

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to SB 368:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia  
2 Annotated, relating to the "Fair Business Practices Act of 1975," so as to provide for certain  
3 unlawful activity relating to the listing of certain telephone numbers in local telephone  
4 directories; to provide for definitions; to clarify certain provisions regarding confidentiality  
5 of certain information; to provide for related matters; to provide for an effective date; to  
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,  
10 relating to the "Fair Business Practices Act of 1975," is amended by revising paragraph (4)  
11 of subsection (b) and subsection (d) of Code Section 10-1-393, relating to unfair or deceptive  
12 practices in consumer transactions being unlawful, as follows:

13 "(4)(A) Using deceptive representations or designations of geographic origin in  
14 connection with goods or services. Without limiting the generality of the foregoing, it  
15 is specifically declared to be unlawful:

16 (i) For any nonlocal business to cause to be listed in any local telephone directory a  
17 local telephone number for the business if calls to the local telephone number are  
18 routinely forwarded or otherwise transferred to the nonlocal business location that is  
19 outside the calling area covered by such local telephone directory or to a toll-free  
20 number which does not have a local address and the listing fails to state clearly the  
21 principal place of business of the nonlocal business;

22 (ii) For any person operating a business to cause to be listed in any local telephone  
23 directory a toll-free number for the business if the listing fails to state clearly the  
24 principal place of business of such business; or

25 (iii) For any person to use an assumed or fictitious name in the conduct of such  
 26 person's business, if the use of such name could reasonably be construed to be a  
 27 misrepresentation of the geographic origin or location of such person's business.

28 ~~(i) For any nonlocal business to publish in any local telephone classified advertising~~  
 29 ~~directory any advertisement containing a local telephone number for the business~~  
 30 ~~unless the advertisement clearly states the nonlocal location of the business; or~~

31 ~~(ii) For any nonlocal business to cause to be listed in any nonclassified advertising~~  
 32 ~~local telephone directory a local telephone number for the business if calls to the~~  
 33 ~~number are routinely forwarded or otherwise transferred to the nonlocal business~~  
 34 ~~location that is outside the calling area covered by such local telephone directory and~~  
 35 ~~the listing fails to state clearly the principal place of business of the nonlocal business~~

36 (B) For purposes of this paragraph, the term:

37 (i) 'Local' or 'local area' ~~refers to~~ means the area in which any particular telephone  
 38 directory is distributed or otherwise provided free of charge to some or all telephone  
 39 service telecommunications services subscribers.

40 (ii) 'Local telephone ~~classified advertising directory~~' ~~refers to any telephone classified~~  
 41 ~~advertising directory~~ means any telecommunications services directory, directory  
 42 assistance data base, or other directory listing which is distributed or otherwise  
 43 provided free of charge to some or all telephone telecommunications services  
 44 subscribers in any area of ~~the~~ this state and includes such directories distributed by  
 45 ~~telephone service~~ telecommunications companies as well as such directories  
 46 distributed by other parties.

47 (iii) 'Local telephone number' ~~refers to any telephone~~ means any telecommunications  
 48 services number which is not clearly identifiable as a long-distance telephone  
 49 telecommunications services number and which has a three-number prefix typically  
 50 used by the local ~~telephone service~~ telecommunications company for ~~telephones~~  
 51 telecommunications services devices physically located within the local area.

52 (iv) ~~'Nonclassified advertising local telephone directory'~~ ~~refers to any telephone~~  
 53 ~~directory which is distributed free of charge to some or all telephone subscribers in~~  
 54 ~~any area of the state and which does not contain classified advertising and includes~~  
 55 ~~such directories distributed by telephone service companies as well as such directories~~  
 56 ~~distributed by other parties.~~

57 (v) 'Nonlocal business' ~~refers to~~ means any business which does not have within the  
 58 local area a physical place of business providing the goods or services which are the  
 59 subject of the advertisement or listing in question.

60 (v) 'Telecommunications company' shall have the same meaning as provided in Code  
 61 Section 46-5-162.

62 (vi) 'Telecommunications services' shall have the same meaning as provided in Code  
 63 Section 46-5-162.

64 (vii) 'Telecommunications services subscriber' means a person or entity to whom  
 65 telecommunications services, either residential or commercial, are provided;"

66 "(d)(1) Notwithstanding any other provision of the law to the contrary, the names,  
 67 addresses, telephone numbers, social security numbers, or any other information which  
 68 could reasonably serve to identify any person making a complaint about unfair or  
 69 deceptive acts or practices shall be confidential. However, the complaining party may  
 70 consent to public release of his or her identity by giving such consent expressly,  
 71 affirmatively, and directly to the administrator or administrator's employees.

72 (2) Nothing contained in this subsection shall be construed:

73 (A) to prevent the subject of the complaint, or any other person to whom disclosure to  
 74 the To prevent the administrator from disclosing the complainant's identity may if the  
 75 administrator believes that disclosure will aid in resolution of the complaint, from being  
 76 informed of the identity of the complainant;

77 (B) to To prohibit any valid discovery under the relevant discovery rules; or

78 (C) to To prohibit the lawful subpoena of such information."

## 79 SECTION 2.

80 Said part is further amended by revising Code Section 10-1-397, relating to the authority of  
 81 the administrator to issue cease and desist orders or impose civil penalties, judicial relief, and  
 82 receivers, as follows:

83 "10-1-397.

84 (a) As used in this Code section, the term:

85 (1) 'Call' means any communication, message, signal, or transmission.

86 (2) 'Telecommunications company' shall have the same meaning as provided in Code  
 87 Section 46-5-162.

88 (3) 'Telecommunications services' shall have the same meaning as provided in Code  
 89 Section 46-5-162.

90 (b) Whenever it may appear to the administrator that any person is using, has used, or is  
 91 about to use any method, act, or practice declared by Code Section 10-1-393, 10-1-393.1,  
 92 10-1-393.2, 10-1-393.3, 10-1-393.4, 10-1-393.5, or 10-1-393.6 or by regulations made  
 93 under Code Section 10-1-394 to be unlawful and that proceedings would be in the public  
 94 interest, whether or not any person has actually been misled, he or she the administrator  
 95 may:

96 (1) Subject to notice and opportunity for hearing in accordance with Code Section  
 97 10-1-398, unless the right to notice is waived by the person against whom the sanction  
 98 is imposed, take any or all of the following actions:

99 (A) Issue a cease and desist order prohibiting any unfair or deceptive act or practice  
 100 against any person; or

101 (B) Issue an order against a person who willfully violates this part, imposing a civil  
 102 penalty of up to a maximum of \$2,000.00 per violation; or

103 (2) Without regard as to whether the administrator has issued any orders under this Code  
 104 section, upon a showing by the administrator in any superior court of competent  
 105 jurisdiction that a person has violated or is about to violate this part, a rule promulgated  
 106 under this part, or an order of the administrator, the court may enter or grant any or all of  
 107 the following relief:

108 (A) A temporary restraining order or temporary or permanent injunction;

109 (B) A civil penalty of up to a maximum of \$5,000.00 per violation of this part;

110 (C) A declaratory judgment;

111 (D) Restitution to any person or persons adversely affected by a defendant's actions in  
 112 violation of this part;

113 (E) The appointment of a receiver, auditor, or conservator for the defendant or the  
 114 defendant's assets; or

115 (F) Other relief as the court deems just and equitable.

116 ~~(b)~~(c) Unless the administrator determines that a person subject to this part designs quickly  
 117 to depart from this state or to remove his or her property therefrom or to conceal himself  
 118 or herself or his or her property therein or that there is immediate danger of harm to citizens  
 119 of this state or of another state, ~~he~~ the administrator shall, unless he or she seeks a  
 120 temporary restraining order to redress or prevent an injury resulting from a violation of  
 121 paragraph (20) of subsection (b) of Code Section 10-1-393, before initiating any  
 122 proceedings as provided in this Code section, give notice in writing that such proceedings  
 123 are contemplated and allow such person a reasonable opportunity to appear before the  
 124 administrator and execute an assurance of voluntary compliance as provided in this part.  
 125 The determination of the administrator under this subsection shall be final and not subject  
 126 to judicial review.

127 ~~(c)~~(d) With the exception of consent judgments entered before any testimony is taken, a  
 128 final judgment under this Code section ~~is~~ shall be admissible as prima-facie evidence of  
 129 such specific findings of fact as may be made by the court which enters the judgment in  
 130 subsequent proceedings by or against the same person or his or her successors or assigns.

131 ~~(d)~~(e) When a receiver is appointed by the court pursuant to this part, he or she shall have  
 132 the power to sue for, collect, receive, and take into his or her possession all the goods and

133 chattels, rights and credits, moneys and effects, lands and tenements, books, records,  
 134 documents, papers, choses in action, bills, notes, and property of every description derived  
 135 by means of any practice declared to be illegal and prohibited by this part, including  
 136 property with which such property has been mingled if it cannot be identified in kind  
 137 because of such commingling, and to sell, convey, and assign the same and hold and  
 138 dispose of the proceeds thereof under the direction of the court. In the case of a partnership  
 139 or business entity, the receiver may, in the discretion of the court, be authorized to dissolve  
 140 the business and distribute the assets under the direction of the court. The court shall have  
 141 jurisdiction of all questions arising in such proceedings and may make such orders and  
 142 judgments therein as may be required.

143 ~~(e)~~(f)(1) Whenever the administrator issues a cease and desist order to any person  
 144 regarding the use of a telephone number which when called automatically imposes a  
 145 per-call charge or other costs to the consumer, other than a regular charge imposed for  
 146 long distance service, including, but not limited to, a telephone number in which the local  
 147 prefix is 976 or in which the long distance prefix is 900, the administrator may certify to  
 148 the appropriate local or long distance ~~carrier~~ telecommunications company responsible  
 149 for billing consumers for the charges that billing for the charges or for certain of the  
 150 charges should be suspended. The ~~carrier~~ telecommunications company shall then  
 151 suspend such billing with reasonable promptness to preserve the assets of consumers in  
 152 accordance with the certification, without incurring any liability to any person for doing  
 153 so. For the purposes of this Code section, 'reasonable promptness to preserve the assets  
 154 of consumers' shall mean to act as quickly as the ~~carrier~~ telecommunications company  
 155 would act to preserve its own assets, provided that the ~~carrier~~ telecommunications  
 156 company cannot be required to make any changes to its existing systems, technologies,  
 157 or methods used for billing, other than any minimal procedural changes necessary to  
 158 actually suspend the billing. The ~~carrier~~ telecommunications company shall not be made  
 159 a party to any proceedings under this part for complying with this requirement but shall  
 160 have a right to be heard as a third party in any such proceedings.

161 (2) The suspension of billing under this subsection shall remain in effect until the  
 162 administrator certifies to the ~~carrier~~ telecommunications company that the matter has  
 163 been resolved. The administrator shall certify to the ~~carrier~~ telecommunications company  
 164 with reasonable promptness when the matter has been resolved. In this certification, the  
 165 administrator shall advise the ~~carrier~~ telecommunications company to collect none of, all  
 166 of, or any designated part of the billings in accordance with the documents or orders  
 167 which resolved the matter. The ~~carrier~~ telecommunications company shall collect or not  
 168 collect the billings in the manner so designated and shall not incur any liability to any  
 169 person for doing so.

170 (3) Nothing contained in this subsection shall limit or restrict the right of the ~~carrier~~  
171 telecommunications company to place its own restrictions, guidelines, or criteria, by  
172 whatever name denominated, upon the use of such ~~telephone service~~ telecommunications  
173 services, provided such restrictions, guidelines, or criteria do not conflict with the  
174 provisions of this subsection."

175 **SECTION 3.**

176 This Act shall become effective on January 1, 2011.

177 **SECTION 4.**

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