

The House Committee on Judiciary Non-civil offers the following substitute to SB 59:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 and Part 4 of Article 6 of Chapter 9
2 of Title 6 of the Official Code of Georgia Annotated, relating to the "Fair Business Practices
3 Act of 1975" and Internet and e-mail fraud, respectively, so as to provide restrictions
4 regarding deceptive commercial e-mail and communication; to provide for certain unlawful
5 activity relating to the listing of certain telephone numbers in local telephone directories; to
6 provide for definitions; to clarify certain provisions regarding confidentiality of certain
7 information; to prohibit a person from using certain computers to relay or retransmit
8 commercial e-mail messages with the intent to deceive or mislead recipients or an e-mail
9 service provider under certain circumstances; to prohibit a person from materially falsifying
10 header information in commercial e-mail messages under certain circumstances; to prohibit
11 a person from registering for e-mail accounts or domain names under certain circumstances;
12 to provide for criminal and civil penalties; to provide for forfeiture; to provide for related
13 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

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

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

23 (i) For any nonlocal business to cause to be listed in any local telephone directory a
24 local telephone number for the business if calls to the local telephone number are
25 routinely forwarded or otherwise transferred to the nonlocal business location that is
26 outside the calling area covered by such local telephone directory or to a toll-free

27 number which does not have a local address and the listing fails to state clearly the
 28 principal place of business of the nonlocal business; and

29 (ii) For any business to cause to be listed in any local telephone directory a toll-free
 30 number for the business if the listing fails to state clearly the principal place of
 31 business of such business.

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

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

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

41 (i) 'Local' or 'local area' ~~refers to~~ means the area in which any particular telephone
 42 directory is distributed free of charge to some or all ~~telephone service~~
 43 telecommunications services subscribers.

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

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

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

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

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

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

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

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

75 (2) Nothing contained in this subsection shall be construed to prevent the subject of the
 76 complaint, or any other person to whom disclosure to the:

77 (A) To prevent the administrator from disclosing the complainant's identity may if the
 78 administrator believes that disclosure will aid in resolution of the complaint, from being
 79 informed of the identity of the complainant, to;

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

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

82 **SECTION 2.**

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

86 "10-1-397.

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

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

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

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

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

99 (1) Subject to notice and opportunity for hearing in accordance with Code Section
 100 10-1-398, unless the right to notice is waived by the person against whom the sanction
 101 is imposed, take any or all of the following actions:

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

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

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

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

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

113 (C) A declaratory judgment;

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

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

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

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

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

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

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

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

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

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

178 **SECTION 3.**

179 Part 4 of Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,
 180 relating to Internet and e-mail fraud, is amended by adding a new Code section to read as
 181 follows:

182 "16-9-109.2.

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

184 (1) 'Commercial e-mail message' means an e-mail message sent primarily for the purpose
 185 of commercial advertisement or promotion of:

186 (A) A commercial product;

187 (B) A commercial service;

188 (C) The content of an Internet website; or

189 (D) A website operated for a commercial purpose.

190 (2) 'Domain name' means any alphanumeric designation that is registered with or
 191 assigned by a domain name registrar, domain name registry, or other domain name
 192 registration authority as part of an e-mail address on the Internet.

193 (3) 'E-mail service provider' means any person, including an Internet service provider,
 194 that is an intermediary in sending and receiving e-mail and that provides to the public the
 195 ability to send or receive e-mail to or from an e-mail account or on-line user account.

196 (4) 'Financial institution' means any financial institution of the type supervised under
 197 Chapter 1 of Title 7, the 'Financial Institutions Code of Georgia,' whether or not state
 198 chartered.

199 (5) 'Header information' means the source, destination, and routing information attached
 200 to an e-mail message, including the originating domain name and originating e-mails, and
 201 any other information that appears in the line identifying or purporting to identify a
 202 person initiating the message, and technical information that authenticates the sender of
 203 an e-mail message for network security or network management purposes.

204 (6) 'Initiate,' when used with respect to a commercial e-mail message, means to originate
 205 or transmit the commercial e-mail message or to procure the origination or transmission
 206 of the commercial e-mail message and does not include actions that constitute routine
 207 conveyances of such commercial e-mail message.

- 208 (7) 'Internet protocol address' means the string of numbers by which a location on the
209 Internet is identified by routers or other computers connected to the Internet.
- 210 (8) 'Materially falsified' means altered or concealed in a manner that would impair the
211 ability of one of the following to identify, locate, or respond to a person who initiated an
212 e-mail message or to investigate an alleged violation of this Code section:
- 213 (A) A recipient of the message;
214 (B) An Internet access service processing the message on behalf of a recipient;
215 (C) A person alleging a violation of this Code section; or
216 (D) A law enforcement agency.
- 217 (9) 'Multiple' means:
- 218 (A) More than ten commercial e-mail messages during a 24 hour period;
219 (B) More than 100 commercial e-mail messages during a 30 day period; or
220 (C) More than 1,000 commercial e-mail messages during a one-year period.
- 221 (10) 'Protected computer' means any computer that, at the time of an alleged violation
222 of any provision of this Code section involving that computer, was located within the
223 geographic boundaries of the State of Georgia.
- 224 (11) 'Routine conveyance' means the transmission, routing, relaying, handling, or storing,
225 through an automatic technical process, of an e-mail message for which another person
226 has identified the recipients or provided the recipients' addresses.
- 227 (b) No person shall conspire to or knowingly:
- 228 (1) Use a protected computer of another to relay or retransmit multiple commercial
229 e-mail messages with the intent to deceive or mislead recipients of an e-mail service
230 provider as to the origins of such commercial e-mail messages;
- 231 (2) Materially falsify header information in multiple commercial e-mail messages and
232 intentionally initiate the transmission of such commercial e-mail messages;
- 233 (3) Register, using information that materially falsifies the identity of the actual
234 registrant, for 15 or more e-mail accounts or on-line user accounts of two or more domain
235 names and intentionally initiate the transmission of multiple commercial e-mail messages
236 from one or any combination of such accounts or domain names;
- 237 (4) Falsely represent the right to use five or more Internet protocol addresses and
238 intentionally initiate the transmission of multiple commercial e-mail messages from such
239 Internet protocol addresses;
- 240 (5) Access a protected computer of another without authorization and intentionally
241 initiate the transmission of multiple commercial e-mail messages from or through such
242 protected computer;
- 243 (6) Violate paragraph (1), (2), (3), (4), or (5) of this subsection by providing or selecting
244 addresses to which a commercial e-mail message was transmitted, knowing that:

245 (A) The e-mail addresses of the recipients were obtained using an automated means
246 from an Internet website or proprietary on-line service operated by another person; and
247 (B) The website or on-line service included, at the time the addresses were obtained,
248 a notice stating that the operator of the website or on-line service will not transfer
249 addresses maintained by the website or on-line service to any other party for the
250 purposes of initiating or enabling others to initiate e-mail messages; or
251 (7) Violate paragraph (1), (2), (3), (4), or (5) of this subsection by providing or selecting
252 e-mail addresses of recipients obtained using an automated means that generates possible
253 e-mail addresses by combining names, letters, or numbers into numerous permutations.
254 (c)(1) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this
255 Code section shall be guilty of a felony and upon conviction shall be punished by
256 imprisonment for a period not to exceed three years or a fine not to exceed \$5,000.00, or
257 both.
258 (2) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this
259 Code section involving the transmission of more than 250 commercial e-mail messages
260 during a 24 hour period, 2,500 commercial e-mail messages during any 30 day period,
261 or 25,000 commercial e-mail messages during any one-year period shall be guilty of a
262 felony and upon conviction shall be punished by imprisonment for a period not to exceed
263 five years or a fine not to exceed \$10,000.00, or both.
264 (3) A person who violates paragraph (3) or (4) of subsection (b) of this Code section
265 involving 20 or more e-mail accounts or ten or more domain names and intentionally
266 initiates the transmission of multiple commercial e-mail messages from such accounts or
267 using such domain names shall be guilty of a felony and upon conviction shall be
268 punished by imprisonment for a period not to exceed five years or a fine not to exceed
269 \$10,000.00, or both.
270 (4) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this
271 Code section in a manner that causes a loss of \$500.00 or more during any one-year
272 period shall be guilty of a felony and upon conviction shall be punished by imprisonment
273 for a period not to exceed five years or a fine not to exceed \$10,000.00, or both.
274 (5) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this
275 Code section in concert with three or more other persons as the leader or organizer of the
276 action that constitutes the violation shall be guilty of a felony and upon conviction shall
277 be punished by imprisonment for a period not to exceed five years or a fine not to exceed
278 \$10,000.00, or both.
279 (6) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this
280 Code section in furtherance of a felony, or who has previously been convicted of an
281 offense under the laws of this state, another state, or any federal law, involving the

282 transmission of multiple commercial e-mail messages shall be guilty of a felony and upon
 283 conviction shall be punished by imprisonment for a period not to exceed ten years or a
 284 fine not to exceed \$25,000.00, or both.

285 (7) A person who violates paragraph (6) or (7) of subsection (b) of this Code section
 286 shall be guilty of a felony and upon conviction shall be punished by imprisonment for a
 287 period not to exceed one year or a fine not to exceed \$5,000.00, or both.

288 (d) The Attorney General, a district attorney, or an assistant district attorney may enforce
 289 criminal violations of this Code section.

290 (e)(1) In addition to the criminal penalties authorized by this Code section, the following
 291 shall be subject to forfeiture to the state:

292 (A) Any moneys and other income, including all proceeds earned but not yet received
 293 by a defendant from a third party as a result of such defendant's violation of this Code
 294 section; and

295 (B) All computer equipment, computer software, and personal property used in
 296 connection with a violation of this Code section known by the owner of such computer
 297 equipment, computer software, or personal property to have been used in violation of
 298 this Code section.

299 (2) The Attorney General, a district attorney, or an assistant district attorney may
 300 commence forfeiture proceedings under this Code section. Forfeiture shall be had by the
 301 same procedure set forth in Code Section 16-14-7. A forfeiture proceeding pursuant to
 302 this Code section may be commenced up until three years after the conduct in violation
 303 of this Code section terminates.

304 (3) In addition to forfeiture, the Attorney General, a district attorney, or an assistant
 305 district attorney shall be authorized in the forfeiture complaint to seek a civil penalty as
 306 follows:

307 (A) Up to \$25,000.00 per day of violation; or

308 (B) Not less than \$2.00 nor more than \$8.00 per commercial e-mail message sent in
 309 violation of this Code section;

310 provided, however, that the civil penalty, excluding the forfeiture amount, shall not
 311 exceed \$2 million.

312 (4) The Attorney General, a district attorney, or an assistant district attorney may seek
 313 injunctive relief in a civil action to prohibit a person who has engaged in or is engaged
 314 in a violation of this Code section from engaging in further violations."

315 **SECTION 4.**

316 This Act shall become effective on January 1, 2010.

317

SECTION 5.

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