or outside this state, as the Secretary of State deems necessary or appropriate  
 4 for the protection of the public. ~~The Secretary of State shall not disclose this information~~  
 5 ~~except to the extent necessary for investigative or law enforcement purposes.~~

6 (e) Local or community organizations affiliated with or acting on behalf of a state-wide  
 7 or national civic organization whose fundraising activities are conducted by unpaid  
 8 members of the organization need not register separately with the Secretary of State;  
 9 provided, however, that all records of such organizations which relate to charitable  
 10 solicitations or charitable contributions shall be subject to such reasonable periodic, special,  
 11 or other examinations by the Secretary of State, within or outside this state, as the Secretary  
 12 of State deems necessary or appropriate for the protection of the public.

13 ~~(e)~~(f) The Secretary of State is authorized to exempt, by rule, regulation, or order, such  
 14 entities and organizations from the registration provisions of Code Section 43-17-5 as he  
 15 or she deems necessary and appropriate in the public interest.

16 43-17-10.

17 (a) The administration of this chapter shall be vested in the Secretary of State.

18 (b) The Secretary of State is authorized to administer oaths in and to prescribe forms for  
 19 all matters arising under this chapter. The Secretary of State shall cooperate with the  
 20 administrators of the charitable solicitation laws of other states with a view to assisting  
 21 those administrators in the enforcement of such laws and to achieving maximum  
 22 uniformity in the interpretation of like provisions of the laws administered by them and in  
 23 the forms which are required to be filed under such laws.

24 (c) The Secretary of State is authorized to employ examiners, clerks, stenographers, and  
 25 other employees as the administration of that portion of this chapter vested in him or her  
 26 may require. The Secretary of State is also authorized to appoint and employ investigators  
 27 who shall have, in any case that there is reason to believe a violation of this chapter has  
 28 occurred or is about to occur, the right and power to serve subpoenas and to swear out and  
 29 execute search warrants and arrest warrants.

30 (d) The Secretary of State may promulgate such rules and regulations, not inconsistent  
 31 with the provisions of this chapter, necessary for the administration and enforcement of this  
 32 chapter. Such rules and regulations shall be promulgated in accordance with Chapter 13 of  
 33 Title 50, the 'Georgia Administrative Procedure Act.'

34 (e) The Secretary of State or any persons employed by him or her shall be paid, in addition  
 35 to their regular compensation, the transportation fare, board, lodging, and other traveling

1 expenses necessary and actually incurred by each of them in the performance of their duties  
2 under this chapter.

3 (f) The Secretary of State may delegate such of his or her powers and duties under this  
4 chapter as he or she desires to a division director in his or her office. Such division director,  
5 when duly appointed, shall be the ultimate decision maker in all contested case hearings  
6 held pursuant to Code Section 43-17-16 and Chapter 13 of Title 50, the 'Georgia  
7 Administrative Procedure Act.'

8 (g) The Secretary of State may designate filing depositories for all records required to be  
9 filed and maintained under this chapter. Such records may be maintained in original form  
10 or by means of microfilm, microfiche, microphotographic reproduction, photographic  
11 reproduction, word processing, computerization, or other acceptable reproductive methods.

12 (h) Except as provided in subsection (i) of this Code section, information and documents  
13 filed with or obtained by the Secretary of State are public information and are available for  
14 public examination.

15 (i) The following information and documents do not constitute public information under  
16 subsection (h) of this Code section and shall be confidential:

17 (1) Information or documents obtained by the Secretary of State in connection with an  
18 investigation under Code Section 43-17-11; and

19 (2) Any document or record specifically designated as confidential in accordance with  
20 this chapter or the rules and regulations promulgated under this chapter.

21 43-17-11.

22 (a) The Secretary of State, in enforcing this chapter, may:

23 (1) Make such public or private investigations within or outside of this state as he or she  
24 deems necessary to determine whether any person has violated or is about to violate this  
25 chapter or any rule, regulation, or order under this chapter or to aid in the enforcement  
26 of this chapter;

27 (2) Require or permit any person to file a statement in writing, under oath or otherwise  
28 as the Secretary of State determines, as to all the facts and circumstances concerning the  
29 matter to be investigated; and

30 (3) Publish information concerning any violation of this chapter or any rule, regulation,  
31 or order under this chapter.

32 (b)(1) For the purpose of conducting any investigation as provided in this Code section,  
33 the Secretary of State shall have the power to administer oaths, to call any party to testify  
34 under oath at such investigation, to require the attendance of witnesses, to require the  
35 production of books, records, and papers, and to take the depositions of witnesses. For  
36 such purposes the Secretary of State is authorized to issue a subpoena for any witness or

1 a subpoena for the production of documentary evidence. Such subpoenas may be served  
 2 by registered or certified mail or statutory overnight delivery, return receipt requested,  
 3 to the addressee's business mailing address or by investigators appointed by the Secretary  
 4 of State or shall be directed for service to the sheriff of the county where such witness  
 5 resides or is found or where the person in custody of any books, records, or papers resides  
 6 or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the  
 7 funds in the state treasury for the use of the Secretary of State in the same manner that  
 8 other expenses of the Secretary of State are paid.

9 (2) The Secretary of State may issue and apply to enforce subpoenas in this state at the  
 10 request of the administrator of the charitable solicitation laws of another state if the  
 11 activities constituting an alleged violation for which the information is sought would be  
 12 a violation of this chapter if the activities had occurred in this state.

13 (c) In case of refusal to obey a subpoena issued under any Code section of this chapter to  
 14 any person, a superior court of appropriate jurisdiction, upon application by the Secretary  
 15 of State, may issue to the person an order requiring him or her to appear before the court  
 16 to show cause why he or she should not be held in contempt for refusal to obey the  
 17 subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

18 (d) In the case of any investigation or examination conducted under this Code section, the  
 19 Secretary of State may appoint an investigative agent or examiner to conduct the  
 20 investigation or examination who shall have the same powers and authority granted to the  
 21 Secretary of State under this Code section. The investigative agent or examiner shall  
 22 possess such qualifications as the Secretary of State may require. All recommendations of  
 23 the investigative agent or examiner shall be advisory only and shall not have the effect of  
 24 an order of the Secretary of State.

25 (e) In any case where investigations or examinations are conducted by an investigative  
 26 agent or examiner, he or she shall submit to the Secretary of State a written report,  
 27 including the transcript of the testimony in evidence if requested by the Secretary of State  
 28 and the findings and recommendations of the action to be taken by the Secretary of State.  
 29 The recommendation of the investigative agent or examiner may be approved, modified,  
 30 or disapproved by the Secretary of State. The Secretary of State may direct an investigative  
 31 agent or examiner to conduct further investigation or take additional testimony or acquire  
 32 further documentary evidence as may be necessary.

33 (f) In addition to any other hearings and investigations that the Secretary of State is  
 34 authorized or required by this chapter to hold, the Secretary of State is also authorized to  
 35 hold general investigative hearings on his or her own motion with respect to any matter  
 36 under this chapter. A general investigative hearing as provided for in this subsection may  
 37 be conducted by any person designated by the Secretary of State for that purpose and may

1 be transcribed by the Secretary of State or by any other interested party. No formal action  
2 may be taken as a result of such investigative hearing, but the Secretary of State may take  
3 such action as he or she deems appropriate, based on the information developed in the  
4 hearing and on any other information that he or she may have.

5 (g) To encourage uniform interpretation and administration of this chapter and effective  
6 charitable solicitation regulation and enforcement, the Secretary of State may cooperate  
7 with the charitable regulatory agencies or administrators of one or more states, Canadian  
8 provinces or territories, another country, the Federal Trade Commission, any  
9 self-regulatory organization, any national or international organization of charitable  
10 regulatory officials or agencies, and any governmental law enforcement or regulatory  
11 agency. Said cooperation includes, but is not limited to, the following actions:

12 (1) Making a joint registration examination or investigation;

13 (2) Holding a joint administrative hearing;

14 (3) Filing and prosecuting a joint civil or administrative proceeding;

15 (4) Sharing and exchanging personnel;

16 (5) Sharing and exchanging information and documents subject to the restrictions of this  
17 Code section;

18 (6) Formulating, in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
19 Procedure Act,' rules or proposed rules on matters such as statements of policy,  
20 guidelines, and interpretative opinions and releases; and

21 (7) Participating in any multistate regulatory investigation or proceeding and  
22 participating in any financial or regulatory settlement resulting therefrom.

23 (h) The Secretary of State may disclose such information or documents obtained in  
24 connection with an investigation under this Code section if disclosure is for the purpose of  
25 a civil, administrative, or criminal investigation or proceeding whether by the Secretary of  
26 State or any governmental agency with regulatory or law enforcement powers. Any agency  
27 with charitable regulatory or law enforcement powers receiving such information or  
28 documents must represent that, under the applicable law, protections exist to preserve the  
29 integrity, confidentiality, and security of the information.

30 (i) The records of a charitable organization or paid solicitor registered or required to be  
31 registered under this chapter are subject to such reasonable periodic, special, or other  
32 audits, examinations, or inspections by a representative of the Secretary of State, within or  
33 outside this state, as the Secretary of State deems necessary or appropriate in the public  
34 interest. Such audit, examination, or inspection may be made at any time and without prior  
35 notice. The Secretary of State may copy and remove such copies from the premises for  
36 audit, examination, or inspection all records the Secretary of State reasonably deems

1 necessary or appropriate to conduct such audit, examination, or inspection under this  
2 chapter.

3 ~~(d) In addition to any other hearings and investigations which the Secretary of State is~~  
4 ~~authorized or required by this chapter to hold, the Secretary of State is also authorized to~~  
5 ~~hold general investigative hearings on his own motion with respect to any matter under this~~  
6 ~~chapter. A general investigative hearing as provided for in this subsection may be~~  
7 ~~conducted by a person designated by the Secretary of State for that purpose and may, but~~  
8 ~~need not be, transcribed by the Secretary of State or by any other interested party. No~~  
9 ~~formal action may be taken as a result of such investigative hearings, but the Secretary of~~  
10 ~~State may take such action as he deems appropriate, based on the information developed~~  
11 ~~in the hearing and on any other information which he may have.~~

12 ~~(e)(i)~~ The Secretary of State may cooperate with the administrator of Part 2 of Article 15  
13 of Chapter 1 of Title 10, known as the 'Fair Business Practices Act of 1975,' in enforcing  
14 the provisions of this chapter. Said cooperation includes, but is not limited to, making a  
15 joint examination or investigation; holding joint administrative hearings; filing and  
16 prosecuting a joint civil or administrative proceeding; sharing and exchanging information  
17 and documents; and disclosing information and documents obtained in connection with an  
18 investigation. When the administrator has initiated a civil or administrative proceeding in  
19 connection with a joint investigation under this subsection he or she may publish  
20 information concerning any violation of this chapter or Part 2 of Article 15 of Chapter 1  
21 of Title 10, known as the 'Fair Business Practices Act of 1975.'

22 ~~(f) To encourage uniform interpretation and administration of this chapter and effective~~  
23 ~~regulation and enforcement, the Secretary of State may cooperate with state law~~  
24 ~~enforcement or regulatory agencies and agencies or administrators of one or more states,~~  
25 ~~Canadian provinces or territories, another country, appropriate federal agencies, any~~  
26 ~~national or international organization of officials or agencies, and any governmental law~~  
27 ~~enforcement or regulatory agency. Such cooperation includes, but is not limited to, making~~  
28 ~~a joint registration examination or investigation; holding joint administrative hearings;~~  
29 ~~filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging~~  
30 ~~personnel; sharing and exchanging information and documents; and disclosing information~~  
31 ~~obtained in connection with an investigation under this Code section to the extent provided~~  
32 ~~in this Code section and if disclosure is for the purpose of a civil, administrative, or~~  
33 ~~criminal investigation or proceeding by a local, state, or federal law enforcement or~~  
34 ~~regulatory agency and the receiving agency presents that, under the applicable law,~~  
35 ~~protections exist to preserve the integrity, confidentiality, and security of the information.~~

1 43-17-12.

2 (a) It shall be unlawful for any person to violate any provision of this chapter or any rule,  
3 regulation, or order promulgated or issued by the Secretary of State under this chapter.

4 (b) It shall be unlawful for any person who is registered as, or making application for  
5 registration as, a ~~solicitor agent or paid solicitor~~ or charitable organization or is an affiliate  
6 of such registrant or applicant knowingly to ~~cause to be made, in any document filed with~~  
7 ~~the Secretary of State or in any proceeding under this chapter, any statement which is, at~~  
8 ~~the time it is made and in light of the circumstances under which it is made, false or~~  
9 ~~misleading in any material respect~~ make or cause to be made to the Secretary of State or  
10 anyone acting on his or her behalf any written or oral statement or statements which the  
11 person knows to contain any untrue statement of material or fact to omit to state a material  
12 fact necessary in order to make any statement or statements made, in light of the  
13 circumstances under which they were made, not misleading.

14 (c) It shall be unlawful for any person in connection with the planning, conduct, or  
15 execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

16 (1) To utilize any representation that implies the contribution is for or on behalf of a  
17 charitable organization or to utilize any emblem, device, or printed matter belonging to  
18 or associated with a charitable organization, without first being authorized in writing to  
19 do so by the charitable organization;

20 (2) To utilize a name, symbol, or statement so closely related or similar to that used by  
21 another charitable organization that the use thereof would tend to confuse or mislead a  
22 solicited person;

23 (3) To misrepresent to or mislead anyone in any manner to believe that any other person  
24 sponsors, endorses, or approves such solicitation or charitable sales promotion when such  
25 other person has not given consent in writing to the use of his or her name for these  
26 purposes;

27 (4) To utilize or exploit the fact of registration so as to lead any person to believe that  
28 such registration in any manner constitutes an endorsement or approval by the state;

29 (5) To represent directly or by implication that a charitable organization will receive a  
30 fixed or estimated percentage of the gross revenue from a solicitation campaign greater  
31 than that identified in filings with the Secretary of State pursuant to this chapter;

32 (6) To represent that tickets to events will be donated for use by another, unless the paid  
33 solicitor shall have commitments, in writing, from charitable organizations stating that  
34 they will accept donated tickets and specifying the number of tickets they are willing to  
35 accept; or

1 (7) To represent that any part of the contributions received will be given or donated to  
 2 any ~~other~~ charitable organization unless such organization has consented in writing to the  
 3 use of its name prior to the solicitation.

4 (d) It shall be unlawful for any person in connection with the planning, conduct, or  
 5 execution of any charitable solicitation or charitable sales promotion, directly or indirectly:

6 (1) To employ a device, scheme, or artifice to defraud;

7 (2) To engage in an act, practice, or course of business that operates or would operate as  
 8 a fraud or deceit upon a person;

9 (3) To misrepresent or mislead anyone in any manner to believe that the person on whose  
 10 behalf a solicitation or charitable sales promotion is being conducted is a charitable  
 11 organization or that the proceeds of such solicitation or charitable sales promotion will  
 12 be used for charitable purposes if such is not the fact; or

13 (4) To misappropriate, convert, illegally withhold, or fail to account for any charitable  
 14 contributions solicited by, or on behalf of, any charitable organization required to be  
 15 registered pursuant to this chapter.

16 (e) It shall be unlawful for any paid solicitor to have physical possession or legal control  
 17 of a contribution collected by it in or from this state on behalf of any charitable  
 18 organization without having complied with the requirements of paragraph ~~(3)~~ (5) or ~~(6)~~ (8)  
 19 of subsection (c) of Code Section 43-17-3, as applicable, and Code Section 43-17-4.

20 43-17-13.

21 (a) Whenever it may appear to the Secretary of State, either upon complaint or otherwise,  
 22 that any person has engaged in, ~~or~~ is engaging in, or is about to engage in any act, practice,  
 23 or transaction which is prohibited by this chapter or by any rule, regulation, or order of the  
 24 Secretary of State promulgated or issued pursuant to any Code section of this chapter or  
 25 which is declared to be unlawful under this chapter or has failed to comply with a subpoena  
 26 or order, including an order to produce documents, issued by the Secretary of State, the  
 27 Secretary of State may, at his or her discretion, act under any or all of the following  
 28 paragraphs and may:

29 (1) Impose administrative sanctions or remedies as provided in this paragraph;<sup>2</sup>

30 ~~(A) Subject~~ subject to notice and opportunity for hearing in accordance with Code  
 31 Section 43-17-16, unless the right to notice is waived by the person against whom the  
 32 sanction or remedy is imposed, and the Secretary of State may:

33 ~~(i)~~ (A) Issue a cease and desist order against any person;

34 ~~(ii)~~ (B) Censure the person if the person is registered as a paid solicitor;

35 ~~(iii)~~ (C) Bar or suspend the person from association with a paid solicitor or charitable  
 36 organization; ~~or~~

1 ~~(iv)(D) Issue an order against a paid solicitor person who willfully violates this chapter,~~  
 2 ~~imposing a civil penalty up to a maximum of \$2,500.00 for a single violation or up to~~  
 3 ~~\$25,000.00 for multiple violations in a single proceeding or a series of related~~  
 4 ~~proceedings in an amount the Secretary of State deems to be in the public interest~~  
 5 ~~considering, among other factors, the frequency, persistence, and willfulness of the~~  
 6 ~~conduct constituting a violation of this chapter or a rule promulgated thereunder or an~~  
 7 ~~order of the Secretary of State, the number of persons adversely affected by the~~  
 8 ~~conduct, and the resources of the person committing the violation;~~

9 ~~(E) Issue an order for the appointment of an individual qualified by education and~~  
 10 ~~experience as an auditor, examiner, or regulatory monitor; or~~

11 ~~(F) Impose such other relief as the Secretary of State deems just and equitable;~~

12 ~~(B) Imposition of the sanctions under this paragraph is limited as follows:~~

13 ~~(i) If the Secretary of State revokes the registration of a charitable organization or~~  
 14 ~~paid solicitor or bars a person from association with a charitable organization or paid~~  
 15 ~~solicitor under subparagraph (A) of this paragraph, the imposition of that sanction~~  
 16 ~~precludes imposition of the sanction specified in division (iv) of subparagraph (A) of~~  
 17 ~~this paragraph; and~~

18 ~~(ii) The imposition by the Secretary of State of one or more sanctions under this~~  
 19 ~~paragraph with respect to a specific violation precludes the Secretary of State from~~  
 20 ~~later imposing any other sanctions under this paragraph with respect to the violation;~~

21 ~~(C) For the purpose of determining the amount or extent of a sanction, if any, to be~~  
 22 ~~imposed under subparagraph (A) of this paragraph, the Secretary of State shall~~  
 23 ~~consider, among other factors, the frequency, persistence, and willfulness of the~~  
 24 ~~conduct constituting a violation of this chapter or a rule promulgated under this chapter~~  
 25 ~~or an order of the Secretary of State, the number of persons adversely affected by the~~  
 26 ~~conduct, and the resources of the person committing the violation;~~

27 (2) Seek civil sanctions by applying to any superior court of competent jurisdiction in  
 28 ~~this state, which court:~~

29 (A) Upon a showing by the Secretary of State that a person has violated this chapter,  
 30 a rule promulgated under this chapter, or an order of the Secretary of State, may enter  
 31 or grant:

32 (i) A temporary restraining order, permanent or temporary injunction, or a writ of  
 33 prohibition or mandamus;

34 (ii) A civil penalty ~~up to a maximum of \$2,500.00 for a single violation or up to~~  
 35 ~~\$25,000.00 for multiple violations in a single proceeding or a series of related~~  
 36 ~~proceedings in an amount the court finds to be in the public interest considering,~~  
 37 ~~among other factors, the frequency, persistence, and willfulness of the conduct~~

1 constituting a violation of this chapter or a rule promulgated thereunder or an order  
 2 of the Secretary of State, the number of persons adversely affected by the conduct,  
 3 and the resources of the person committing the violation;

4 (iii) A declaratory judgment;

5 (iv) Restitution to contributors;

6 (v) An order of disgorgement;

7 (vi) The appointment of a receiver, auditor, or conservator for ~~the defendant or the~~  
 8 ~~defendant's~~ such person or such person's assets; or

9 (vii) ~~Other~~ Such other relief as the court deems just and equitable;

10 (B) May, upon a showing by the Secretary of State that the defendant is about to  
 11 violate this chapter, a rule promulgated under this chapter, or an order of the Secretary  
 12 of State, issue:

13 (i) A temporary restraining order;

14 (ii) A temporary or permanent injunction;

15 (iii) A writ of prohibition or mandamus; or

16 (iv) Such other relief as the court deems just and equitable;

17 (C) In determining the appropriate relief to grant, shall consider enforcement action  
 18 taken and sanctions imposed by the Secretary of State under paragraph (1) of this  
 19 subsection in connection with the transaction or transactions constituting a violation of  
 20 this chapter, a rule promulgated under this chapter, or an order of the Secretary of State;  
 21 or

22 (D) Upon a showing by the charitable solicitations regulatory agency or administrator  
 23 of another state that a person has violated the charitable solicitations law of that state,  
 24 a rule promulgated thereunder, or an order of said agency or administrator, in addition  
 25 to any other legal or equitable remedies, may impose one or more of the following  
 26 remedies:

27 (i) The appointment of a receiver, auditor, examiner, monitor, conservator, or  
 28 ancillary receiver or conservator for such person or such person's assets located in  
 29 this state; and

30 (ii) Such other relief as the court deems just and equitable; or

31 (3) Transmit such evidence as may be available concerning such act, practice, or  
 32 transaction to any district attorney or to the Attorney General, who may, at his or her  
 33 individual discretion, institute ~~the necessary~~ such criminal or other proceedings as may  
 34 be appropriate.

35 (b) In any proceedings for an injunction, the Secretary of State may apply for and be  
 36 entitled to have issued the court's subpoena requiring:

1 (1) The appearance forthwith of any ~~defendant and the defendant's~~ person and such  
 2 person's agents, employees, partners, officers, or directors or the members of a ~~defendant~~  
 3 limited liability company; and

4 (2) The production of such documents, books, and records as may appear necessary for  
 5 the ~~hearing upon~~ consideration of the petition for an injunction.

6 Upon proof of any of the offenses described in this Code section, the court may grant such  
 7 injunction and appoint a receiver or an auditor and issue such other orders for the  
 8 protection of the citizens as the facts may warrant.

9 (c) In any action brought under subsection (a) of this Code section, the court, upon  
 10 application of the state, may appoint a receiver for the assets of the ~~defendant~~ person where  
 11 it has been established:

12 (1) That the ~~defendant~~ person has engaged in a pattern of willful violations of this  
 13 chapter which has resulted in substantial actual damage to citizens of this state;

14 (2) That the ~~defendant~~ person is outside this state or is actually removing or about to  
 15 remove himself or herself or his or her property outside the limits of this state or conceals  
 16 himself or herself or his or her property; or

17 (3) That the appointment of the receiver is necessary to preserve the assets of ~~the~~  
 18 ~~defendant~~ such person for the benefit of citizens of the state damaged by ~~the defendant's~~  
 19 such person's violations of this chapter.

20 (d) When a receiver is appointed by the court pursuant to this chapter, he or she shall have  
 21 the power to bring an action for, collect, receive, and take into his or her possession all the  
 22 goods and chattels, rights and credits, moneys and effects, lands and tenements, books,  
 23 records, documents, papers, choses in action, bills, notes, and property of every description,  
 24 derived by any means in violation of this chapter, including property with which such  
 25 property has been mingled. He or she shall have the power to sell, convey, and assign the  
 26 same and to hold and dispose of the proceeds thereof under the direction of the court. The  
 27 court shall have jurisdiction of all questions arising in such proceedings and may make  
 28 such orders and judgments therein as may be required.

29 (e) In any criminal proceeding either the district attorney or the Attorney General or both  
 30 may apply for and be entitled to have issued the court's subpoena requiring:

31 (1) The appearance forthwith of any ~~defendant or the defendant's~~ person or such  
 32 person's agents, employees, partners, officers, or directors or the members of a ~~defendant~~  
 33 limited liability company; and

34 (2) The production of such documents, books, and records as may appear necessary for  
 35 the prosecution of such criminal proceedings.

1 (f) In the event that civil penalties are imposed by the Secretary of State under this Code  
2 section, the Secretary of State may, to collect such penalties, act under any or all of the  
3 following paragraphs:

4 (1) In addition to any other method provided by law for the collection of civil penalties  
5 imposed pursuant to paragraph (1) of subsection (a) of this Code section, any civil  
6 penalty assessed by any order entered after July 1, 2004, not paid when due, including  
7 any interest and costs thereon, may be collected by the Secretary of State by and with the  
8 same authority as is contained in Code Section 48-2-55, providing for the collection of  
9 taxes by the state Department of Revenue. If any civil penalty imposed by this chapter  
10 is not paid within ten days after notice and demand from the Secretary of State, the  
11 Secretary of State may issue an execution or writ of fieri facias directed to any levying  
12 officer designated by the Secretary of State, the sheriff, or the lawful deputies of the  
13 sheriff of any county of the state, requiring such officer to levy upon and sell the real or  
14 personal property of the person liable for such civil penalty found within such officer's  
15 county in sufficient amount to satisfy the execution so issued, together with interest at the  
16 legal rate and all costs of executing and collecting said execution, and to return such  
17 execution to the Secretary of State, together with all such sums collected under and by  
18 virtue thereof, by a time to be therein specified, not more than 60 days from the date of  
19 the execution;

20 (2) Nothing contained in this Code section shall prevent the Secretary of State from  
21 having the execution or writ of fieri facias entered upon the general execution docket  
22 prior to the time the execution is turned over to a levying officer designated by the  
23 Secretary of State for collection. The Secretary of State may file the execution with the  
24 clerk of any superior court of any county in this state. It shall then be the duty of the clerk  
25 of the superior court to enter the execution on the general docket of the superior court of  
26 said county in the same manner and form as prescribed by the general laws of the State  
27 of Georgia relating to executions issued by a superior court of this state;

28 (3) The amount of any civil penalty not paid when due, including any interest and costs,  
29 shall constitute a lien upon all property and rights to property and upon all after acquired  
30 property and rights to property, both real and personal, of the person liable for such civil  
31 penalty. The lien shall attach and be perfected as of the date such civil penalty becomes  
32 due; provided, however, the lien shall not be preserved against purchasers, judgment  
33 creditors, pledges, subsequent tax liens, or other liens or encumbrances until an execution  
34 for such penalties has been entered on the general execution docket. When the execution  
35 for such penalties has been issued and docketed, the lien shall be a perfected lien upon  
36 all property and rights to property, both real and personal, of the person liable in each  
37 county in which such execution is docketed; and

1 (4) In aid of collection or execution, the Secretary of State may do any or all of the  
 2 following:

3 (A) Examine any person, including the person liable, by taking depositions or  
 4 propounding interrogatories in the manner provided for in Chapter 11 of Title 9, the  
 5 'Georgia Civil Practice Act';

6 (B) Compel the production of documents or other items in the manner provided for in  
 7 Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' for such discovery measures  
 8 prior to judgment; or

9 (C) Provide for collection by contingent fee not to exceed one-third of the amount  
 10 collected, to be paid from the civil penalties, including interest and costs, actually  
 11 collected.

12 43-17-14.

13 (a) Any person who suffers injury or damages as a result of acts or practices in violation  
 14 of this chapter may bring an action against the charitable organization or paid solicitor  
 15 engaged in such acts or practices. The person may recover such general damages sustained  
 16 as a result of such acts or practices. Exemplary damages and attorney's fees may be  
 17 awarded in cases of intentional violations of this chapter.

18 (b) Any person entitled to bring an action under this chapter may institute a class action  
 19 pursuant to Code Section 9-11-23 for the recovery of damages.

20 43-17-15.

21 For the purposes of venue for any civil or criminal action under this chapter, any violation  
 22 of this chapter or of any rule, regulation, or order promulgated under this chapter shall be  
 23 considered to have been committed in any county in which any act was performed in  
 24 furtherance of the transaction which violated this chapter, in the county of any violator's  
 25 principal place of business in this state, in the county of the charitable organization's  
 26 principal place of business in this state, and in any county in which any violator had control  
 27 or possession of any proceeds of the violation or any books, records, documents, or other  
 28 material or objects which were used in furtherance of the violation.

29 43-17-16.

30 (a) Where the Secretary of State has issued ~~any order forbidding the solicitation or~~  
 31 ~~acceptance of contributions under Code Section 43-17-7, he~~ an order under this chapter,  
 32 he or she shall promptly send to the charitable organization or paid solicitor a notice of  
 33 hearing or a notice of opportunity for hearing. Before entering an order refusing to register  
 34 any person under Code Section 43-17-3 or 43-17-5 and after the entering of any order for

1 revocation or suspension under this chapter, the Secretary of State shall promptly send to  
 2 such person and if such person is a paid solicitor to the charitable organization who  
 3 employs or proposes to employ such person, a notice of hearing or a notice of opportunity  
 4 for hearing except as otherwise provided in this chapter. Hearings under this chapter shall  
 5 be conducted pursuant to this Code section and may be conducted by the Secretary of State  
 6 or a person the division director designated by the Secretary of State.

7 (b) Notices of hearing or notices of opportunity for hearing shall be served by ~~investigators~~  
 8 any agent appointed by the Secretary of State or sent by registered or certified mail or  
 9 statutory overnight delivery, return receipt requested, to the addressee's business mailing  
 10 address. ~~Such~~ or residential address as shown on information filed with the Secretary of  
 11 State or directed for service to the sheriff of the county where such person resides or is  
 12 found, and such notice shall state:

13 (1) The order which has been issued or which is proposed to be issued;

14 (2) The ground for issuing such order or proposed order; and

15 (3) ~~That~~ The date, place, and time of hearing or that the person to whom such notice is  
 16 sent will be afforded a hearing upon request if such request is made within ten days after  
 17 receipt of the notice.

18 (c) Whenever a person requests a hearing in accordance with this Code section, there shall  
 19 immediately be set a date, time, and place for such hearing and the person requesting such  
 20 hearing shall forthwith be notified thereof. ~~Except as provided in subsection (b) of Code~~  
 21 ~~Section 43-17-7, the~~ The date set for such hearing shall be within ~~15~~ 30 days, but not  
 22 earlier than five days after the request for hearing has been made, unless otherwise agreed  
 23 to by the charitable organization and the persons requesting the hearing.

24 (d) For the purpose of conducting any hearing as provided in this Code section, the  
 25 Secretary of State shall have the power to administer oaths, to call any party to testify under  
 26 oath at such hearing, to require the attendance of witnesses and the production of books,  
 27 records, and papers, and to take the depositions of witnesses; and for such purposes the  
 28 Secretary of State is authorized, at the request of the person requesting the hearing or upon  
 29 his or her own initiative, to issue a subpoena for any witness or a subpoena for production  
 30 of documentary evidence to compel the production of any books, records, or papers. The  
 31 subpoenas may be served by registered or certified mail or statutory overnight delivery,  
 32 return receipt requested, to the addressee's business mailing address or residential address  
 33 as shown on information filed with the Secretary of State or by investigators appointed by  
 34 the Secretary of State or shall be directed for service to the sheriff of the county where such  
 35 witness resides or is found or where the person in custody of any books, records, or papers  
 36 resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid

1 from the funds in the state treasury for the use of the Secretary of State in the same manner  
2 that other expenses of the Secretary of State are paid.

3 (e)(1) At any hearing conducted under this Code section, a party or any affected person  
4 may appear ~~in his~~ on his or her own behalf or may be represented by an attorney.

5 (2) A stenographic record of the testimony and other evidence submitted shall be taken  
6 unless the Secretary of State and the persons requesting the hearing shall agree that such  
7 a stenographic record of the testimony shall not be taken.

8 (3) The Secretary of State shall pass upon the admissibility of such evidence, but a party  
9 may at any time make objections to any such rulings thereon; and, if the Secretary of  
10 State refuses to admit evidence, the party offering the same shall make a proffer thereof  
11 and such proffer shall be made a part of the record of the hearing.

12 ~~(f)(1) In the case of any hearing conducted under this Code section, the Secretary of~~  
13 ~~State may conduct the hearing or he may appoint a referee to conduct the hearing who~~  
14 ~~shall have the same powers and authority in conducting the hearing as are granted in this~~  
15 ~~Code section to the Secretary of State.~~

16 ~~(2) The referee shall have been admitted to the practice of law in this state and possess~~  
17 ~~such additional qualifications as the Secretary of State may require.~~

18 ~~(3) In any case where a hearing is conducted by a referee, the referee shall submit to the~~  
19 ~~Secretary of State a written report including the transcript of the testimony and evidence~~  
20 ~~(if such transcript is requested by the Secretary of State), the findings of fact and~~  
21 ~~conclusions of law, and a recommendation of action to be taken by the Secretary of State.~~  
22 ~~Within five days of the time of submission thereof to the Secretary of State, a copy of~~  
23 ~~such written report and recommendations shall be served upon the person who requested~~  
24 ~~the hearing or his attorney or other representative of record by registered or certified mail~~  
25 ~~or statutory overnight delivery. That person or his attorney, within ten days of service of~~  
26 ~~the copy of such written report and recommendations, may file with the Secretary of State~~  
27 ~~written objections to the report and recommendations which shall be considered by the~~  
28 ~~Secretary of State before a final order is entered.~~

29 ~~(4) No recommendation of the referee shall be approved, modified, or disapproved by~~  
30 ~~the Secretary of State until after ten days after service of such report and~~  
31 ~~recommendations as provided in this subsection.~~

32 ~~(5) The recommendations of the referee may be approved, modified, or disapproved by~~  
33 ~~the Secretary of State. The Secretary of State may direct his referee to take additional~~  
34 ~~testimony or to permit the introduction of further documentary evidence.~~

35 ~~(6) In any hearing conducted by a referee, a transcript of testimony, evidence, and~~  
36 ~~objections, if any, shall have the same force and effect as if such hearing or hearings had~~  
37 ~~been conducted by the Secretary of State.~~

1 ~~(7) All recommendations of the referee shall be advisory only and shall not have the~~  
 2 ~~effect of an order of the Secretary of State.~~

3 ~~(g)(f)~~ If the Secretary of State does not receive a request for a hearing within the  
 4 prescribed time, he or she may permit an order previously entered to remain in effect or he  
 5 or she may enter a proposed order. If a hearing is requested and conducted as provided in  
 6 this Code section, the Secretary of State shall issue a written order which shall:

7 (1) Set forth his or her findings with respect to the matters involved; and

8 (2) Enter an order in accordance with his or her findings.

9 (g) All orders entered pursuant to Code Sections 43-17-3, 43-17-5, and 43-17-13 shall be  
 10 entered pursuant to this Code section, except where, notwithstanding any other provision  
 11 of this chapter:

12 (1) The Secretary of State deems that the public health, safety, or welfare imperatively  
 13 requires emergency action and incorporates a finding to that effect in the order, in which  
 14 case the order may be effective immediately pending proceedings, which proceedings  
 15 shall be promptly instituted and determined; or

16 (2) The order is expressly required, by a judgment or a statute, to be made without the  
 17 right to a hearing or continuance of any type.

18 43-17-17.

19 (a) An appeal may be taken from any order of the Secretary of State resulting from a  
 20 hearing held in accordance with Code Section 43-17-16 by any person adversely affected  
 21 thereby to the Superior Court of Fulton County by serving the Secretary of State, within  
 22 20 days after the date of entry of such order, a written notice of appeal, signed by the  
 23 appellant, stating:

24 (1) The order from which the appeal is taken;

25 (2) The ground upon which a reversal or modification of the order is sought; and

26 (3) A demand for a certified transcript of the record of the order.

27 (b) Upon receipt of the notice of appeal, the Secretary of State shall, within ten days  
 28 thereafter, make, certify, and deliver to the appellant a transcript of the record of the order  
 29 from which the appeal is taken, provided that the appellant shall pay the reasonable costs  
 30 of such transcript. The appellant, within five days after receipt of the transcript, shall file  
 31 such transcript and a copy of the notice of appeal with the clerk of the court. The notice of  
 32 appeal and transcript of the record shall constitute appellant's complaint. The complaint  
 33 shall thereupon be entered on the trial calendar of the court.

34 (c) If the order of the Secretary of State shall be reversed, the court shall by its mandate  
 35 specifically direct the Secretary of State as to his or her further action in the matter,

1 including the making and entering of an order or orders in connection therewith and the  
2 conditions, limitations, or restrictions to be therein contained.

3 43-17-18.

4 Where a consent to service of process is required under this chapter, such consent to  
5 service of process shall be in the form prescribed by the Secretary of State, shall be  
6 irrevocable, and shall provide that actions arising out of or founded upon the solicitation  
7 of charitable contributions in violation of this chapter may be commenced against the  
8 person executing such consent in any court of competent jurisdiction and proper venue  
9 within this state by the service of process or pleadings upon the Secretary of State. Service  
10 of any such process or pleadings in any such action against a person who has filed a  
11 consent to service with the Secretary of State shall, if made on the Secretary of State, be  
12 by duplicate copies, one of which shall be filed in the office of the Secretary of State and  
13 the other shall immediately be forwarded by the Secretary of State by registered or certified  
14 mail or statutory overnight delivery to the persons against whom such process or pleadings  
15 are directed at his or her latest address on file in the office of the Secretary of State.

16 43-17-19.

17 Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a  
18 consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1  
19 of Title 10, the 'Fair Business Practices Act of 1975.' Nothing contained in this chapter  
20 shall be construed to limit the authority of the administrator to take any action under the  
21 'Fair Business Practices Act of 1975' regarding unfair and deceptive acts or practices in a  
22 solicitation or in solicitations.

23 43-17-20.

24 For any action taken or any proceeding had under this chapter or under color of law, the  
25 Secretary of State shall be immune from liability and suit to the same extent that any judge  
26 of any court of general jurisdiction in this state would be immune.

27 43-17-21.

28 (a) In a civil or administrative proceeding under this chapter, a person claiming an  
29 exemption or an exception from a definition has the burden of proving this exemption or  
30 exception.

31 (b) In a criminal proceeding, the burden of going forward with evidence of a claim of  
32 exemption or exception from a definition is on the person claiming the exemption or  
33 exception.

1 (c) In any action, civil or criminal, copies, photostatic or otherwise, certified by the  
 2 Secretary of State of any documents filed in his or her office and of any of his or her  
 3 records shall be admissible with the same effect as the original of such documents or  
 4 records would have if actually produced.

5 (d) In any action, civil or criminal, a certificate signed and sealed by the Secretary of State,  
 6 stating compliance or noncompliance with this chapter, shall constitute prima-facie  
 7 evidence of such compliance or noncompliance with this chapter and shall be admissible  
 8 in any such action.

9 43-17-22.

10 Any criminal proceeding or civil proceeding, including but not limited to judicial review  
 11 of all administrative orders, instituted under this chapter shall be governed by the  
 12 provisions of this chapter as such provisions existed in full force and effect on the date of  
 13 the alleged commission of the underlying facts or circumstances which constitute evidence  
 14 of the commission of a crime or violation of this chapter, notwithstanding any subsequent  
 15 amendment to this chapter, unless the General Assembly shall specifically declare  
 16 otherwise, except that no civil or criminal proceeding shall be instituted after the lapse of  
 17 the appropriate period of limitations which was in effect at the time the cause of action  
 18 arose or the alleged commission of the crime occurred.

19 43-17-23.

20 (a) Except as provided in subsection (b) of this Code section, any person who shall  
 21 willfully violate any provision of this chapter shall be guilty of a misdemeanor.

22 (b) Any person who shall willfully violate subsection (d) of Code Section 43-17-12 shall  
 23 be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more  
 24 than ~~\$5,000.00~~ \$10,000.00 or imprisonment for not less than one nor more than five years,  
 25 or both.

26 (c) Nothing in this chapter shall limit any statutory or common-law right of the state to  
 27 punish any person for violation of any law."

28 **SECTION 2.**

29 All laws and parts of laws in conflict with this Act are repealed.