

HOUSE SUBSTITUTE TO SENATE BILL 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 this part or by regulations
 93 made under Code Section 10-1-394 to be unlawful and that proceedings would be in the
 94 public interest, whether or not any person has actually been misled, he or she the
 95 administrator 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.