

Senate Bill 148

By: Senators Kennedy of the 18th, Dugan of the 30th, Miller of the 49th, Jackson of the 24th, Bethel of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, so as to transfer the powers and responsibilities of the Governor's Office of Consumer
3 Affairs to the Attorney General's office; to amend Titles 2, 16, 18, 31, 33, 35, 36, 43, and 46
4 of the Official Code of Georgia Annotated, relating to agriculture, crimes and offenses,
5 debtors and creditors, health, insurance, law enforcement officers and agencies, local
6 government, professions and businesses, and public utilities and public transportation,
7 respectively, so as to conform to such transfer, correct cross-references, and remove obsolete
8 provisions; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
12 amended by revising Part 1A of Article 15 of Chapter 1, relating to administrative resolution
13 relative to deceptive or unfair practices, as follows:

14 style="text-align:center">"Part 1A

15 10-1-380.

16 As used in this article, the term '~~administrator~~ Attorney General' means the person
17 ~~appointed by the Governor pursuant to Code Section 10-1-395~~ Attorney General or his or
18 her designee.

19 10-1-381.

20 (a) The ~~administrator~~ Attorney General may file in the superior court of the county in
21 which a person under order resides, or in the county in which the violation occurred, or, if
22 the person is a corporation, in the county in which the corporation maintains its principal
23 place of business, a certified copy of a final order issued pursuant to this article by the
24 ~~administrator~~ Attorney General which is unappealed from or a final order of an

25 administrative law judge issued pursuant to this article which is unappealed from or a final
26 order of an administrative law judge issued pursuant to this article which is affirmed upon
27 appeal, whereupon the court shall render judgment in accordance therewith and notify the
28 parties. The judgment shall have the same effect, and all proceedings in relation thereto
29 shall thereafter be the same as though the judgment had been rendered in an action duly
30 heard and determined by the court.

31 (b) The ~~administrator~~ Attorney General may file in the superior court of the county in
32 which the person obligated to pay funds over to the ~~administrator~~ Attorney General resides,
33 or in the county in which the violation or alleged violation occurred, or, if the person is a
34 corporation, in the county in which the corporation maintains its principal place of
35 business, a certified copy of any document under which funds are due to the ~~administrator~~
36 Attorney General based on obligations created in the administration of this article, whether
37 obtained through official action, compromise, settlement, assurance of voluntary
38 compliance, or otherwise, and are delinquent according to the terms of the document
39 creating the obligation, whereupon the court shall render judgment in accordance therewith
40 and notify the parties. The judgment shall have the same effect, and all proceedings in
41 relation thereto shall thereafter be the same as though the judgment had been rendered in
42 an action duly heard and determined by the court.

43 (c) The court shall specify that any funds to be collected under the judgment shall be
44 disbursed by the ~~administrator~~ Attorney General in accordance with the terms of the
45 original order or in accordance with the terms of the original document creating the
46 obligation, subject to the provisions of Code Section 10-1-382. Such funds may have been
47 designated in the original order or in the original document to be applied to consumer
48 restitution, to reimbursement of funds from which investigative expenses were paid, to civil
49 penalties to be disbursed into the consumer preventive education plan, to civil penalties to
50 be disbursed into the state general fund, or any combination thereof.

51 (d) In original orders or original documents the ~~administrator~~ Attorney General may
52 designate that civil penalties shall be applied to the consumer preventive education plan;
53 in that event, such funds shall not be applied in an aggregate amount which is any greater
54 than the amount of funds appropriated for the consumer preventive education plan. Any
55 amount of civil penalties which exceeds the appropriation for the consumer preventive
56 education plan shall be disbursed into the state general fund.

57 (e) All judgments obtained pursuant to this Code section shall be considered delinquent
58 if unpaid 30 calendar days after the judgment is rendered.

59 (f) The ~~administrator~~ Attorney General is authorized to establish a consumer preventive
60 education plan.

61 10-1-382.

62 (a) In addition to any amount owed under a judgment rendered under Code Section
 63 10-1-381 or 10-1-397, a delinquent party shall be responsible by operation of law for a
 64 collection fee equal to 40 percent of the amount of the judgment as if such collection fee
 65 had been included as part of the judgment. ~~The amount of the judgment together with the~~
 66 ~~40 percent collection fee shall be designated as the amount due. The administrator shall~~
 67 ~~have the authority to contract with private collection agencies to collect any amount due.~~
 68 ~~In the event that such collection agencies are unable to collect any part of such amounts~~
 69 ~~due, the administrator may request that the~~ The Attorney General may contract with
 70 collection attorneys to collect all or any remaining part of such amounts due under a
 71 judgment rendered under Code Section 10-1-381. ~~Such collection attorneys shall be paid~~
 72 ~~in the same manner as collection agencies.~~

73 (b) All funds collected by ~~the collection agency or by the~~ any such collection attorneys
 74 shall be remitted to the administrator Attorney General for disbursement. ~~In no event shall~~
 75 ~~the collection agency or attorney be entitled to any compensation in an amount greater than~~
 76 ~~the 40 percent collection fee.~~

77 (c) ~~The administrator shall remit to the collection agency or to the collection attorney a fee~~
 78 ~~of 10 percent of any amount actually collected by that collection agency or that attorney.~~

79 (d) ~~After the 10 percent of the funds collected to date has been remitted to the appropriate~~
 80 ~~collection agency or collection attorney, as specified in subsection (c) of this Code section,~~
 81 ~~and up until such time as 100 percent of the judgment has been disbursed in the manner~~
 82 ~~called for in the judgment, the administrator shall disburse the remaining 90 percent of the~~
 83 ~~funds collected to date as designated in the judgment.~~

84 (e) ~~After 100 percent of the funds have been disbursed as designated in the judgment and~~
 85 ~~the collector has also received the collection fee equal to 10 percent of such collected~~
 86 ~~funds, the administrator shall remit to the collection agency or to the collection attorney~~
 87 ~~any of the remaining funds which were actually collected by that collection agency or by~~
 88 ~~that collection attorney, provided, however, in no event shall the total of collection fees~~
 89 ~~disbursed in connection with the collection of the judgment exceed an amount equal to 40~~
 90 ~~percent of the judgment.~~

91 (f) ~~The administrator shall render semiannual reports to the Governor on the amounts~~
 92 ~~collected and disbursed. Such reports shall be due on the tenth day of January and the tenth~~
 93 ~~day of July of each year."~~

94 **SECTION 2.**

95 Said title of said chapter of said article is further amended by revising Part 2, relating to the
 96 'Fair Business Practices Act of 1975,' as follows:

97 "Part 2

98 10-1-390.

99 This part shall be known and may be cited as the 'Fair Business Practices Act of 1975.'

100 10-1-391.

101 (a) The purpose of this part shall be to protect consumers and legitimate business
102 enterprises from unfair or deceptive practices in the conduct of any trade or commerce in
103 part or wholly in the state. It is the intent of the General Assembly that such practices be
104 swiftly stopped, and this part shall be liberally construed and applied to promote its
105 underlying purposes and policies.

106 (b) It is the intent of the General Assembly that this part be interpreted and construed
107 consistently with interpretations given by the Federal Trade Commission in the federal
108 courts pursuant to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section
109 45(a)(1)), as from time to time amended.

110 10-1-392.

111 (a) As used in this part, the term:

112 (1) 'Attorney General' means the Attorney General or his or her designee.
113 ~~'Administrator' means the administrator appointed pursuant to subsection (a) of Code~~
114 ~~Section 10-1-395 or his or her delegate.~~

115 (2) 'Campground membership' means any arrangement under which a purchaser has the
116 right to use, occupy, or enjoy a campground membership facility.

117 (3) 'Campground membership facility' means any campground facility at which the use,
118 occupation, or enjoyment of the facility is primarily limited to those purchasers, along
119 with their guests, who have purchased a right to make reservations at future times to use
120 the facility or who have purchased the right periodically to use the facility at fixed times
121 or intervals in the future, but shall not include any such arrangement which is regulated
122 under Article 5 of Chapter 3 of Title 44.

123 (4) 'Career consulting firm' means any person providing services to an individual in
124 conjunction with a career search and consulting program for the individual, including, but
125 not limited to, counseling as to the individual's career potential, counseling as to
126 interview techniques, and the identification of prospective employers. A 'career
127 consulting firm' shall not guarantee actual job placement as one of its services. A 'career
128 consulting firm' shall not include any person who provides these services without
129 charging a fee to applicants for those services or any employment agent or agency
130 regulated under Chapter 10 of Title 34.

- 131 (5) 'Child support enforcement' means the action, conduct, or practice of enforcing a
132 child support order issued by a court or other tribunal.
- 133 (6) 'Consumer' means a natural person.
- 134 (7) 'Consumer acts or practices' means acts or practices intended to encourage consumer
135 transactions.
- 136 (8) 'Consumer report' means any written or other communication of any information by
137 a consumer reporting agency bearing on a consumer's creditworthiness, credit standing,
138 or credit capacity which is used or intended to be used or collected in whole or in part for
139 the purpose of serving as a factor in establishing the consumer's eligibility for:
- 140 (A) Credit or insurance to be used primarily for personal, family, or household
141 purposes; or
- 142 (B) Employment consideration.
- 143 (9) 'Consumer reporting agency' or 'agency' means any person which, for monetary fees,
144 dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the
145 practice of assembling or evaluating consumer credit information or other information
146 on consumers for the purpose of furnishing consumer reports to third parties.
- 147 (10) 'Consumer transactions' means the sale, purchase, lease, or rental of goods, services,
148 or property, real or personal, primarily for personal, family, or household purposes.
- 149 (11) 'Department' means the Department of Human Services.
- 150 (12) 'Documentary material' means the original or a copy, whether printed, filmed, or
151 otherwise preserved or reproduced, by whatever process, including electronic data storage
152 and retrieval systems, of any book, record, report, memorandum, paper, communication,
153 tabulation, map, chart, photograph, mechanical transcription, or other tangible document
154 or record wherever situate.
- 155 (13) 'Examination' of documentary material means inspection, study, or copying of any
156 such material and the taking of testimony under oath or acknowledgment with respect to
157 any such documentary material.
- 158 (14) 'File' means, when used in connection with information on any consumer, all of the
159 information on that consumer recorded or retained by a consumer reporting agency
160 regardless of how the information is stored.
- 161 (14.1) 'Food' means articles used for food or drink for human consumption, chewing
162 gum, and articles used for components of any such article.
- 163 (15) 'Going-out-of-business sale' means any offer to sell to the public or sale to the
164 public of goods, wares, or merchandise on the implied or direct representation that such
165 sale is in anticipation of the termination of a business at its present location or that the
166 sale is being held other than in the ordinary course of business and includes, without
167 being limited to, any sale advertised either specifically or in substance to be a sale

168 because the person is going out of business, liquidating, selling his or her entire stock or
 169 50 percent or more of his or her stock, selling out to the bare walls, selling because the
 170 person has lost his or her lease, selling out his or her interest in the business, or selling
 171 because everything in the business must be sold or that the sale is a trustee's sale,
 172 bankruptcy sale, save us from bankruptcy sale, insolvency sale, assignee's sale, must
 173 vacate sale, quitting business sale, receiver's sale, loss of lease sale, forced out of business
 174 sale, removal sale, liquidation sale, executor's sale, administrator's sale, warehouse
 175 removal sale, branch store discontinuance sale, creditor's sale, adjustment sale, or defunct
 176 business sale.

177 (16) 'Health spa' means an establishment which provides, as one of its primary purposes,
 178 services or facilities which are purported to assist patrons to improve their physical
 179 condition or appearance through change in weight, weight control, treatment, dieting, or
 180 exercise. The term includes an establishment designated as a 'reducing salon,' 'health
 181 spa,' 'spa,' 'exercise gym,' 'health studio,' 'health club,' or by other terms of similar import.
 182 A health spa shall not include any of the following:

183 (A) Any nonprofit organization;

184 (B) Any facility wholly owned and operated by a licensed physician or physicians at
 185 which such physician or physicians are engaged in the actual practice of medicine; or

186 (C) Any such establishment operated by a health care facility, hospital, intermediate
 187 care facility, or skilled nursing care facility.

188 (16.1) 'Kosher food disclosure statement' means a statement which:

189 (A) Discloses to consumers practices relating to the preparation, handling, and sale of
 190 any unpackaged food, or food packaged at the premises where it is sold to consumers,
 191 if the food is represented to be kosher, kosher for Passover, or prepared or maintained
 192 under rabbinical or other kosher supervision; and

193 (B) Complies with the provisions of subsections (b) through (e) of Code Section
 194 10-1-393.11.

195 (17) 'Marine membership' means any arrangement under which a purchaser has a right
 196 to use, occupy, or enjoy a marine membership facility.

197 (18) 'Marine membership facility' means any boat, houseboat, yacht, ship, or other
 198 floating facility upon which the use, occupation, or enjoyment of the facility is primarily
 199 limited to those purchasers, along with their guests, who have purchased a right to make
 200 reservations at future times to use the facility or who have purchased a right to use
 201 periodically, occupy, or enjoy the facility at fixed times or intervals in the future, but shall
 202 not include any such arrangement which is regulated under Article 5 of Chapter 3 of Title
 203 44.

- 204 (19) 'Obligee' means a resident of this state who is identified in an order for child support
205 issued by a court or other tribunal as the payee to whom an obligor owes child support.
- 206 (20) 'Obligor' means a resident of this state who is identified in an order for child support
207 issued by a court or other tribunal as required to make child support payments.
- 208 (21) 'Office' means any place where business is transacted, where any service is supplied
209 by any person, or where any farm is operated.
- 210 (22) 'Office supplier' means any person who sells, rents, leases, or ships, or offers to sell,
211 lease, rent, or ship, goods, services, or property to any person to be used in the operation
212 of any office or of any farm.
- 213 (23) 'Office supply transactions' means the sale, lease, rental, or shipment of, or offer to
214 sell, lease, rent, or ship, goods, services, or property to any person to be used in the
215 operation of any office or of any farm but shall not include transactions in which the
216 goods, services, or property is purchased, leased, or rented by the office or farm for
217 purposes of reselling them to other persons.
- 218 (24) 'Person' means a natural person, corporation, trust, partnership, incorporated or
219 unincorporated association, or any other legal entity.
- 220 (24.1) 'Presealed kosher food package' means a food package which bears a kosher
221 symbol insignia and is sealed by the manufacturer, processor, or wholesaler at premises
222 other than the premises where the food is to be sold to the public.
- 223 (25) 'Private child support collector' means an individual or nongovernmental entity that
224 solicits and contracts directly with obligees to provide child support collection services
225 for a fee or other compensation but shall not include attorneys licensed to practice law
226 in this state unless such attorney is employed by a private child support collector.
- 227 (26) 'Prize' means a gift, award, or other item intended to be distributed or actually
228 distributed in a promotion.
- 229 (27) 'Promotion' means any scheme or procedure for the promotion of consumer
230 transactions whereby one or more prizes are distributed among persons who are required
231 to be present at the place of business or are required to participate in a seminar, sales
232 presentation, or any other presentation, by whatever name denominated, in order to
233 receive the prize or to determine which, if any, prize they will receive. Promotions shall
234 not include any procedure where the receipt of the prize is conditioned upon the purchase
235 of the item which the seller is trying to promote if such condition is clearly and
236 conspicuously disclosed in the promotional advertising and literature and the receipt of
237 the prize does not involve an element of chance. Any procedure where the receipt of the
238 prize is conditioned upon the purchase of the item which the seller is trying to promote
239 or upon the payment of money and where the receipt of that prize involves an element of
240 chance shall be deemed to be a lottery under Code Section 16-12-20; provided, however,

241 that nothing in this definition shall be construed to include a lottery operated by the State
 242 of Georgia or the Georgia Lottery Corporation as authorized by law; provided, further,
 243 that any deposit made in connection with an activity described by subparagraph
 244 (b)(22)(B) of Code Section 10-1-393 shall not constitute the payment of money.

245 (27.1) 'Representation regarding kosher food' means any direct or indirect statement,
 246 whether oral or written, including but not limited to an advertisement, sign, or menu and
 247 any letter, word, sign, emblem, insignia, or mark which could reasonably lead a consumer
 248 to believe that a representation is being made that the final food product sold to the
 249 consumer is kosher, kosher for Passover, or prepared or maintained under rabbinical or
 250 other kosher supervision.

251 (28) 'Trade' and 'commerce' mean the advertising, distribution, sale, lease, or offering for
 252 distribution, sale, or lease of any goods, services, or any property, tangible or intangible,
 253 real, personal, or mixed, or any other article, commodity, or thing of value wherever
 254 situate and shall include any trade or commerce directly or indirectly affecting the people
 255 of this state.

256 (b) An 'intentional violation' occurs when the person committing the act or practice knew
 257 that his or her conduct was in violation of this part. Maintenance of an act or practice
 258 specifically designated as unlawful in subsection (b) of Code Section 10-1-393 after the
 259 ~~administrator~~ Attorney General gives notice that the act or practice is in violation of the
 260 part shall be prima-facie evidence of intentional violation. For the purposes of this
 261 subsection, the ~~administrator~~ Attorney General gives notice that an act or practice is in
 262 violation of this part by the adoption of specific rules promulgated pursuant to subsection
 263 (a) of Code Section 10-1-394 and by notice in writing to the alleged violator of a violation,
 264 if such written notice may be reasonably given without substantially or materially altering
 265 the purposes of this part; provided, however, that no presumption of intention shall arise
 266 in the case of an alleged violator who maintains a place of business within the jurisdiction
 267 of this state with sufficient assets to respond to a judgment under this part, unless such
 268 alleged violator has received written notice. The burden of showing no reasonable
 269 opportunity to give written notice shall be upon the ~~administrator~~ Attorney General.

270 10-1-393.

271 (a) Unfair or deceptive acts or practices in the conduct of consumer transactions and
 272 consumer acts or practices in trade or commerce are declared unlawful.

273 (b) By way of illustration only and without limiting the scope of subsection (a) of this
 274 Code section, the following practices are declared unlawful:

275 (1) Passing off goods or services as those of another;

- 276 (2) Causing actual confusion or actual misunderstanding as to the source, sponsorship,
277 approval, or certification of goods or services;
- 278 (3) Causing actual confusion or actual misunderstanding as to affiliation, connection, or
279 association with or certification by another;
- 280 (4)(A) Using deceptive representations or designations of geographic origin in
281 connection with goods or services. Without limiting the generality of the foregoing, it
282 is specifically declared to be unlawful:
- 283 (i) For any nonlocal business to cause to be listed in any local telephone directory a
284 local telephone number for the business if calls to the local telephone number are
285 routinely forwarded or otherwise transferred to the nonlocal business location that is
286 outside the calling area covered by such local telephone directory or to a toll-free
287 number which does not have a local address and the listing fails to state clearly the
288 principal place of business of the nonlocal business;
- 289 (ii) For any person operating a business to cause to be listed in any local telephone
290 directory a toll-free number for the business if the listing fails to state clearly the
291 principal place of business of such business; or
- 292 (iii) For any person to use an assumed or fictitious name in the conduct of such
293 person's business, if the use of such name could reasonably be construed to be a
294 misrepresentation of the geographic origin or location of such person's business.
- 295 (B) For purposes of this paragraph, the term:
- 296 (i) 'Local' or 'local area' means the area in which any particular telephone directory
297 is distributed or otherwise provided free of charge to some or all telecommunications
298 services subscribers.
- 299 (ii) 'Local telephone directory' means any telecommunications services directory,
300 directory assistance data base, or other directory listing which is distributed or
301 otherwise provided free of charge to some or all telecommunications services
302 subscribers in any area of this state and includes such directories distributed by
303 telecommunications companies as well as such directories distributed by other parties.
- 304 (iii) 'Local telephone number' means any telecommunications services number which
305 is not clearly identifiable as a long-distance telecommunications services number and
306 which has a three-number prefix typically used by the local telecommunications
307 company for telecommunications services devices physically located within the local
308 area.
- 309 (iv) 'Nonlocal business' means any business which does not have within the local area
310 a physical place of business providing the goods or services which are the subject of
311 the advertisement or listing in question.

- 312 (v) 'Telecommunications company' shall have the same meaning as provided in Code
 313 Section 46-5-162.
- 314 (vi) 'Telecommunications services' shall have the same meaning as provided in Code
 315 Section 46-5-162.
- 316 (vii) 'Telecommunications services subscriber' means a person or entity to whom
 317 telecommunications services, either residential or commercial, are provided;
- 318 (5) Representing that goods or services have sponsorship, approval, characteristics,
 319 ingredients, uses, benefits, or quantities that they do not have or that a person has a
 320 sponsorship, approval, status, affiliation, or connection that he or she does not have;
- 321 (6) Representing that goods are original or new if they are deteriorated, reconditioned,
 322 reclaimed, used, or secondhand;
- 323 (7) Representing that goods or services are of a particular standard, quality, or grade or
 324 that goods are of a particular style or model, if they are of another;
- 325 (8) Disparaging goods, services, or business of another by false or misleading
 326 representation;
- 327 (9) Advertising goods or services with intent not to sell them as advertised;
- 328 (10) Advertising goods or services with intent not to supply reasonably expectable public
 329 demand, unless the advertisement discloses a limitation of quantity;
- 330 (11) Making false or misleading statements concerning the reasons for, existence of, or
 331 amounts of price reductions;
- 332 (12) Failing to comply with the provisions of Code Section 10-1-393.2 concerning health
 333 spas;
- 334 (13) Failure to comply with the following provisions concerning career consulting firms:
- 335 (A) A written contract shall be employed which shall constitute the entire agreement
 336 between the parties, a fully completed copy of which shall be furnished to the consumer
 337 at the time of its execution which shows the date of the transaction and the name and
 338 address of the career consulting firm;
- 339 (B) The contract or an attachment thereto shall contain a statement in boldface type
 340 which complies substantially with the following:
- 341 'The provisions of this agreement have been fully explained to me and I understand
 342 that the services to be provided under this agreement by the seller do not include
 343 actual job placement.'
- 344 The statement shall be signed by both the consumer and the authorized representative
 345 of the seller;
- 346 (C) Any advertising offering the services of a career consulting firm shall contain a
 347 statement which contains the following language: 'A career consulting firm does not
 348 guarantee actual job placement as one of its services.';

349 (14) Failure of a hospital or long-term care facility to deliver to an inpatient who has
350 been discharged or to his or her legal representative, not later than six business days after
351 the date of such discharge, an itemized statement of all charges for which the patient or
352 third-party payor is being billed;

353 (15) Any violation of 49 U.S.C. Sections 32702 through 32704 and any violation of
354 regulations prescribed under 49 U.S.C. Section 32705. Notwithstanding anything in this
355 part to the contrary, all such actions in violation of such federal statutes or regulations
356 shall be consumer transactions and consumer acts or practices in trade or commerce;

357 (16) Failure to comply with the following provisions concerning promotions:

358 (A) For purposes of this paragraph, the term:

359 (i) 'Conspicuously,' when referring to type size, means either a larger or bolder type
360 than the adjacent and surrounding material.

361 (ii) 'In conjunction with and in immediate proximity to,' when referring to a listing
362 of verifiable retail value and odds for each prize, means that such value and odds must
363 be adjacent to that particular prize with no other printed or pictorial matter between
364 the value and odds and that listed prize.

365 (iii) 'Notice' means a communication of the disclosures required by this paragraph to
366 be given to a consumer that has been selected, or has purportedly been selected, to
367 participate in a promotion. If the original notice is in writing, it shall include all of
368 the disclosures required by this paragraph. If the original notice is oral, it shall
369 include all of the disclosures required by this paragraph and shall be followed by a
370 written notice to the consumer of the same disclosures. In all cases, written notice
371 shall be received by the consumer before any agreement or other arrangement is
372 entered into which obligates the consumer in any manner.

373 (iv) 'Participant' means a person who is offered an opportunity to participate in a
374 promotion.

375 (v) 'Promoter' means the person conducting the promotion.

376 (vi) 'Sponsor' means the person on whose behalf the promotion is conducted in order
377 to promote or advertise the goods, services, or property of that person.

378 (vii) 'Verifiable retail value,' when referring to a prize, means:

379 (I) The price at which the promoter or sponsor can substantiate that a substantial
380 number of those prizes have been sold at retail by someone other than the promoter
381 or sponsor; or

382 (II) In the event that substantiation as described in subdivision (I) of this division
383 is not readily available to the promoter or sponsor, no more than three times the
384 amount which the promoter or sponsor has actually paid for the prize.

385 (A.1) Persons who are offered an opportunity to participate in a promotion must be
386 given a notice as required by this paragraph. The written notice must be given to the
387 participant either prior to the person's traveling to the place of business or, if no travel
388 by the participant is necessary, prior to any seminar, sales presentation, or other
389 presentation, by whatever name denominated. Written notices may be delivered by
390 hand, by mail, by newspaper, ~~or by periodical,~~ or by electronic mail or any other form
391 of electronic, digital, or Internet based communication. Any offer to participate made
392 through any other medium must be preceded by or followed by the required notice at
393 the required time. It is the intent of this paragraph that full, clear, and meaningful
394 disclosure shall be made to the participant in a manner such that the participant can
395 fully study and understand the disclosure prior to deciding whether to travel to the place
396 of participation or whether to allow a presentation to be made in the participant's home;
397 and that this paragraph be liberally construed to effect this purpose. The notice
398 requirements of this paragraph shall be applicable to any promotion offer made by any
399 person in the State of Georgia or any promotion offer made to any person in the State
400 of Georgia;

401 (B) The promotion must be an advertising and promotional undertaking, in good faith,
402 solely for the purpose of advertising the goods, services, or property, real or personal,
403 of the sponsor. The notice shall contain the name and address of the promoter and of
404 the sponsor, as applicable. The promoter and the sponsor may be held liable for any
405 failure to comply with the provisions of this paragraph;

406 (C) A promotion shall be a violation of this paragraph if a person is required to pay any
407 money including, but not limited to, payments for service fees, mailing fees, or
408 handling fees payable to the sponsor or seller or furnish any consideration for the prize,
409 other than the consideration of traveling to the place of business or to the presentation
410 or of allowing the presentation to be made in the participant's home, in order to receive
411 any prize; provided, however, that the payment of any deposit made in connection with
412 an activity described in subparagraph (B) of paragraph (22) of this subsection shall not
413 constitute a requirement to pay any money under this subparagraph;

414 (D) Each notice must state the verifiable retail value of each prize which the participant
415 has a chance of receiving. Each notice must state the odds of the participant's receiving
416 each prize if there is an element of chance involved. The odds must be clearly
417 identified as 'odds.' Odds must be stated as the total number of that particular prize
418 which will be given and of the total number of notices. The total number of notices
419 shall include all notices in which that prize may be given, regardless of whether it
420 includes notices for other sponsors. If the odds of winning a particular prize would not
421 be accurately stated on the basis of the number of notices, then the odds may be stated

422 in another manner, but must be clearly stated in a manner which will not deceive or
423 mislead the participant regarding the participant's chance of receiving the prize. The
424 verifiable retail value and odds for each prize must be stated in conjunction and in
425 immediate proximity with each listing of the prize in each place where it appears on the
426 written notice and must be listed in the same size type and same boldness as the prize.
427 Odds and verifiable retail values may not be listed in any manner which requires the
428 participant to refer from one place in the written notice to another place in the written
429 notice to determine the odds and verifiable retail value of the particular prize.
430 Verifiable retail values shall be stated in Arabic numerals;

431 (E) Upon arriving at the place of business or upon allowing the sponsor to enter the
432 participant's home, the participant must be immediately informed which, if any, prize
433 the participant will receive prior to any seminar, sales presentation, or other
434 presentation; and the prize, or any voucher, certificate, or other evidence of obligation
435 in lieu of the prize, must be given to the participant at the time the participant is so
436 informed;

437 (F) No participant shall be required or invited to view, hear, or attend any sales
438 presentation, by whatever name denominated, unless such requirement or invitation has
439 been conspicuously disclosed to the participant in the written notice in at least ten-point
440 boldface type;

441 (G) Except in relation to an activity described in subparagraph (B) of paragraph (22)
442 of this subsection, in no event shall any prize be offered or given which will require the
443 participant to purchase additional goods or services, including shipping fees, handling
444 fees, or any other charge by whatever name denominated, from any person in order to
445 make the prize conform to what it reasonably appears to be in the mailing or delivery,
446 unless such requirement and the additional cost to the participant is clearly disclosed
447 in each place where the prize is listed in the written notice using a statement in the same
448 size type and boldness as the prize listed;

449 (H) Any limitation on eligibility of participants must be clearly disclosed in the notice;

450 (I) Substitutes of prizes shall not be made. In the event the represented prize is
451 unavailable, the participant shall be presented with a certificate which the sponsor shall
452 honor within 30 days by shipping the prize, as represented in the notice, to the
453 participant at no cost to the participant. In the event a certificate cannot be honored
454 within 30 days, the sponsor shall mail to the participant a valid check or money order
455 for the verifiable retail value which was represented in the notice;

456 (J) In the event the participant is presented with a voucher, certificate, or other
457 evidence of obligation as the participant's prize, or in lieu of the participant's prize, it
458 shall be the responsibility of the sponsor to honor the voucher, certificate, or other

459 evidence of obligation, as represented in the notice, if the person who is named as being
460 responsible for honoring the voucher, certificate, or other evidence of obligation fails
461 to honor it as represented in the notice;

462 (K) The geographic area covered by the notice must be clearly stated. If any of the
463 prizes may be awarded to persons outside of the listed geographical area or to
464 participants in promotions for other sponsors, these facts must be clearly stated, with
465 a corresponding explanation that every prize may not be given away by that particular
466 sponsor. If prizes will not be awarded or given if the winning ticket, token, number, lot,
467 or other device used to determine winners in that particular promotion is not presented
468 to the promoter or sponsor, this fact must be clearly disclosed;

469 (L) Upon request of the ~~administrator~~ Attorney General, the sponsor or promoter must
470 within ten days furnish to the ~~administrator~~ Attorney General the names, addresses, and
471 telephone numbers of persons who have received any prize;

472 (M) A list of all winning tickets, tokens, numbers, lots, or other devices used to
473 determine winners in promotions involving an element of chance must be prominently
474 posted at the place of business or distributed to all participants if the seminar, sales
475 presentation, or other presentation is made at a place other than the place of business.
476 A copy of such list shall be furnished to each participant who so requests;

477 (N) Any promotion involving an element of chance which does not conform with the
478 provisions of this paragraph shall be considered an unlawful lottery as defined in Code
479 Section 16-12-20. Except as provided in Code Section 16-12-35 and Article 3 of
480 Chapter 27 of Title 50, any promotion involving an element of chance which involves
481 the playing of a game on a computer, mechanical device, or electronic device at a place
482 of business in this state shall be considered an unlawful lottery as defined in Code
483 Section 16-12-20 and shall not be permitted under this chapter. Any promotion
484 involving the playing of a no-skill game on a computer, mechanical device, or
485 electronic device at a place of business in this state shall be considered an unlawful
486 lottery as defined in Code Section 16-12-20. The ~~administrator~~ Attorney General may
487 seek and shall receive the assistance of the prosecuting attorneys of this state in the
488 commencement and prosecution of persons who promote and sponsor promotions
489 which constitute an unlawful lottery;

490 (N.1) All prizes offered and awarded shall be noncash prizes only and shall not be
491 redeemable for cash;

492 (O) Any person who participates in a promotion and does not receive an item which
493 conforms with what that person, exercising ordinary diligence, reasonably believed that
494 person should have received based upon the representations made to that person may
495 bring the private action provided for in Code Section 10-1-399 and, if that person

496 prevails, shall be awarded, in addition to any other recovery provided under this part,
 497 a sum which will allow that person to purchase an item at retail which reasonably
 498 conforms to the prize which that person, exercising ordinary diligence, reasonably
 499 believed that person would receive; and

500 (P) In addition to any other remedy provided under this part, where a contract is
 501 entered into while participating in a promotion which does not conform with this
 502 paragraph, the contract shall be voidable by the participant for ten business days
 503 following the date of the participant's receipt of the prize. In order to void the contract,
 504 the participant must notify the sponsor in writing within ten business days following the
 505 participant's receipt of the prize;

506 (17) Failure to furnish to the buyer of any campground membership or marine
 507 membership at the time of purchase a notice to the buyer allowing the buyer seven days
 508 to cancel the purchase. The notice shall be on a separate sheet of paper with no other
 509 written or pictorial material, in at least ten-point boldface type, double spaced, and shall
 510 read as follows:

511 'Notice to the Buyer

512 Please read this form completely and carefully. It contains valuable cancellation rights.
 513 The buyer or buyers may cancel this transaction at any time prior to 5:00 P.M. of the
 514 seventh day following receipt of this notice.

515 This cancellation right cannot be waived in any manner by the buyer or buyers.

516 Any money paid by the buyer or buyers must be returned by the seller within 30 days
 517 of cancellation.

518 To cancel, sign this form, and mail by certified mail or statutory overnight delivery,
 519 return receipt requested, by 5:00 P.M. of the seventh day following the transaction. Be
 520 sure to keep a photocopy of the signed form and your post office receipt.

521 _____
 522 Seller's Name

523 _____
 524 Address to which cancellation is to be mailed

525 _____
 526 I (we) hereby cancel this transaction.

527 _____
 528 Buyer's Signature

529 _____

530 Buyer's Signature

531 _____

532 Date

533 _____

534 Printed Name(s) of Buyer(s)

535 _____

536 Street Address

537 _____

538 City, State, ZIP Code'

539 (18) Failure of the seller of a campground membership or marine membership to fill in
540 the seller's name and the address to which cancellation notices should be mailed on the
541 form specified in paragraph (17) of this subsection;

542 (19) Failure of the seller of a campground membership or marine membership to cancel
543 according to the terms specified in the form described in paragraph (17) of this
544 subsection;

545 (20)(A) Representing that moneys provided to or on behalf of a debtor, as defined in
546 Code Section 44-14-162.1 in connection with property used as a dwelling place by said
547 debtor, are a loan if in fact they are used to purchase said property and any such
548 misrepresentation upon which is based the execution of a quitclaim deed or warranty
549 deed by that debtor shall authorize that debtor to bring an action to reform such deed
550 into a deed to secure debt in addition to any other right such debtor may have to cancel
551 the deed pursuant to Code Section 23-2-2, 23-2-60, or any other applicable provision
552 of law.

553 (B) Advertising to assist debtors whose loan for property the debtors use as a dwelling
554 place is in default with intent not to assist them as advertised or making false or
555 misleading representations to such a debtor about assisting the debtor in connection
556 with said property.

557 (C) Failing to comply with the following provisions in connection with the purchase
558 of property used as a dwelling place by a debtor whose loan for said property is in
559 default and who remains in possession of this property after said purchase:

560 (i) A written contract shall be employed by the buyer which shall summarize and
561 incorporate the entire agreement between the parties, a fully completed copy of which
562 shall be furnished to the debtor at the time of its execution. Said contract shall show
563 the date of the transaction and the name and address of the parties; shall state, in plain
564 and bold language, that the subject transaction is a sale; and shall indicate the amount
565 of cash proceeds and the amount of any other financial benefits that the debtor will
566 receive;

567 (ii) This contract shall contain a statement in boldface type which complies
568 substantially with the following:

569 "The provisions of this agreement have been fully explained to me. I understand that
570 under this agreement I am selling my house to the other undersigned party.'

571 This statement shall be signed by the debtor and the buyer;

572 (iii) If a lease or rental agreement is executed in connection with said sale, it shall set
573 forth the amount of monthly rent and shall state, in plain and bold language, that the
574 debtor may be evicted for failure to pay said rent. Should an option to purchase be
575 included in this lease, it shall state, in plain and bold language, the conditions that
576 must be fulfilled in order to exercise it; and

577 (iv) The buyer shall furnish to the seller at the time of closing a notice to the seller
578 allowing the seller ten days to cancel the purchase. This right to cancel shall not limit
579 or otherwise affect the seller's right to cancel pursuant to Code Section 23-2-2,
580 23-2-60, or any other applicable provision of law. The notice shall serve as the cover
581 sheet to the closing documents. It shall be on a separate sheet of paper with no other
582 written or pictorial material, in at least ten-point boldface type, double spaced, and
583 shall read as follows:

584 'Notice to the Seller

585 Please read this form completely and carefully. It contains valuable cancellation
586 rights.

587 The seller or sellers may cancel this transaction at any time prior to 5:00 P.M. of the
588 tenth day following receipt of this notice.

589 This cancellation right cannot be waived in any manner by the seller or sellers.

590 Any money paid to the seller or sellers must be returned by the seller within 30 days
591 of cancellation.

592 To cancel, sign this form, and return it to the buyer by 5:00 P.M. of the tenth day
593 following the transaction. It is best to mail it by certified mail or statutory overnight
594 delivery, return receipt requested, and to keep a photocopy of the signed form and
595 your post office receipt.

596 _____
597 Buyer's Name

598 _____
599 Address to which cancellation

600 _____
601 is to be returned

602 I (we) hereby cancel this transaction.

603 _____

604 Seller's Signature

605 _____

606 Seller's Signature

607 _____

608 Date

609 _____

610 Printed Name(s) of Seller(s)

611 _____

612 Street Address

613 _____

614 City, State, ZIP Code'

615 (D) The provisions of subparagraph (C) of this paragraph shall only apply where all
616 three of the following conditions are present:

617 (i) A loan on the property used as a dwelling place is in default;

618 (ii) The debtor transfers the title to the property by quitclaim deed, limited warranty
619 deed, or general warranty deed; and

620 (iii) The debtor remains in possession of the property under a lease or as a tenant at
621 will;

622 (21) Advertising a telephone number the prefix of which is 976 and which when called
623 automatically imposes a per-call charge or cost to the consumer, other than a regular
624 charge imposed for long-distance telephone service, unless the advertisement contains
625 the name, address, and telephone number of the person responsible for the advertisement
626 and unless the person's telephone number and the per-call charge is printed in type of the
627 same size as that of the number being advertised;

628 (22) Representing, in connection with a vacation, holiday, or an item described by terms
629 of similar meaning, or implying that:

630 (A) A person is a winner, has been selected or approved, or is in any other manner
631 involved in a select or special group for receipt of an opportunity or prize, or that a
632 person is entering a contest, sweepstakes, drawing, or other competitive enterprise from
633 which a winner or select group will receive an opportunity or prize, when in fact the
634 enterprise is designed to make contact with prospective customers, or in which all or
635 a substantial number of those entering such competitive enterprise receive the same
636 prize or opportunity; or

637 (B) In connection with the types of representations referred to in subparagraph (A) of
638 this paragraph, representing that a vacation, holiday, or an item described by other

639 terms of similar meaning, is being offered, given, awarded, or otherwise distributed
640 unless:

- 641 (i) The item represented includes all transportation, meals, and lodging;
- 642 (ii) The representation specifically describes any transportation, meals, or lodging
643 which is not included; or
- 644 (iii) The representation discloses that a deposit is required to secure a reservation, if
645 that is the case.

646 The provisions of this paragraph shall not apply where the party making the
647 representations is in compliance with paragraph (16) of this subsection;

648 (23) Except in relation to an activity which is in compliance with paragraph (16) or (22)
649 of this subsection, stating, in writing or by telephone, that a person has won, is the winner
650 of, or will win or receive anything of value, unless the person will receive the prize
651 without obligation;

652 (24)(A) Conducting a going-out-of-business sale for more than 90 days.

653 (B) After the 90 day time limit in subparagraph (A) of this paragraph has expired,
654 continuing to do business in any manner contrary to any representations which were
655 made regarding the nature of the going-out-of-business sale.

656 (C) The prohibitions of this paragraph shall not extend to any of the following:

- 657 (i) Sales for the estate of a decedent by the personal representative or the personal
658 representative's agent, according to law or by the provisions of the will;
- 659 (ii) Sales of property conveyed by security deed, deed of trust, mortgage, or judgment
660 or ordered to be sold according to the deed, mortgage, judgment, or order;
- 661 (iii) Sales of all agricultural produce and livestock arising from the labor of the seller
662 or other labor under the seller's control on or belonging to the seller's real or personal
663 estate and not purchased or sold for speculation;
- 664 (iv) All sales under legal process;
- 665 (v) Sales by a pawnbroker or loan company which is selling or offering for sale
666 unredeemed pledges of chattels as provided by law; or
- 667 (vi) Sales of automobiles by an auctioneer licensed under the laws of the State of
668 Georgia;

669 (25) The issuance of a check or draft by a lender in connection with a real estate
670 transaction in violation of Code Section 44-14-13;

671 (26) With respect to any individual or facility providing personal care services or assisted
672 living care:

- 673 (A) Any person or entity not duly licensed or registered as a personal care home or
674 assisted living community formally or informally offering, advertising to, or soliciting
675 the public for residents or referrals; or

676 (B) Any personal care home, as defined in subsection (a) of Code Section 31-7-12, or
 677 any assisted living community, as defined in Code Section 31-7-12.2, offering,
 678 advertising, or soliciting the public to provide services:

679 (i) Which are outside the scope of personal care services or assisted living care,
 680 respectively; and

681 (ii) For which it has not been specifically authorized.

682 Nothing in this subparagraph prohibits advertising by a personal care home or assisted
 683 living community for services authorized by the Department of Community Health
 684 under a waiver or variance pursuant to subsection (b) of Code Section 31-2-7.

685 For purposes of this paragraph, 'personal care' means protective care and watchful
 686 oversight of a resident who needs a watchful environment but who does not have an
 687 illness, injury, or disability which requires chronic or convalescent care including medical
 688 and nursing services, and 'assisted living care' includes services provided for in Code
 689 Section 31-7-12.2. The provisions of this paragraph shall be enforced following
 690 consultation with the Department of Community Health which shall retain primary
 691 responsibility for issues relating to licensure of any individual or facility providing
 692 personal care services;

693 (27) Mailing any notice, notification, or similar statement to any consumer regarding
 694 winning or receiving any prize in a promotion, and the envelope or other enclosure for
 695 the notice fails to conspicuously identify on its face that the contents of the envelope or
 696 other enclosure is a commercial solicitation and, if there is an element of chance in
 697 winning a prize, the odds of winning as 'odds';

698 (28) Any violation of the rules and regulations promulgated by the Department of Driver
 699 Services pursuant to subsection (e) of Code Section 40-5-83 which relates to the
 700 consumer transactions and business practices of DUI Alcohol or Drug Use Risk
 701 Reduction Programs, except that the Department of Driver Services shall retain primary
 702 jurisdiction over such complaints;

703 (29) With respect to any consumer reporting agency:

704 (A) Any person who knowingly and willfully obtains information relative to a
 705 consumer from a consumer reporting agency under false pretenses shall be guilty of a
 706 misdemeanor;

707 (B) Any officer or employee of a consumer reporting agency who knowingly and
 708 willfully provides information concerning an individual from the agency's files to a
 709 person not authorized to receive that information shall be guilty of a misdemeanor; and

710 (C) Each consumer reporting agency which compiles and maintains files on consumers
 711 on a nation-wide basis shall furnish to any consumer who has provided appropriate

712 verification of his or her identity two complete consumer reports per calendar year,
713 upon request and without charge;

714 (29.1) With respect to any credit card issuer:

715 (A) A credit card issuer who mails an unsolicited offer or solicitation to apply for a
716 credit card and who receives by mail a completed application in response to the
717 solicitation which lists an address that is not substantially the same as the address on
718 the solicitation may not issue a credit card based on that application until steps have
719 been taken to verify the applicant's valid address to the same extent required by
720 regulations prescribed pursuant to subsection (l) of 31 U.S.C. Section 5318. Any
721 person who violates this paragraph commits an unlawful practice within the meaning
722 of this Code section; and

723 (B) Notwithstanding subparagraph (A) of this paragraph, a credit card issuer, upon
724 receiving an application, may issue a credit card to a consumer or commercial customer
725 with whom it already has a business relationship provided the address to which the card
726 is mailed is a valid address based upon information in the records of the credit card
727 issuer or its affiliates;

728 (30) With respect to any individual or facility providing home health services:

729 (A) For any person or entity not duly licensed by the Department of Community Health
730 as a home health agency to regularly hold itself out as a home health agency; or

731 (B) For any person or entity not duly licensed by the Department of Community Health
732 as a home health agency to utilize the words 'home health' or 'home health services' in
733 any manner including but not limited to advertisements, brochures, or letters. Unless
734 otherwise prohibited by law, nothing in this subparagraph shall be construed to prohibit
735 persons or entities from using the words 'home health' or 'home health services' in
736 conjunction with the words 'equipment,' 'durable medical equipment,' 'pharmacy,'
737 'pharmaceutical services,' 'prescription medications,' 'infusion therapy,' or 'supplies' in
738 any manner including but not limited to advertisements, brochures, or letters. An
739 unlicensed person or entity may advertise under the category 'home health services' in
740 any advertising publication which divides its advertisements into categories, provided
741 that:

742 (i) The advertisement is not placed in the category with the intent to mislead or
743 deceive;

744 (ii) The use of the advertisement in the category is not part of an unfair or deceptive
745 practice; and

746 (iii) The advertisement is not otherwise unfair, deceptive, or misleading.

747 For purposes of this paragraph, the term 'home health agency' shall have the same
748 definition as contained in Code Section 31-7-150, as now or hereafter amended. The

749 provisions of this paragraph shall be enforced by the ~~administrator in consultation with~~
 750 ~~the Department of Community Health; provided, however, that the administrator shall not~~
 751 ~~have any responsibility for matters or functions related to the licensure of home health~~
 752 ~~agencies~~ Attorney General;

753 (30.1) Failing to comply with the following provisions in connection with a contract for
 754 health care services between a physician and an insurer which offers a health benefit plan
 755 under which such physician provides health care services to enrollees:

756 (A) As used in this paragraph, the term:

757 (i) 'Enrollee' means an individual who has elected to contract for or participate in a
 758 health benefit plan for that individual or for that individual and that individual's
 759 eligible dependents and includes that enrollee's eligible dependents.

760 (ii) 'Health benefit plan' means any hospital or medical insurance policy or certificate,
 761 health care plan contract or certificate, qualified higher deductible health plan, health
 762 maintenance organization subscriber contract, any health benefit plan established
 763 pursuant to Article 1 of Chapter 18 of Title 45, or any managed care plan.

764 (iii) 'Insurer' means a corporation or other entity which is licensed or otherwise
 765 authorized to offer a health benefit plan in this state.

766 (iv) 'Patient' means a person who seeks or receives health care services under a health
 767 benefit plan.

768 (v) 'Physician' means a person licensed to practice medicine under Article 2 of
 769 Chapter 34 of Title 43.

770 (B) Every contract between a physician and an insurer which offers a health benefit
 771 plan under which that physician provides health care services shall be in writing and
 772 shall state the obligations of the parties with respect to charges and fees for services
 773 covered under that plan when provided by that physician to enrollees under that plan.
 774 Neither the insurer which provides that plan nor the enrollee under that plan shall be
 775 liable for any amount which exceeds the obligations so established for such covered
 776 services.

777 (C) Neither the physician nor a representative thereof shall intentionally collect or
 778 attempt to collect from an enrollee any obligations with respect to charges and fees for
 779 which the enrollee is not liable and neither such physician nor a representative thereof
 780 may maintain any action at law against such enrollee to collect any such obligations.

781 (D) The provisions of this paragraph shall not apply to the amount of any deductible
 782 or copayment which is not covered by the health benefit plan.

783 (E) This paragraph shall apply to only such health benefit plan contracts issued,
 784 delivered, issued for delivery, or renewed in this state on or after July 2, 2001;

785 (31) With respect to telemarketing sales:

786 (A) For any seller or telemarketer to use any part of an electronic record to attempt to
 787 induce payment or attempt collection of any payment that the seller or telemarketer
 788 claims is due and owing to it pursuant to a telephone conversation or series of telephone
 789 conversations with a residential subscriber. Nothing in this paragraph shall be
 790 construed to:

791 (i) Prohibit the seller or telemarketer from introducing, as evidence in any court
 792 proceeding to attempt collection of any payment that the seller or telemarketer claims
 793 is due and owing to it pursuant to a telephone conversation or series of telephone
 794 conversations with a residential subscriber, an electronic record of the entirety of such
 795 telephone conversation or series of telephone conversations; or

796 (ii) Expand the permissible use of an electronic record made pursuant to 16 C.F.R.
 797 Part 310.3(a)(3), the Federal Telemarketing Sales Rule.

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

799 (i) 'Covered communication' ~~means any unsolicited telephone call or telephone call~~
 800 ~~arising from an unsolicited telephone call~~ shall have the same meaning as the term
 801 'telemarketing' in subsection (a) of Code Section 10-1-393.5.

802 (ii) 'Electronic record' means any recording by electronic device of, in part or in its
 803 entirety, a telephone conversation or series of telephone conversations with a
 804 residential subscriber that is initiated by a seller or telemarketer in order to induce the
 805 purchase of goods, services, or property. This term shall include, without limitation,
 806 any subsequent telephone conversations in which the seller or telemarketer attempts
 807 to verify any alleged agreement in a previous conversation or previous conversations.

808 (iii) 'Residential subscriber' means any person who has subscribed to residential
 809 phone service from a local exchange company or the other persons living or residing
 810 with such person.

811 (iv) 'Seller or telemarketer' means any person or entity making a covered
 812 communication to a residential subscriber for the purpose of inducing the purchase
 813 of goods, services, or property by such subscriber. This term shall include, without
 814 limitation, any agent of the seller or telemarketer, whether for purposes of conducting
 815 calls to induce the purchase, for purposes of verifying any calls to induce the
 816 purchase, or for purposes of attempting to collect on any payment under the purchase;

817 (32) Selling, marketing, promoting, advertising, providing, or distributing any card or
 818 other purchasing mechanism or device that is not insurance or evidence of insurance
 819 coverage and that purports to offer or provide discounts or access to discounts on
 820 purchases of health care goods or services from providers of the same or making any
 821 representation or statement that purports to offer or provide discounts or access to

822 discounts on purchases of health care goods or services from providers of the same,
823 when:

824 (A) Such card or other purchasing mechanism or device does not contain a notice
825 expressly and prominently providing in boldface type that such discounts are not
826 insurance; or

827 (B) Such discounts or access to such discounts are not specifically authorized under a
828 separate contract with a provider of health care goods or services to which such
829 discounts are purported to be applicable;

830 (33)(A) For any person, firm, partnership, association, or corporation to issue a gift
831 certificate, store gift card, or general use gift card without:

832 (i) Including the terms of the gift certificate, store gift card, or general use gift card
833 in the packaging which accompanies the certificate or card at the time of purchase,
834 as well as making such terms available upon request; and

835 (ii) Conspicuously printing the expiration date, if applicable, on the certificate or card
836 and conspicuously printing the amount of any dormancy or nonuse fees on:

837 (I) The certificate or card; or

838 (II) A sticker affixed to the certificate or card.

839 A gift certificate, store gift card, or general use gift card shall be valid in accordance
840 with its terms in exchange for merchandise or services.

841 (B) As used in this paragraph, the term:

842 (i) 'General use gift card' means a plastic card or other electronic payment device
843 which is usable at multiple, unaffiliated merchants or service providers; is issued in
844 an amount which amount may or may not be, at the option of the issuer, increased in
845 value or reloaded if requested by the holder; is purchased or loaded on a prepaid basis
846 by a consumer; and is honored upon presentation by merchants for goods or services.

847 (ii) 'Gift certificate' means a written promise that is usable at a single merchant or an
848 affiliated group of merchants that share the same name, mark, or logo; is issued in a
849 specified amount and cannot be increased in value on the face thereof; is purchased
850 on a prepaid basis by a consumer in exchange for payment; and is honored upon
851 presentation for goods or services by such single merchant or affiliated group of
852 merchants that share the same name, mark, or logo.

853 (iii) 'Store gift card' means a plastic card or other electronic payment device which
854 is usable at a single merchant or an affiliated group of merchants that share the same
855 name, mark, or logo; is issued in a specified amount and may or may not be increased
856 in value or reloaded; is purchased on a prepaid basis by a consumer in exchange for
857 payment; and is honored upon presentation for goods or services by such single

858 merchant or affiliated group of merchants that share the same name, mark, or logo;
859 and

860 (34) For any person, firm, partnership, business, association, or corporation to willfully
861 and knowingly accept or use an individual taxpayer identification number issued by the
862 Internal Revenue Service for fraudulent purposes and in violation of federal law.

863 (c) A seller may not by contract, agreement, or otherwise limit the operation of this part
864 notwithstanding any other provision of law.

865 (d)(1) Notwithstanding any other provision of the law to the contrary, the names,
866 addresses, telephone numbers, social security numbers, or any other information which
867 could reasonably serve to identify any person making a complaint about unfair or
868 deceptive acts or practices shall be confidential. However, the complaining party may
869 consent to public release of his or her identity by giving such consent expressly,
870 affirmatively, and directly to the ~~administrator or administrator's~~ Attorney General or the
871 Attorney General's employees.

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

873 (A) To prevent the ~~administrator~~ Attorney General from disclosing the complainant's
874 identity if the ~~administrator~~ Attorney General believes that disclosure will aid in
875 resolution of the complaint;

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

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

878 10-1-393.1.

879 (a) Unfair or deceptive acts or practices by an office supplier in the conduct of office
880 supply transactions in trade or commerce are declared unlawful.

881 (b) By way of illustration only and without limiting the scope of subsection (a) of this
882 Code section, the following practices by office suppliers in the conduct of office supply
883 transactions are declared unlawful:

884 (1) Passing off goods or services as those of another;

885 (2) Falsely representing to any person that the office supplier is the usual supplier of
886 goods, services, or property purchased by that person;

887 (3) Falsely representing to any person that the goods, services, or property sold, leased,
888 rented, or shipped by the office supplier are the same brand as that person usually uses;

889 (4) Misrepresenting in any manner, including the use of a confusingly similar name, the
890 manufacturer, supplier, or seller of the goods, services, or property;

891 (5) Representing that the prices an office supplier charges are less than a person usually
892 pays for goods, services, or property, unless the goods, services, or property compared
893 are identical and the representation is true;

894 (6) Shipping or supplying an amount or quantity of goods, services, or property to a
895 person which is substantially greater than the amount or quantity which the person
896 actually orders;

897 (7) Misrepresenting in any manner, including but not limited to failure to disclose
898 material facts regarding the value of, any gift, prize, or award which will be given by an
899 office supplier in conjunction with any office supply transaction;

900 (8) Falsely representing that there is an imminent price increase;

901 (9) Substituting any brand or quality of goods, services, or property for that actually
902 ordered without prior approval of such substitution from the person ordering; or

903 (10)(A) Solicitation for inclusion in the listing of a telephone classified advertising
904 directory unless such solicitation form has prominently printed therein at least one inch
905 apart from any other text on the form and in type size and boldness equal to or greater
906 than any other type size and boldness on the form the words:

907 'THIS IS NOT A BILL. THIS IS A SOLICITATION.'

908 (B) For the purposes of this paragraph, the term 'telephone classified advertising
909 directory' refers to any telephone classified advertising directory which is distributed
910 to some or all telephone subscribers in any area of the state and includes such
911 directories distributed by telephone service companies as well as such directories
912 distributed by other parties.

913 (c) An office supplier may not by contract, agreement, or otherwise limit the operation of
914 this part, notwithstanding any other provision of law.

915 10-1-393.2.

916 (a) Health spas shall comply with the provisions of this Code section.

917 (b) A written contract shall be employed which shall constitute the entire agreement
918 between the parties, a fully completed copy of which shall be furnished to the consumer
919 at the time of its execution and which shall show the date of the transaction and the name
920 and address of the seller; provided, however, that no contract shall be valid which has a
921 term in excess of 36 months. Contracts may be renewable at the end of each 36 month
922 period of time at the option of both parties to the contract.

923 (c) The contract or an attachment thereto shall state clearly any rules and regulations of the
924 seller which are applicable to the consumer's use of the facilities or receipt of its services.

925 (d) The contract shall state clearly on its face the cancellation and refund policies of the
926 seller.

927 (e) The health spa member shall have the right to cancel the contract within seven business
928 days after the date of the signing of the contract by notifying the seller in writing of such
929 intent and by either mailing the notice before 12:00 Midnight of the seventh business day

930 after the date of the signing of the contract or by hand delivering the notice of cancellation
 931 to the health spa before 12:00 Midnight of the seventh business day following the date of
 932 the signing of the contract. The notice must be accompanied by the contract forms,
 933 membership cards, and any and all other documents and evidence of membership
 934 previously delivered to the buyer. If the health spa member so cancels, any payments made
 935 under the contract will be refunded and any evidence of indebtedness executed by the
 936 health spa member will be canceled by the seller, provided that the member shall be liable
 937 for the fair market value of services actually received, which in no event shall exceed
 938 \$100.00. The preparation of any documents shall not be construed to be services; provided,
 939 however, that any documents prepared which are merely ancillary to services which are
 940 actually rendered shall not prevent the health spa from charging for such services actually
 941 rendered up to the limits specified in this subsection. Each health spa contract shall contain
 942 the following paragraphs separated from all other paragraphs:

943 'You (the buyer) have seven business days to cancel this contract. To cancel, mail or
 944 hand deliver a letter to the following address:

945 _____

946 Name of health spa

947 _____

948 Address

949 _____

950 City, State, ZIP Code

951 Do not sign this contract if there are any blank spaces above. In the event optional
 952 services are offered, be sure that any options you have not selected are lined through or
 953 that it is otherwise indicated that you have not selected these options. It is recommended
 954 that you send your cancellation notice by registered or certified mail or statutory
 955 overnight delivery, return receipt requested, in order to prove that you did cancel. If you
 956 do hand deliver your cancellation, be sure to get a signed statement from an official of
 957 the spa acknowledging your cancellation.

958 To be effective, your cancellation must be postmarked by midnight, or hand delivered by
 959 midnight on _____ (date) _____, and must include all contract forms, membership
 960 cards, and any and all other documents and evidence of membership previously delivered
 961 to you.'

962 The health spa shall fill in the blank spaces in the above paragraph before the consumer
 963 signs the contract. In the event a consumer fails to provide with the cancellation notice all
 964 contract forms, membership cards, and any and all other documents and evidence of
 965 membership previously delivered, the health spa shall either cancel the contract or provide
 966 written notice by certified mail or statutory overnight delivery to the consumer that such

967 documents must be provided within 30 days in order for the cancellation to be effective.
968 In the event that the consumer provides the documents within 30 days, the contract shall
969 be canceled as of the date on which the cancellation notice was delivered; provided,
970 however, that should the consumer continue to use the facilities or services during the 30
971 day period, the cancellation shall be effective on the first business day following the last
972 day on which the consumer uses the facilities or services.

973 (f) In the event a health spa no longer offers a substantial service which was offered at the
974 time of the initiation of the contract, or in the event a health spa which previously limited
975 its membership to members of one sex should become coeducational or one which was
976 previously coeducational should become limited to members of one sex, the member shall
977 have 30 days from the time the member knew or should have known of the change to
978 cancel the remainder of the membership and receive a refund. The refund shall be
979 calculated by dividing the total cost of the membership by the total number of months
980 under the membership and refunding the monthly cost for any months or fractions of
981 months remaining under the membership. The contract shall contain a clause in at least
982 ten-point boldface type which reads as follows:

983 'You (the buyer) may cancel this agreement within 30 days from the time you knew or
984 should have known of any substantial change in the services or programs available at the
985 time you joined. Substantial changes include, but are not limited to, changing from being
986 coed to being exclusively for one sex and vice versa. To cancel, send written notice of
987 your cancellation to the address provided in this contract for sending a notice of
988 cancellation. The best way to cancel is by keeping a photocopy and sending the
989 cancellation by registered or certified mail or statutory overnight delivery, return receipt
990 requested.'

991 The provisions of this subsection shall not apply in any instance where a court has ordered
992 that a change be made in the sexual character of the health spa. The ~~administrator~~ Attorney
993 General is authorized upon petition to issue a declaratory ruling under Code Section
994 50-13-11 as to whether any planned change in a health spa is a substantial change or
995 whether alternate locations are substantially similar under this Code section. Such
996 declaratory rulings shall be subject to review as under Chapter 13 of Title 50, the 'Georgia
997 Administrative Procedure Act.'

998 (g) Every contract for health spa services shall contain a clause providing that if the
999 member becomes totally and permanently disabled during the membership term, he may
1000 cancel his or her contract and that the health spa is entitled to a reasonable predetermined
1001 fee in such event in addition to an amount equal to the value of services made available for
1002 use. This amount shall be computed by dividing the total cost of the membership by the
1003 total number of months under the membership and multiplying the result by the number of

1004 months expired under the membership term. The health spa shall have the right to require
1005 and verify reasonable evidence of total and permanent disability. For purposes of this
1006 subsection, 'total and permanent disability' means a condition which has existed or will
1007 exist for more than 45 days and which will prevent the member from using the facility to
1008 the same extent as the member used it before commencement of the condition.

1009 (h) The health spa contract shall state that if a consumer has a history of heart disease, he
1010 should consult a physician before joining a spa.

1011 (i) Every health spa contract shall comply with either paragraph (1) or paragraph (2) of this
1012 subsection:

1013 (1)(A) The written contract used shall contain the following clause: 'Under this
1014 contract, no further payments shall be due to anyone, including any purchaser of any
1015 note associated with or contained in this contract, in the event the health spa at which
1016 the contract is entered into ceases operation and fails to offer an alternate location,
1017 substantially similar, within ten miles.'

1018 (B) All payments due under the contract must be in equal monthly installments spread
1019 over the entire term of the contract.

1020 (C) There can be no payments of any type, including, but not limited to, down
1021 payments, enrollment fees, membership fees, or any other direct payment to the health
1022 spa, other than the equal monthly installment payments.

1023 (D) There can be no complimentary, compensatory, or other extensions of the term
1024 incident to the term of the contract, including but not limited to a promise of lifetime
1025 renewal for a minimal annual fee, provided that an agreement of both parties to extend
1026 the term of the contract to compensate for time during which the member could not
1027 fully utilize the spa due to a temporary physical or medical condition arising after the
1028 member joined shall not be considered to bring the spa into noncompliance under this
1029 paragraph; or

1030 (2)(A) The written contract used shall contain the following clause: 'Under this
1031 contract, no further payments shall be due to anyone, including any purchaser of any
1032 note associated with or contained in this contract, in the event the health spa at which
1033 the contract is entered into ceases operation and fails to offer an alternate location,
1034 substantially similar, within ten miles.'

1035 (B) The written contract shall contain the following statement in boldface type which
1036 is larger and bolder than any other type which is in the contract and in at least 14 point
1037 boldface, which statement must be separately signed by the consumer:

1038 **'NOTICE**

1039 State law requires that we inform you that should you (the buyer) choose to pay for
1040 any part of this agreement in advance, be aware that you are paying for future services

1041 and may be risking loss of your money in the event this health spa ceases to conduct
1042 business. Health spas do not post a bond, and there may be no other protections
1043 provided to you should you choose to pay in advance.'

1044 (j) An alternate location for a health spa shall not be considered substantially similar if:
1045 (1) The original facility was limited to use by members of one sex and the alternate
1046 facility is used by members of both sexes;
1047 (2) The original facility was for use by members of both sexes and the alternate facility's
1048 use is limited to members of one sex; or
1049 (3) The size, facilities, equipment, or services available to the member at the alternate
1050 location are not substantially equal to or do not exceed the size, facilities, equipment, or
1051 services available to the member at the health spa location at which the contract was
1052 entered into.

1053 (k) Every contract for health spa services shall contain a clause providing that if the
1054 member dies during the membership term or any renewal term, his or her estate may cancel
1055 the contract and that the health spa is entitled to a reasonable predetermined fee in such
1056 event in addition to an amount computed by dividing the total cost of the membership by
1057 the total number of months under the membership and multiplying the result by the number
1058 of months expired under the membership term. The contract may require the member's
1059 estate seeking relief under this subsection to provide reasonable proof of death.

1060 (l)(1) A health spa shall not enter or offer to enter into a health spa agreement with a
1061 consumer unless the health spa is fully operational and available for use.

1062 (2) For purposes of this subsection, 'fully operational and available for use' means that
1063 all of the facilities, equipment, or services which are promised at the time of entering into
1064 the membership contract are operational and available for use at that time. Nothing
1065 contained in this subsection shall be construed to prohibit a health spa from selling a
1066 membership for existing services and facilities at a location under construction which can
1067 be converted at a later date to a membership for additional services and facilities,
1068 provided that:

1069 (A) The additional services and facilities are fully operational and available for use at
1070 the time of the conversion;

1071 (B) Additional consideration, other than just a nominal consideration, is required from
1072 the consumer under the terms of the conversion; and

1073 (C) The member has until seven days following the date the additional consideration
1074 or a part of the additional consideration becomes due and owing to cancel the remainder
1075 of the contract and receive a refund computed by dividing the total cost of the
1076 membership by the total number of months under the membership and multiplying the
1077 result by the number of months remaining under the membership term.

1078 (3) The provisions of this subsection shall not apply if all of the following conditions are
1079 met:

1080 (A) The health spa has submitted forms prescribed by the ~~administrator~~ Attorney
1081 General requiring, in addition to whatever other information the ~~administrator~~ Attorney
1082 General may require, as much detail as to the size, facilities, equipment, or services to
1083 be provided as the ~~administrator~~ Attorney General may require;

1084 (B) The health spa has obtained the approval in writing of the ~~administrator~~ Attorney
1085 General to sell memberships to a health spa before it is fully operational and available
1086 for use;

1087 (C) The health spa has agreed in writing with the ~~administrator~~ Attorney General, on
1088 forms prescribed by the ~~administrator~~ Attorney General, to deposit all funds obtained
1089 by selling memberships before a health spa is fully operational and available for use in
1090 a single account in a bank or trust company domiciled in the State of Georgia. Such
1091 deposits are to be held in safekeeping for release only upon authorization of the
1092 ~~administrator~~ Attorney General. The bank or trust company must be approved by the
1093 ~~administrator~~ Attorney General. The ~~administrator~~ Attorney General may consult with
1094 the commissioner of banking and finance or with any of the employees of the
1095 commissioner of banking and finance regarding whether the bank or trust company
1096 should be approved and may disapprove the bank or trust company if he or she has
1097 reason to believe any deposits into the account might not be secure;

1098 (D) Each deposit to the single account established under this paragraph shall be
1099 identified by the name and address of the individual who purchased the membership.
1100 The bank or trust company and the health spa shall maintain a list of the deposits, their
1101 amount, and the name and address of the membership purchaser, which list shall be
1102 available to the ~~administrator~~ Attorney General or for inspection or copying by the
1103 ~~administrator's employees upon request~~ Attorney General;

1104 (E) The condition of the account established under this paragraph shall be that no funds
1105 shall be released from the account to any person unless the ~~administrator~~ Attorney
1106 General has certified in writing to the bank or trust company that either the health spa
1107 is fully operational and available for use or that the health spa has not complied and
1108 does not appear likely to comply with its obligation to make the health spa fully
1109 operational and available for use in accordance with the documents submitted to the
1110 ~~administrator~~ Attorney General or in accordance with representations made to
1111 membership purchasers. No action may be maintained in any court against the
1112 ~~administrator~~ Attorney General or any of his or her employees for any determination
1113 or as a consequence of any determination made by the ~~administrator under this~~
1114 ~~subparagraph unless the administrator's determination was a willful and wanton abuse~~

1115 ~~of discretion given the facts and circumstances actually provided to the administrator~~
 1116 ~~in making this determination~~ Attorney General under this subparagraph. Nothing
 1117 contained or implied in this subparagraph shall operate or be construed or applied to
 1118 deprive the Attorney General or any employee of any immunity, indemnity, benefits of
 1119 law, rights, or any defense otherwise available in the Official Code of Georgia
 1120 Annotated;

1121 (F) If the ~~administrator~~ Attorney General certifies to the bank or trust company that the
 1122 health spa is fully operational and available for use, then the funds in the account shall
 1123 be released to the health spa, along with any accrued interest. If the ~~administrator~~
 1124 Attorney General certifies to the bank or trust company that the health spa has not
 1125 complied and does not appear likely to comply with its obligation to make the health
 1126 spa fully operational and available for use, then the funds in the account shall be
 1127 released to the ~~administrator~~ Attorney General on behalf of the individuals who
 1128 purchased memberships prior to the health spa's being fully operational and available
 1129 for use. Any accrued interest on the account shall be paid on a pro rata basis to the
 1130 membership purchasers;

1131 (G) Any costs imposed by the bank or trust company for administering the account
 1132 shall be borne by the health spa; and

1133 (H) The member shall have until seven business days following the date upon which
 1134 the health spa becomes fully operational and available for use to cancel the contract and
 1135 receive a full refund of any payments and the cancellation of any evidence of
 1136 indebtedness, provided that the member shall be liable for the fair market value of any
 1137 services actually received, which in no event shall exceed \$50.00. The preparation of
 1138 any documents shall not be construed to be services; provided, however, that all
 1139 documents prepared which are merely ancillary to services which are actually rendered
 1140 shall not prevent the health spa from charging for such services actually rendered up to
 1141 the limits specified in this subparagraph.

1142 (m) All moneys due the consumer under contracts canceled for the reasons contained in
 1143 this Code section shall be refunded within 30 days of receipt of such notice of cancellation.
 1144 The notice must be accompanied by the contract forms, membership cards, and any and all
 1145 other documents and evidence of membership previously delivered to the buyer, except in
 1146 the case of a deceased member. In the event a consumer fails to provide with the
 1147 cancellation notice all contract forms, membership cards, and any and all other documents
 1148 and evidence of membership previously delivered, the health spa shall either cancel the
 1149 contract or provide written notice by certified mail or statutory overnight delivery to the
 1150 consumer that such documents must be provided within 30 days in order for the
 1151 cancellation to be effective. In the event that the consumer provides the documents within

1152 30 days, the contract shall be canceled as of the date on which the cancellation notice was
1153 delivered; provided, however, that should the consumer continue to use the facilities or
1154 services during the 30 day period, the cancellation shall be effective on the first business
1155 day following the last day on which the consumer uses the facility or services.

1156 (n) Any contract which does not comply with this Code section shall be void and
1157 unenforceable; no purchaser of any note associated with or contained in any health spa
1158 contract shall make any attempt to collect on the note or to report the buyer as delinquent
1159 to any consumer reporting or consumer credit reporting agency if there has been any
1160 violation by the health spa of subsections (b) through (m) or of subsection (o) of this Code
1161 section. Any attempt by any purchaser or by any agent of any purchaser to collect on the
1162 note or to report the buyer as delinquent as described in this subsection shall be considered
1163 an unfair and deceptive act or practice as provided in Code Section 10-1-393.

1164 (o) After November 15, 1989, no health spa contract shall be valid or enforceable unless
1165 the health spa operator has on file a statement signed by the ~~administrator or his designee~~
1166 Attorney General certifying that a copy of the contract is on file with the ~~administrator~~
1167 Attorney General and is in compliance with this part. Health spas may begin submitting
1168 a copy of their contract for approval by the ~~administrator~~ Attorney General on July 1, 1989,
1169 and shall submit all contract changes thereafter for approval prior to entering or offering
1170 to enter into that contract with a consumer. In addition to any action which may be taken
1171 by the ~~administrator~~ Attorney General under this part, and in addition to any recovery of
1172 a consumer in the private action provided for under this part, any consumer who has
1173 entered into a contract which has not been approved by the ~~administrator~~ Attorney General
1174 prior to the date of the contract shall be entitled to recover as an additional penalty an
1175 amount equal to any amount paid plus any amount claimed owing on the contract.

1176 (p) In addition to any other penalties provided for in this part, any person who operates or
1177 aids or assists in the operation of a health spa in violation of any of the provisions of
1178 subsection (i) or (o) of this Code section shall be guilty of a misdemeanor. Each day of
1179 operation of a health spa in violation of subsection (i) or (o) shall be considered a separate
1180 and distinct violation. In addition to any other penalties provided in this part, any person
1181 who violates subsection (l) of this Code section shall be guilty of a felony. Each sale of a
1182 membership in violation of subsection (l) of this Code section shall be considered a
1183 separate and distinct violation. Each failure to place properly all of the funds generated
1184 from a particular membership agreement into a properly approved and established trust
1185 account shall be considered a separate and distinct violation.

1186 10-1-393.3.

1187 (a) As used in this Code section, the term 'merchant' means any person who offers goods,
1188 wares, merchandise, or services for sale to the public and shall include an employee of a
1189 merchant.

1190 (b) A merchant shall be prohibited from requiring a purchaser to provide the purchaser's
1191 personal or business telephone number as a condition of purchase when payment for the
1192 transaction is made by credit card.

1193 (c) A merchant shall be prohibited from using a purchaser's credit card to imprint the
1194 information contained on the credit card on the face or back of a check or draft from the
1195 purchaser as a condition of acceptance of such check or draft as payment for a purchase.

1196 (d) A merchant shall be prohibited from recording in any manner the number of a
1197 purchaser's credit card as a condition of acceptance of a check or draft of the purchaser as
1198 payment for a purchase.

1199 (e) Any merchant who violates the provisions of this Code section shall be subject to the
1200 penalties provided in this part.

1201 (f) This Code section shall not prohibit a merchant from:

1202 (1) Recording a credit card number and expiration date as a condition to cashing or
1203 accepting a check where the merchant has agreed with the credit card issuer to cash or
1204 accept such checks as a service to the issuer's cardholders and the issuer has agreed with
1205 the merchant to guarantee payment of all cardholder checks cashed or accepted by the
1206 merchant;

1207 (2) Requesting a purchaser to display a credit or charge card as a means of identification
1208 or as an indication of credit worthiness or financial responsibility;

1209 (3) Recording on the check or elsewhere the type of credit or charge card displayed for
1210 the purposes of paragraph (2) of this subsection and the credit or charge card expiration
1211 date; or

1212 (4) Recording the address or telephone number of a credit cardholder if the information
1213 is necessary for the shipping, delivery, or installation of consumer goods or for special
1214 orders of consumer goods or services.

1215 (g) This Code section shall not require acceptance of a check or draft because a credit card
1216 is presented.

1217 10-1-393.4.

1218 (a) It shall be an unlawful, unfair, and deceptive trade practice for any person, firm, or
1219 corporation doing business in any area in which a state of emergency, as such term is
1220 defined in Code Section 38-3-3, has been declared, for so long as such state of emergency
1221 exists, to sell or offer for sale at retail any goods or services identified by the Governor in

1222 the declaration of the state of emergency necessary to preserve, protect, or sustain the life,
 1223 health, or safety of persons or their property at a price higher than the price at which such
 1224 goods were sold or offered for sale immediately prior to the declaration of a state of
 1225 emergency; provided, however, that such price may be increased only in an amount which
 1226 accurately reflects an increase in cost of the goods or services to the person selling the
 1227 goods or services or an increase in the cost of transporting the goods or services into the
 1228 area.

1229 (b) Notwithstanding the provisions of subsection (a) of this Code section, a retailer may
 1230 increase the price of goods or services during a state of emergency if the price charged for
 1231 those goods or services is no greater than the cost to the retailer of those goods or services,
 1232 plus the retailer's average markup percentage applied during the ten days immediately prior
 1233 to the declaration of a state of emergency.

1234 10-1-393.5.

1235 (a) For purposes of this Code section, the term 'telemarketing' shall have the same meaning
 1236 which it has under 16 Code of Federal Regulations Part 310, the Telemarketing Sales Rule
 1237 of the Federal Trade Commission, except that the term 'telemarketing' shall also include
 1238 those calls made in intrastate as well as interstate commerce.

1239 (b) Without otherwise limiting the definition of unfair and deceptive acts or practices
 1240 under this part, it shall be unlawful for any person who is engaged in telemarketing, any
 1241 person who is engaged in any activity involving or using a computer or computer network,
 1242 or any person who is engaged in home repair work or home improvement work to:

- 1243 (1) Employ any device, scheme, or artifice to defraud a person, organization, or entity;
- 1244 (2) Engage in any act, practice, or course of business that operates or would operate as
 1245 a fraud or deceit upon a person, organization, or entity; or
- 1246 (3) Commit any offense involving theft under Code Sections 16-8-2 through 16-8-9.

1247 (b.1)(1) As used in this subsection, the term:

1248 (A) 'Photograph' means a photograph of a subject individual that was taken in this state
 1249 by an arresting law enforcement agency.

1250 (B) 'Subject individual' means an individual who was arrested and had his or her
 1251 photograph taken and:

- 1252 (i) Access to his or her case or charges was restricted pursuant to Code Section
 1253 35-3-37;
- 1254 (ii) Prior to indictment, accusation, or other charging instrument, his or her case was
 1255 never referred for further prosecution to the proper prosecuting attorney by the
 1256 arresting law enforcement agency and the offense against such individual was closed
 1257 by the arresting law enforcement agency;

- 1258 (iii) Prior to indictment, accusation, or other charging instrument, the statute of
1259 limitations expired;
- 1260 (iv) Prior to indictment, accusation, or other charging instrument, his or her case was
1261 referred to the prosecuting attorney but was later dismissed;
- 1262 (v) Prior to indictment, accusation, or other charging instrument, the grand jury
1263 returned two no bills;
- 1264 (vi) After indictment or accusation, all charges were dismissed or nolle prossed;
- 1265 (vii) After indictment or accusation, the individual pleaded guilty to or was found
1266 guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or
1267 hallucinogenic drug and was sentenced in accordance with the provisions of Code
1268 Section 16-13-2, and the individual successfully completed the terms and conditions
1269 of his or her probation; or
- 1270 (viii) The individual was acquitted of all of the charges by a judge or jury.
- 1271 (2) Any person who is engaged in any activity involving or using a computer or
1272 computer network who publishes on such person's publicly available website a subject
1273 individual's arrest booking photograph for purposes of commerce shall be deemed to be
1274 transacting business in this state. Within 30 days of the sending of a written request by
1275 a subject individual, including his or her name, date of birth, date of arrest, and the name
1276 of the arresting law enforcement agency, such person shall, without fee or compensation,
1277 remove from such person's website the subject individual's arrest booking photograph.
1278 Such written request shall be transmitted via certified mail, return receipt requested, or
1279 statutory overnight delivery, to the registered agent, principal place of business, or
1280 primary residence of the person who published the website. Without otherwise limiting
1281 the definition of unfair and deceptive acts or practices under this part, a failure to comply
1282 with this paragraph shall be unlawful.
- 1283 (c) In addition to any civil penalties under this part, any person who intentionally violates
1284 subsection (b) of this Code section shall be subject to a criminal penalty under paragraph
1285 (5) of subsection (a) of Code Section 16-8-12. In addition thereto, if the violator is a
1286 corporation, each of its officers and directors may be subjected to a like penalty; if the
1287 violator is a sole proprietorship, the owner thereof may be subjected to a like penalty; and,
1288 if the violator is a partnership, each of the partners may be subjected to a like penalty,
1289 provided that no person shall be subjected to a like penalty if the person did not have prior
1290 actual knowledge of the acts violating subsection (b) of this Code section.
- 1291 (d) Any person who intentionally targets an elder or disabled person, as defined in Article
1292 31 of this chapter, in a violation of subsection (b) of this Code section shall be subject to
1293 an additional civil penalty, as provided in Code Section 10-1-851.

1294 (e) Persons employed full time or part time for the purpose of conducting potentially
1295 criminal investigations under this article shall be certified peace officers and shall have all
1296 the powers of a certified peace officer of this state when engaged in the enforcement of this
1297 article, including but not limited to the power to obtain, serve, and execute search warrants.
1298 Such Georgia certified peace officers shall be subject to the requirements of Chapter 8 of
1299 Title 35, the 'Georgia Peace Officer Standards and Training Act,' and are specifically
1300 required to complete the training required for peace officers by that chapter. Such certified
1301 peace officers shall be authorized, upon completion of the required training, with the
1302 written approval of the ~~administrator~~ Attorney General, and notwithstanding Code Sections
1303 16-11-126 and 16-11-129, to carry firearms of a standard police issue when engaged in
1304 detecting, investigating, or preventing crimes under this article.

1305 (f) The ~~administrator~~ Attorney General shall be authorized to promulgate procedural rules
1306 relating to his or her enforcement duties under this Code section.

1307 10-1-393.6.

1308 (a) For purposes of this Code section, the term 'telemarketing' shall have the same meaning
1309 which it has under Code Section 10-1-393.5.

1310 (b) Without otherwise limiting the definition of unfair or deceptive acts or practices under
1311 this part and without limiting any other Code section under this part, it shall be unlawful
1312 for any person to:

1313 (1) In connection with a telemarketing transaction, request a fee in advance to remove
1314 derogatory information from or improve a person's credit history or credit record;

1315 (2) Request or receive payment in advance from a person to recover, or otherwise aid in
1316 the return of, money or any other item lost by the consumer in a prior telemarketing
1317 transaction; provided, however, that this paragraph shall not apply to goods or services
1318 provided to a person by a licensed attorney; or

1319 (3) In connection with a telemarketing transaction, procure the services of any
1320 professional delivery, courier, or other pickup service to obtain immediate receipt or
1321 possession of a consumer's payment, unless the goods are delivered with the opportunity
1322 to inspect before any payment is collected.

1323 (c) In addition to any civil penalties under this part, any person who intentionally violates
1324 subsection (b) of this Code section shall be subject to a criminal penalty under paragraph
1325 (5) of subsection (a) of Code Section 16-8-12. In addition thereto, if the violator is a
1326 corporation, each of its officers and directors may be subjected to a like penalty; if the
1327 violator is a sole proprietorship, the owner thereof may be subjected to a like penalty; and,
1328 if the violator is a partnership, each of the partners may be subjected to a like penalty,

1329 provided that no person shall be subjected to a like penalty if the person did not have prior
1330 actual knowledge of the acts violating subsection (b) of this Code section.

1331 10-1-393.7.

1332 (a) Without otherwise limiting the definition of unfair or deceptive acts or practices under
1333 this part, it shall be unlawful for any person to solicit another during such other's final
1334 illness or during the final illness of any other person for the purpose of persuading a person
1335 who is suffering from his or her final illness or a person acting on behalf of such person to
1336 seek refund of moneys paid for an existing preneed contract for burial services or
1337 merchandise or funeral services or merchandise.

1338 (b) In addition to any other penalty imposed for the violation of this Code section, the
1339 administrative agency which issues a finding of violation shall order the violator to pay
1340 restitution in the amount of the refund to the person, corporation, partnership, or other legal
1341 entity which refunded moneys paid for an existing preneed contract for burial services or
1342 merchandise or funeral services or merchandise.

1343 10-1-393.8.

1344 (a) Except as otherwise provided in this Code section, a person, firm, or corporation shall
1345 not:

1346 (1) Publicly post or publicly display in any manner an individual's social security
1347 number. As used in this Code section, 'publicly post' or 'publicly display' means to
1348 intentionally communicate or otherwise make available to the general public;

1349 (2) Require an individual to transmit his or her social security number over the Internet,
1350 unless the connection is secure or the social security number is encrypted; or

1351 (3) Require an individual to use his or her social security number to access an Internet
1352 website, unless a password or unique personal identification number or other
1353 authentication device is also required to access the Internet website.

1354 (b) This Code section shall not apply to:

1355 (1) The collection, release, or use of an individual's social security number as required
1356 by state or federal law;

1357 (2) The inclusion of an individual's social security number in an application, form, or
1358 document sent by mail, electronically transmitted, or transmitted by facsimile:

1359 (A) As part of an application or enrollment process;

1360 (B) To establish, amend, or terminate an account, contract, or policy; or

1361 (C) To confirm the accuracy of the individual's social security number;

1362 (3) The use of an individual's social security number for internal verification or
1363 administrative purposes; or

1364 (4) An interactive computer service provider's or a telecommunications provider's
 1365 transmission or routing of, or intermediate temporary storage or caching of, an
 1366 individual's social security number.

1367 (c) This Code section shall not impose a duty on an interactive computer service provider
 1368 or a telecommunications provider actively to monitor its service or to affirmatively seek
 1369 evidence of the transmission of social security numbers on its service.

1370 (d) Notwithstanding the provisions of this Code section, the clerks of superior court of this
 1371 state and the Georgia Superior Court Clerks' Cooperative Authority shall be held harmless
 1372 for filing, publicly posting, or publicly displaying any document containing an individual's
 1373 social security number that the clerk is otherwise required by law to file, publicly post, or
 1374 publicly display for public inspection.

1375 10-1-393.9.

1376 (a) Private child support collectors shall register with the Secretary of State and shall
 1377 provide information as requested by the Secretary of State, including, but not limited to,
 1378 the name of the private child support collector, the office address and telephone number
 1379 for such entity, and the registered agent in this state on whom service of process is to be
 1380 made in a proceeding against such private child support collector.

1381 (b) An application for registration shall be accompanied by a surety bond filed, held, and
 1382 approved by the Secretary of State, and the surety bond shall be:

1383 (1) Issued by a surety authorized to do business in this state;

1384 (2) In the amount of \$50,000.00;

1385 (3) In favor of the state for the benefit of a person damaged by a violation of this Code
 1386 section; and

1387 (4) Conditioned on the private child support collector's compliance with this Code
 1388 section and Code Section 10-1-393.10 and the faithful performance of the obligations
 1389 under the private child support collector's agreements with its clients.

1390 (c) In lieu of a surety bond, the Secretary of State may accept a deposit of money in the
 1391 amount of \$50,000.00. The Secretary of State shall deposit any amounts received under
 1392 this subsection in an insured depository account designated for that purpose.

1393 10-1-393.10.

1394 (a) Any contract for the collection of child support between a private child support
 1395 collector and an obligee shall be filed by the private child support collector with the
 1396 ~~Governor's Office of Consumer Affairs~~ office of the Attorney General.

- 1397 (b) Any contract for the collection of child support between a private child support
1398 collector and an obligee shall be in writing, in at least ten-point type, and signed by such
1399 private child support collector and obligee. The contract shall include:
- 1400 (1) An explanation of the nature of the services to be provided;
 - 1401 (2) An explanation of the amount to be collected from the obligor by the private child
1402 support collector and a statement of a sum certain of the total amount that is to be
1403 collected by the private child support collector that has been engaged by the obligee;
 - 1404 (3) An explanation in dollar figures of the maximum amount of fees which could be
1405 collected under the contract and an example of how fees are calculated and deducted;
 - 1406 (4) A statement that fees shall only be charged for collecting past due child support,
1407 although the contract may include provisions to collect current and past due child
1408 support;
 - 1409 (5) A statement that a private child support collector shall not retain fees from collections
1410 that are primarily attributable to the actions of the department and that a private child
1411 support collector shall be required by law to refund any fees improperly retained;
 - 1412 (6) An explanation of the opportunities available to the obligee or private child support
1413 collector to cancel the contract or other conditions under which the contract terminates;
 - 1414 (7) The mailing address, telephone numbers, facsimile numbers, and e-mail address of
1415 the private child support collector;
 - 1416 (8) A statement that the private child support collector shall only collect money owed to
1417 the obligee and not child support assigned to the State of Georgia;
 - 1418 (9) A statement that the private child support collector is not a governmental entity and
1419 that the department provides child support enforcement services at little or no cost to the
1420 obligee; and
 - 1421 (10) A statement that the obligee may continue to use or pursue services through the
1422 department to collect child support.
- 1423 (c) A private child support collector shall not:
- 1424 (1) Improperly retain fees from collections that are primarily attributable to the actions
1425 of the department. If the department or an obligee notifies a private child support
1426 collector of such improper fee retention, such private child support collector shall refund
1427 such fees to the obligee within seven business days of the notification of the improper
1428 retention of fees and shall not be liable for such improper fee retention. A private child
1429 support collector may require documentation that the collection was primarily attributable
1430 to the actions of the department prior to issuing any refund;
 - 1431 (2) Charge fees in excess of one-third of the total amount of child support payments
1432 collected;

- 1433 (3) Solicit obligees using marketing materials, advertisements, or representations
1434 reasonably calculated to create a false impression or mislead an obligee into believing the
1435 private child support collector is affiliated with the department or any other governmental
1436 entity;
- 1437 (4) Use or threaten to use violence or other criminal means to cause harm to an obligor
1438 or the property of the obligor;
- 1439 (5) Falsely accuse or threaten to falsely accuse an obligor of a violation of state or
1440 federal laws;
- 1441 (6) Take or threaten to take an enforcement action against an obligor that is not
1442 authorized by law;
- 1443 (7) Represent to an obligor that the private child support collector is affiliated with the
1444 department or any other governmental entity authorized to enforce child support
1445 obligations or fail to include in any written correspondence to an obligor the statement
1446 that 'This communication is from a private child support collector. The purpose of this
1447 communication is to collect a child support debt. Any information obtained will be used
1448 for that purpose.';
- 1449 (8) Communicate to an obligor's employer, or his or her agent, any information relating
1450 to an obligor's indebtedness other than through proper legal action, process, or
1451 proceeding;
- 1452 (9) Communicate with an obligor whenever it appears the obligor is represented by an
1453 attorney and the attorney's name and address are known, or could be easily ascertained,
1454 unless the attorney fails to answer correspondences, return telephone calls, or discuss the
1455 obligation in question, or unless the attorney and the obligor consent to direct
1456 communication;
- 1457 (10) Contract with an obligee who is owed less than three months of child support
1458 arrearages; or
- 1459 (11) Contract with an obligee for a sum certain to be collected which is greater than the
1460 total sum of arrearages and the statutory interest owed as of the date of execution of the
1461 contract.
- 1462 (d) In addition to any other cancellation or termination provisions provided in the contract
1463 between a private child support collector and an obligee, the contract shall be cancelled or
1464 terminate if:
- 1465 (1) The obligee requests cancellation in writing within 30 days of signing the contract;
1466 (2) The obligee requests cancellation in writing after any 12 consecutive months in
1467 which the private child support collector fails to make a collection;
- 1468 (3) The private child support collector breaches any term of the contract or violates any
1469 provision contained within this Code section; or

- 1470 (4) The amount to be collected pursuant to the contract has been collected.
- 1471 (e) When it reasonably appears to the ~~administrator~~ Attorney General that a private child
1472 support collector has contracted with obligees on or after July 1, 2009, using a contract that
1473 is not in compliance with this Code section, the ~~administrator~~ Attorney General may
1474 demand pursuant to Code Section 10-1-403 that such private child support collector
1475 produce a true and accurate copy of each such contract. If such private child support
1476 collector fails to comply or the contracts are determined by the ~~administrator~~ Attorney
1477 General to not be compliant with the provisions of this Code section, the ~~administrator~~
1478 Attorney General may utilize any of the powers vested in this part to ensure compliance.
- 1479 (f) Upon the request of an obligee, the Child Support Enforcement Agency of the
1480 department shall forward child support payments made payable to the obligee to any
1481 private child support collector that is in compliance with the provisions of this Code section
1482 and Code Section 10-1-393.9.
- 1483 (g) The remedies provided in this part shall be cumulative and shall be in addition to any
1484 other procedures, rights, or remedies available under any other law.
- 1485 (h) Any waiver of the rights, requirements, and remedies provided by this Code section
1486 that are contained in a contract between a private child support collector and an obligee
1487 violates public policy and shall be void.
- 1488 10-1-393.11.
- 1489 (a) A person who makes a representation regarding kosher food shall prominently and
1490 conspicuously display on the premises on which the food is sold, in a location readily
1491 visible to the consumer, a completed kosher food disclosure statement which shall be
1492 updated within 14 days of any changes in the information required by subsections (b)
1493 through (e) of this Code section.
- 1494 (b) A kosher food disclosure statement shall set forth the name and address of the
1495 establishment to which it applies and the date on which it was completed.
- 1496 (c) A kosher food disclosure statement shall state in the affirmative or negative whether
1497 the person:
- 1498 (1) Operates under rabbinical or other kosher supervision;
 - 1499 (2) Sells or serves only food represented as kosher;
 - 1500 (3) Sells or serves food represented as kosher, as well as food not represented as kosher;
 - 1501 (4) Sells or serves meat, dairy, and pareve food;
 - 1502 (5) Sells or serves only meat and pareve food;
 - 1503 (6) Sells or serves only dairy and pareve food;

- 1504 (7) Sells or serves meat and poultry represented as kosher only if it is slaughtered under
1505 rabbinical or other kosher supervision and identified at the slaughterhouse to be sold as
1506 kosher;
- 1507 (8) Represents kosher meat sold as 'Glatt kosher' or 'Glatt';
- 1508 (9) Sells or serves seafood only if it has or had fins and removable scales;
- 1509 (10) Keeps separate meat represented as kosher, dairy represented as kosher, pareve food
1510 represented as kosher, and food not represented as kosher;
- 1511 (11) Uses separate utensils for meat represented as kosher, dairy represented as kosher,
1512 pareve food represented as kosher, and food not represented as kosher;
- 1513 (12) Uses separate work areas for meat and poultry represented as kosher, dairy
1514 represented as kosher, pareve food represented as kosher, and food not represented as
1515 kosher;
- 1516 (13) Sells or serves wine represented as kosher only if it has rabbinical supervision;
- 1517 (14) Sells or serves cheese represented as kosher only if it has rabbinical supervision;
- 1518 (15) Sells or serves food represented as kosher for Passover;
- 1519 (16) Uses separate utensils for food represented as kosher for Passover and food not
1520 represented as kosher for Passover;
- 1521 (17) Uses separate work areas for food represented as kosher for Passover and food not
1522 represented as kosher for Passover;
- 1523 (18) Keeps food represented as kosher for Passover free from and not in contact with
1524 food not represented as kosher for Passover; and
- 1525 (19) Prepares food represented as kosher for Passover under rabbinical or other kosher
1526 supervision.
- 1527 (d) If a kosher food disclosure statement has an affirmative response to the question
1528 contained in paragraph (15) of subsection (c) of this Code section, responses to the
1529 questions contained in paragraphs (16) through (19) shall be required; otherwise, such
1530 responses shall not be required.
- 1531 (e) A person who represents to the public that any unpackaged food for sale or a place of
1532 business is under rabbinical or other kosher supervision shall also provide in the kosher
1533 food disclosure statement the following information about the rabbinical or other kosher
1534 supervision:
- 1535 (1) The name of the supervising rabbi, agency, or other person;
- 1536 (2) The address of the supervising rabbi, agency, or other person;
- 1537 (3) The telephone number of the supervising rabbi, agency, or other person;
- 1538 (4) The frequency with which the supervising rabbi, agency, or other person visits the
1539 establishment; and

- 1540 (5) Any relevant affiliations of the supervising rabbi, agency, or other person that the
 1541 person making the disclosure wishes to disclose.
- 1542 (f) The ~~administrator~~ Attorney General shall promulgate a form for the kosher food
 1543 disclosure statement and any additional information that the ~~administrator~~ Attorney
 1544 General deems reasonable and necessary for full and complete disclosure. The completion
 1545 and prominent and conspicuous display of such form shall constitute compliance with
 1546 subsections (b) through (e) of this Code section.
- 1547 (g) No person shall display a kosher food disclosure statement or other written document
 1548 stating that a rabbi, agency, or other person certifies food or a place of business as kosher
 1549 or kosher for Passover if no such certification is being provided. The person making the
 1550 display shall remove the statement or document if the rabbi, agency, or other person sends
 1551 a notice via certified mail or statutory overnight delivery directed to the person making the
 1552 display that no such certification is being provided.
- 1553 (h) It shall be unlawful for any person to:
- 1554 (1) Fail to complete and prominently and conspicuously display a kosher food disclosure
 1555 statement as required by this Code section;
- 1556 (2) Otherwise fail to comply with this Code section; or
- 1557 (3) Knowingly or intentionally, with intent to defraud, make a false affirmation or
 1558 disclosure in a kosher food disclosure statement.
- 1559 (i) This Code section shall not apply to:
- 1560 (1) Food sold in a presealed kosher food package; or
- 1561 (2) Food represented as 'kosher-style' or 'kosher-type.'
- 1562 10-1-393.12.
- 1563 (a) As used in this Code section, the term:
- 1564 (1) 'Residential real estate' means a new or existing building constructed for habitation
 1565 by one to four families, including detached garages.
- 1566 (2) 'Residential roofing contractor' means a person or entity in the business of contracting
 1567 or offering to contract with an owner or possessor of residential real estate to repair or
 1568 replace roof systems.
- 1569 (3) 'Roof system' means a roof covering, roof sheathing, roof weatherproofing, roof
 1570 framing, roof ventilation system, and insulation.
- 1571 (b) A person who has entered into a written contract with a residential roofing contractor
 1572 to provide goods or services to be paid from the proceeds of a property and casualty
 1573 insurance policy may cancel the contract prior to midnight on the fifth business day after
 1574 the insured has received written notice from the insurer that all or any part of the claim or
 1575 contract is not a covered loss under such insurance policy. Cancellation shall be evidenced

1576 by the insured giving written notice of cancellation to the residential roofing contractor at
 1577 the address stated in the contract. Notice of cancellation, if given by mail, shall be
 1578 effective upon deposit into the United States mail, postage prepaid and properly addressed
 1579 to the residential roofing contractor. Notice of cancellation need not take a particular form
 1580 and shall be sufficient if it indicates, by any form of written expression, the intention of the
 1581 insured not to be bound by the contract.

1582 (c) Before entering a contract as provided in subsection (b) of this Code section, the
 1583 residential roofing contractor shall:

1584 (1) Furnish the insured a statement in boldface type of a minimum size of ten points, in
 1585 substantially the following form:

1586 'You may cancel this contract at any time before midnight on the fifth business day after
 1587 you have received written notification from your insurer that all or any part of the claim
 1588 or contract is not a covered loss under the insurance policy. This right to cancel is in
 1589 addition to any other rights of cancellation which may be found in state or federal law
 1590 or regulation. See attached notice of cancellation form for an explanation of this right';
 1591 and

1592 (2) Furnish each insured a fully completed form in duplicate, captioned 'NOTICE OF
 1593 CANCELLATION,' which shall be attached to the contract but easily detachable, and
 1594 which shall contain in boldface type of a minimum size of ten points the following
 1595 statement:

1596 'NOTICE OF CANCELLATION'

1597 If you are notified by your insurer that all or any part of the claim or contract is not a
 1598 covered loss under the insurance policy, you may cancel the contract by mailing or
 1599 delivering a signed and dated copy of this cancellation notice or any other written
 1600 notice to (name of contractor) at (address of contractor's place of business) at any time
 1601 prior to midnight on the fifth business day after you have received such notice from
 1602 your insurer.

1603 I HEREBY CANCEL THIS TRANSACTION

1604 _____

1605 (date)

1606 _____

1607 (insured's signature).

1608 (d) In circumstances in which payment may be made from the proceeds of a property and
 1609 casualty insurance policy, a residential roofing contractor shall not require any payments
 1610 from an insured until the five-day cancellation period has expired. If, however, the
 1611 residential roofing contractor has performed any emergency services, acknowledged by the
 1612 insured in writing to be necessary to prevent damage to the premises, the residential roofing

1613 contractor shall be entitled to collect the amount due for the emergency services at the time
 1614 they are rendered. Any provision in a contract as provided in subsection (b) of this Code
 1615 section that requires the payment of any fee for anything except emergency services shall
 1616 not be enforceable against any insured who has canceled a contract under this Code section.
 1617 (e) A residential roofing contractor shall not represent or negotiate, or offer or advertise
 1618 to represent or negotiate, on behalf of an owner or possessor of residential real estate on
 1619 any insurance claim in connection with the repair or replacement of roof systems. This
 1620 subsection shall not apply to a public adjuster licensed under Chapter 23 of Title 33.

1621 10-1-393.13.

1622 (a) As used in this Code section, the term:

1623 (1) 'ADAD equipment' means any device or system of devices which is used, whether
 1624 alone or in conjunction with other equipment, for the purpose of automatically selecting
 1625 or dialing telephone numbers and disseminating prerecorded messages to the numbers so
 1626 selected or dialed.

1627 (2) 'Business' means any corporation, partnership, proprietorship, firm, enterprise,
 1628 franchise, association, organization, self-employed individual, trust, or other legal entity.

1629 (3) 'Caller identification service' means a type of telephone service which permits
 1630 subscribers to see the telephone number of incoming telephone calls.

1631 (4) 'In this state' means the call:

1632 (A) Originates from this state; or

1633 (B) Is directed by the caller to this state and received at the place to which it is
 1634 directed.

1635 (5) 'Subscriber' means a person or business that has subscribed to telephone service from
 1636 a local exchange company or mobile, wireless, or other telephone service provider or
 1637 other persons living, residing, or working with such person or business.

1638 (6) 'Telephone solicitation' means any voice communication from a live operator,
 1639 through the use of ADAD equipment or by other means, over a telephone line or
 1640 computer network for the purpose of encouraging the purchase or rental of, or investment
 1641 in, property, goods, or services or donation to any organization, but shall not include
 1642 communications:

1643 (A) To any subscriber with that subscriber's prior express invitation or permission;

1644 (B) By or on behalf of any person or entity with whom a subscriber has a prior or
 1645 current business or personal relationship; or

1646 (C) Which convey a political message.

1647 (b) Without otherwise limiting the definition of unfair or deceptive acts or practices under
 1648 this part and without limiting any other Code section under this part, in connection with a
 1649 telephone solicitation:

1650 (1) At the beginning of such call, the person or entity making the call shall state clearly
 1651 the identity of the person or entity initiating the call;

1652 (2) No person or entity who makes a telephone solicitation to the telephone line of a
 1653 subscriber in this state shall knowingly utilize any method to block or otherwise
 1654 circumvent such subscriber's use of a caller identification service;

1655 (3) The telephone number displayed on the caller identification service shall be a
 1656 working telephone number capable of receiving incoming calls at the time the call is
 1657 placed; and

1658 (4) The identity of the caller displayed on the caller identification service shall accurately
 1659 reflect the identity of the caller.

1660 (c) Notwithstanding Code Section 10-1-399, a claim of a violation of this Code section
 1661 may be brought in a representative capacity and may be the subject of a class action under
 1662 Code Section 9-11-23. Damages for such violation shall be the greater of actual damages
 1663 or \$10.00 per violation.

1664 10-1-394.

1665 (a) The administrator Attorney General is authorized to adopt reasonable rules,
 1666 regulations, and standards appropriate to effectuate the purposes of this part and prohibit
 1667 specific acts or practices that are deemed to be a violation of this part. The Attorney
 1668 General is also authorized to adopt as substantive rules that prohibit specific acts or
 1669 practices in violation of Code Section 10-1-393 those rules and regulations of the Federal
 1670 Trade Commission interpreting Section 5(a)(1) of the Federal Trade Commission Act (15
 1671 U.S.C. Section 45(a)(1)), as from time to time amended.

1672 ~~(b) Such rules shall be promulgated only when it is determined by the administrator, in the~~
 1673 ~~reasonable exercise of his discretion, on the basis of his expertise and facts, submissions,~~
 1674 ~~evidence, and all information before him, that such rules are needed to prohibit or control~~
 1675 ~~acts or practices which create the probability of actual and substantial injury to consumers.~~
 1676 ~~No rule shall be promulgated where it is reasonably certain that the burden of complying~~
 1677 ~~with the rule will outweigh the public interest in prohibiting or controlling the practice~~
 1678 ~~which would be so prohibited or controlled. No such rule so promulgated shall be arbitrary~~
 1679 ~~or capricious nor shall its promulgation be characterized by an abuse of discretion or an~~
 1680 ~~unwarranted exercise of discretion.~~

1681 ~~(c)~~(b) Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall apply to
 1682 the promulgation of rules and regulations by the administrator Attorney General pursuant

1683 to subsection (a) of this Code section and in taking testimony pursuant to Code Sections
1684 10-1-403 and 10-1-404.

1685 ~~(d) The Consumer Advisory Board shall be authorized to ratify or veto rules promulgated~~
1686 ~~by the administrator at its next regular meeting after the rules are promulgated by the~~
1687 ~~administrator under the provisions of Chapter 13 of Title 50:~~

1688 10-1-395.

1689 (a) The Attorney General shall have the necessary powers and authority to carry out the
1690 duties vested in him or her pursuant to this title. Any authority, power, or duty vested in
1691 the Attorney General by any provision of this title and Code Section 46-5-27 may be
1692 exercised, discharged, or performed by any employee of the office of the Attorney General
1693 acting in the Attorney General's name and by his or her delegated authority. The Attorney
1694 General shall be responsible for the official acts of such persons who act in his or her name
1695 and by his or her authority. ~~The administrator shall be appointed by the Governor and shall~~
1696 ~~serve at his pleasure. The office of the administrator shall be attached to the office of the~~
1697 ~~Governor for administrative purposes only. The administrator shall perform all functions~~
1698 ~~formerly performed by the Consumer Services Unit of the Division of Special Programs~~
1699 ~~of the Department of Human Resources (now known as the Department of Human~~
1700 ~~Services).~~

1701 (b)(1) A Consumer Advisory Board is created whose duty it shall be to advise and make
1702 recommendations to the administrator Attorney General. The board shall consist of 15
1703 members ~~with the administrator or his designee to serve as the ex officio member. The~~
1704 ~~members of this board shall be appointed by the Governor.~~ Appointments of members
1705 of this board made after July 1, 2015, shall be made by the Attorney General; however,
1706 the Attorney General shall not be an appointee. One member shall be appointed from
1707 each congressional district and the remaining members shall be appointed from the state
1708 at large. At least four members shall be attorneys representing consumers' interests and
1709 two of these consumers' attorneys shall represent Georgia Indigent Legal Services or any
1710 other legal aid society. At least four members shall be representatives of the business
1711 community, two of which are recommended by the Georgia Retail Association and two
1712 recommended for appointment by the Business Council of Georgia, Inc.

1713 ~~(2)(A) On and after July 1, 1983, the Consumer Advisory Board shall consist of 15~~
1714 ~~members who shall be appointed by the Governor as provided in this paragraph. The~~
1715 ~~initial terms of those members other than the ex officio member shall be as follows: five~~
1716 ~~members shall be appointed to serve for a term ending July 1, 1984; five members shall~~
1717 ~~be appointed to serve for a term ending July 1, 1985; and five members shall be~~
1718 ~~appointed for a term ending July 1, 1986. Thereafter, all All members appointed to the~~

1719 board by the ~~Governor~~ Attorney General shall be appointed for terms of three years and
 1720 until their successors are appointed and qualified. In the event of a vacancy during the
 1721 term of any member by reason of death, resignation, or otherwise, the appointment of a
 1722 successor by the ~~Governor~~ Attorney General shall be for the remainder of the unexpired
 1723 term of such member.

1724 ~~(B) The first members appointed under this paragraph shall be appointed for terms~~
 1725 ~~which begin July 1, 1983. The members of the Consumer Advisory Board serving on~~
 1726 ~~April 1, 1983, shall remain in office until June 30, 1983, and until their successors are~~
 1727 ~~appointed.~~

1728 (3) The board shall elect its chairman and shall meet not less than once every four
 1729 calendar months at a time and place specified in writing by the ~~administrator~~ Attorney
 1730 General. The board may also meet from time to time upon its own motion as deemed
 1731 necessary by a majority of the members thereof for the purpose of conducting routine or
 1732 special business. Each member of the board shall serve without pay but shall receive
 1733 standard state per diem for expenses and receive standard travel allowance while
 1734 attending meetings and while in the discharge of his or her responsibilities.

1735 (4) The board shall assist the ~~administrator~~ Attorney General in an advisory capacity in
 1736 carrying out the duties and functions of the office concerning:

1737 (A) Policy matters relating to consumer interests; and

1738 (B) The effectiveness of the state consumer programs and operations.

1739 (5) The board shall make recommendations concerning:

1740 (A) The improvement of state consumer programs and operations;

1741 (B) The elimination of duplication of effort;

1742 (C) The coordination of state consumer programs and operations with other local and
 1743 private programs related to consumer interests;

1744 (D) Legislation needed in the area of consumer protection; and

1745 (E) Avoidance of unnecessary burdens on business, if any, resulting from the
 1746 administration of this part.

1747 ~~(6) The board shall make a written report to the Governor not less frequently than at the~~
 1748 ~~end of each calendar year on its activities and the administration of this part, with such~~
 1749 ~~recommendations for changes, if any, as the board deems proper.~~

1750 (c) The ~~administrator~~ Attorney General shall receive all complaints under this part. ~~He~~
 1751 and shall refer all complaints or inquiries concerning conduct specifically approved or
 1752 prohibited by the Department of Agriculture, Commissioner of Insurance, Public Service
 1753 Commission, Department of Natural Resources, Department of Banking and Finance, or
 1754 other appropriate agency or official of this state to that agency or official for initial
 1755 investigation and corrective action other than litigation.

1756 (d) Any official of this state receiving a complaint or inquiry as provided in subsection (c)
 1757 of this Code section shall advise the ~~administrator~~ Attorney General of his or her action
 1758 with respect to the complaint or inquiry.

1759 (e) All officials and agencies of this state having responsibility under this part are
 1760 authorized and directed to consult and assist one another in maintaining compliance with
 1761 this part.

1762 (f) In the event a person holding a professional license as defined in Chapter 4 of Title 26
 1763 or in Title 43 shall be determined by the ~~administrator~~ Attorney General to be operating a
 1764 business or profession intentionally, persistently, and notoriously in a manner contrary to
 1765 this part, the Secretary of State, at the instruction of the ~~administrator~~ Attorney General,
 1766 shall begin proceedings to revoke such professional license.

1767 (g) The ~~administrator~~ Attorney General shall not be authorized to exercise any powers
 1768 granted in this part against a person regulated by an agency or department listed in
 1769 subsection (c), subsection (d), or subsection (e) of this Code section with regard to conduct
 1770 specifically approved or prohibited by such agency or department if such agency or
 1771 department certifies to the ~~administrator~~ Attorney General that the exercise of such powers
 1772 would not be in the public interest.

1773 ~~(h) On December 31 of each year the administrator shall make a written report to the~~
 1774 ~~Governor summarizing the types and numbers of complaints received and the dispositions~~
 1775 ~~concerning these complaints by his office.~~

1776 ~~(i)~~(h) Nothing contained in this part shall be construed as repealing, limiting, or otherwise
 1777 affecting the existing powers of the various regulatory agencies of the State of Georgia
 1778 except that all agencies of this state, in making determinations as to whether actions or
 1779 proposed actions of persons subject to their jurisdiction and control are in the public
 1780 interest, shall consider the situation in the light of the policies expressed by this part.

1781 10-1-396.

1782 Nothing in this part shall apply to:

1783 (1) Actions or transactions specifically authorized under laws administered by or rules
 1784 and regulations promulgated by any regulatory agency of this state or the United States;

1785 (2) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical,
 1786 radio station or network, or television station or network in the publication or
 1787 dissemination in print or electronically of:

1788 (A) News or commentary; or

1789 (B) An advertisement of or for another person, when the publisher, owner, agent, or
 1790 employee did not have actual knowledge of the false, misleading, or deceptive character

1791 of the advertisement, did not prepare the advertisement, or did not have a direct
1792 financial interest in the sale or distribution of the advertised product or service.

1793 10-1-397.

1794 (a) As used in this Code section, the term:

1795 (1) 'Call' means any communication, message, signal, or transmission.

1796 (2) 'Telecommunications company' shall have the same meaning as provided in Code
1797 Section 46-5-162.

1798 (3) 'Telecommunications services' shall have the same meaning as provided in Code
1799 Section 46-5-162.

1800 (b) Whenever it may appear to the ~~administrator~~ Attorney General that any person is using,
1801 has used, or is about to use any method, act, or practice declared by this part or by
1802 regulations made under Code Section 10-1-394 to be unlawful and that proceedings would
1803 be in the public interest, whether or not any person has actually been misled, the
1804 ~~administrator~~ Attorney General may:

1805 (1) Subject to notice and opportunity for hearing in accordance with Code Section
1806 10-1-398, unless the right to notice is waived by the person against whom the sanction
1807 is imposed, take any or all of the following actions:

1808 (A) Issue a cease and desist order prohibiting any unfair or deceptive act or practice
1809 against any person; ~~or~~

1810 (B) Issue an order against a person who willfully violates this part, imposing a civil
1811 penalty of up to a maximum of \$2,000.00 per violation; or

1812 (C) Issue an order requiring a person whose actions are in violation of this part to pay
1813 restitution to any person or persons adversely affected by such actions; or

1814 (2) Without regard as to whether the ~~administrator~~ Attorney General has issued any
1815 orders under this Code section, upon a showing by the ~~administrator~~ Attorney General
1816 in any superior court of competent jurisdiction that a person has violated or is about to
1817 violate this part, a rule promulgated under this part, or an order of the ~~administrator~~
1818 Attorney General, the court may enter or grant any or all of the following relief:

1819 (A) A temporary restraining order or temporary or permanent injunction;

1820 (B) A civil penalty of up to a maximum of \$5,000.00 per violation of this part;

1821 (C) A declaratory judgment;

1822 (D) Restitution to any person or persons adversely affected by a defendant's actions in
1823 violation of this part;

1824 (E) The appointment of a receiver, auditor, or conservator for the defendant or the
1825 defendant's assets; or

1826 (F) Other relief as the court deems just and equitable.

1827 (c) Unless the ~~administrator~~ Attorney General determines that a person subject to this part
1828 designs quickly to depart from this state or to remove his or her property therefrom or to
1829 conceal himself or herself or his or her property therein or that there is immediate danger
1830 of harm to citizens of this state or of another state, the ~~administrator~~ Attorney General shall,
1831 unless he or she seeks a temporary restraining order to redress or prevent an injury resulting
1832 from a violation of paragraph (20) of subsection (b) of Code Section 10-1-393, before
1833 initiating any proceedings as provided in this Code section, give notice in writing that such
1834 proceedings are contemplated and allow such person a reasonable opportunity to appear
1835 before the ~~administrator~~ Attorney General and execute an assurance of voluntary
1836 compliance as provided in this part. The determination of the ~~administrator~~ Attorney
1837 General under this subsection shall be final and not subject to judicial review.

1838 (d) With the exception of consent judgments entered before any testimony is taken, a final
1839 judgment under this Code section shall be admissible as prima-facie evidence of such
1840 specific findings of fact as may be made by the court which enters the judgment in
1841 subsequent proceedings by or against the same person or his or her successors or assigns.

1842 (e) When a receiver is appointed by the court pursuant to this part, he or she shall have the
1843 power to sue for, collect, receive, and take into his or her possession all the goods and
1844 chattels, rights and credits, moneys and effects, lands and tenements, books, records,
1845 documents, papers, choses in action, bills, notes, and property of every description derived
1846 by means of any practice declared to be illegal and prohibited by this part, including
1847 property with which such property has been mingled if it cannot be identified in kind
1848 because of such commingling, and to sell, convey, and assign the same and hold and
1849 dispose of the proceeds thereof under the direction of the court. In the case of a partnership
1850 or business entity, the receiver may, in the discretion of the court, be authorized to dissolve
1851 the business and distribute the assets under the direction of the court. The court shall have
1852 jurisdiction of all questions arising in such proceedings and may make such orders and
1853 judgments therein as may be required.

1854 (f)(1) Whenever the ~~administrator~~ Attorney General issues a cease and desist order to
1855 any person regarding the use of a telephone number which when called automatically
1856 imposes a per-call charge or other costs to the consumer, other than a regular charge
1857 imposed for long distance service, including, but not limited to, a telephone number in
1858 which the local prefix is 976 or in which the long distance prefix is 900, the ~~administrator~~
1859 Attorney General may certify to the appropriate local or long distance
1860 telecommunications company responsible for billing consumers for the charges that
1861 billing for the charges or for certain of the charges should be suspended. The
1862 telecommunications company shall then suspend such billing with reasonable promptness
1863 to preserve the assets of consumers in accordance with the certification, without incurring

1864 any liability to any person for doing so. For the purposes of this Code section,
 1865 'reasonable promptness to preserve the assets of consumers' shall mean to act as quickly
 1866 as the telecommunications company would act to preserve its own assets, provided that
 1867 the telecommunications company cannot be required to make any changes to its existing
 1868 systems, technologies, or methods used for billing, other than any minimal procedural
 1869 changes necessary to actually suspend the billing. The telecommunications company
 1870 shall not be made a party to any proceedings under this part for complying with this
 1871 requirement but shall have a right to be heard as a third party in any such proceedings.

1872 (2) The suspension of billing under this subsection shall remain in effect until the
 1873 ~~administrator~~ Attorney General certifies to the telecommunications company that the
 1874 matter has been resolved. The ~~administrator~~ Attorney General shall certify to the
 1875 telecommunications company with reasonable promptness when the matter has been
 1876 resolved. In this certification, the ~~administrator~~ Attorney General shall advise the
 1877 telecommunications company to collect none of, all of, or any designated part of the
 1878 billings in accordance with the documents or orders which resolved the matter. The
 1879 telecommunications company shall collect or not collect the billings in the manner so
 1880 designated and shall not incur any liability to any person for doing so.

1881 (3) Nothing contained in this subsection shall limit or restrict the right of the
 1882 telecommunications company to place its own restrictions, guidelines, or criteria, by
 1883 whatever name denominated, upon the use of such telecommunications services, provided
 1884 such restrictions, guidelines, or criteria do not conflict with the provisions of this
 1885 subsection.

1886 10-1-397.1.

1887 The ~~administrator~~ Attorney General is authorized to initiate or intervene as a matter of right
 1888 or otherwise appear in any federal court or administrative agency to implement the
 1889 provisions of this article.

1890 10-1-398.

1891 (a) Any person receiving a cease and desist order from the ~~administrator~~ Attorney General,
 1892 and who demonstrates in any superior court of competent jurisdiction, after petition to the
 1893 court and notice to the ~~administrator~~ Attorney General, that such order will unlawfully
 1894 cause him irreparable harm, shall receive a temporary stay of the order pending the court's
 1895 review of that order. Such temporary stay shall not exceed 30 days, during which time the
 1896 court will review the order to determine if an interlocutory stay will be issued pending a
 1897 final judicial determination of the issues.

1898 (b) Where the ~~administrator~~ Attorney General has issued any order prohibiting any unfair
 1899 or deceptive act or practice, he shall promptly send by certified or registered mail or
 1900 statutory overnight delivery or by personal service to the person or persons so prohibited
 1901 a notice of opportunity for hearing. Hearings shall be conducted pursuant to this Code
 1902 section by the ~~administrator~~ Attorney General or his or her designated representative. Such
 1903 notice shall state:

- 1904 (1) The order which has issued and which is proposed to be issued;
- 1905 (2) The ground for issuing such order and proposed order;
- 1906 (3) That the person to whom such notice is sent will be afforded a hearing upon request
 1907 if such request is made within ten days after receipt of the notice; and
- 1908 (4) That the person to whom such notice is sent may obtain a temporary stay of the order
 1909 upon a showing of irreparable harm in any superior court of competent jurisdiction.

1910 (c) Whenever a person requests a hearing in accordance with this Code section, there shall
 1911 promptly be set a date, time, and place for such hearing and the person requesting such
 1912 hearing shall be notified thereof. The date set for such hearings shall be within 15 days,
 1913 but not earlier than five days after the request for hearing has been made, unless otherwise
 1914 agreed to by the ~~administrator~~ Attorney General and the person requesting the hearing.

1915 (d) In the case of any hearing conducted under this Code section, the ~~administrator~~
 1916 Attorney General or his or her designated representative may conduct the hearing ~~or he~~
 1917 ~~may appoint a referee to conduct the hearing who shall have the same powers and authority~~
 1918 ~~in conducting the hearing as are in this Code section granted to the administrator. The~~
 1919 ~~referee shall have been admitted to the practice of law in this state and possess such~~
 1920 ~~additional qualifications as the administrator may require.~~

1921 (e) The ~~administrator or referee authorized to hold a hearing~~ Attorney General shall have
 1922 authority to do the following:

- 1923 (1) Administer oaths and affirmations;
- 1924 (2) Sign and issue subpoenas;
- 1925 (3) Rule upon offers of proof;
- 1926 (4) Regulate the course of the hearing, set the time and place for continued hearings, and
 1927 fix the time for filing briefs;
- 1928 (5) Dispose of motions to dismiss for lack of agency jurisdiction over the subject matter
 1929 or parties or for any other ground;
- 1930 (6) Dispose of motions to amend or to intervene;
- 1931 (7) Provide for the taking of testimony by deposition or interrogatory; and
- 1932 (8) Reprimand or exclude from the hearing any person for any indecorous or improper
 1933 conduct committed in the presence of the agency ~~or the referee~~.

1934 (f) Subpoenas shall be issued without discrimination between public and private parties.
 1935 When a subpoena is disobeyed, any party may apply to the superior court of the county
 1936 where the hearing is being heard for an order requiring obedience. Failure to comply with
 1937 such order shall be cause for punishment as for contempt of court. The costs of securing
 1938 the attendance of witnesses, including fees and mileage, shall be computed and assessed
 1939 in the same manner as prescribed by law in civil cases in the superior court.

1940 (g) A record shall be kept in each contested case and shall include:

- 1941 (1) All pleadings, motions, and intermediate rulings;
 1942 (2) A summary of the oral testimony plus all other evidence received or considered
 1943 except that oral proceedings or any part thereof shall be transcribed or recorded upon
 1944 request of any party. Upon written request therefor, a transcript of the oral proceedings
 1945 or any part thereof shall be furnished to any party of the proceedings. The ~~administrator~~
 1946 Attorney General shall set a uniform fee for such service;
 1947 (3) A statement of matters officially noticed;
 1948 (4) Questions and offers of proof and rulings thereon;
 1949 (5) Proposed findings and exceptions;
 1950 (6) Any decision, including any initial, recommended, or tentative decision, opinion, or
 1951 report by the officer presiding at the hearing; and
 1952 (7) All staff memoranda or data submitted to the hearing officer or members of the
 1953 agency in connection with their consideration of the case.

1954 (h) Findings of fact shall be based exclusively on the evidence and on matters officially
 1955 noticed.

1956 (i) If the ~~administrator~~ Attorney General does not receive a request for a hearing within the
 1957 prescribed time where he has issued an order prohibiting any unfair or deceptive act or
 1958 practices, he may permit an order previously entered to remain in effect or he may enter
 1959 a proposed order. If a hearing is requested and conducted as provided in this Code section,
 1960 the ~~administrator~~ Attorney General shall issue a written order which shall:

- 1961 (1) Set forth his or her findings with respect to the matters involved; and
 1962 (2) Enter an order in accordance with his or her findings.

1963 (j) The ~~administrator~~ Attorney General may promulgate such procedural rules and
 1964 regulations as may be necessary for the effective administration of the authority granted
 1965 to the ~~administrator~~ Attorney General under this Code section.

1966 10-1-398.1.

1967 Any person who has exhausted all administrative remedies available and who is aggrieved
 1968 by a final decision in a contested case is entitled to judicial review in accordance with the
 1969 procedures, standards, and requirements set forth in Code Section 50-13-19.

1970 ~~(a) An appeal may be taken from any order of the administrator resulting from a hearing~~
 1971 ~~held in accordance with Code Section 10-1-398 by any person adversely affected thereby~~
 1972 ~~to the Superior Court of Fulton County by serving on the administrator, within 20 days~~
 1973 ~~after the date of entry of such order, a written notice of appeal, signed by the appellant,~~
 1974 ~~stating:~~

1975 ~~(1) The order from which the appeal is taken; and~~

1976 ~~(2) The ground upon which a reversal or modification of the order is sought.~~

1977 ~~(b) The court shall not substitute its judgment for that of the administrator as to the weight~~
 1978 ~~of the evidence on questions of fact. The court may affirm the decision of the administrator~~
 1979 ~~or remand the case for further proceedings. The court may reverse or modify the decision~~
 1980 ~~if substantial rights of the appellant have been prejudiced because the administrative~~
 1981 ~~findings, inferences, conclusions, or decisions are:~~

1982 ~~(1) In violation of constitutional or statutory provisions;~~

1983 ~~(2) In excess of the statutory authority of the administrator;~~

1984 ~~(3) Made upon unlawful procedure;~~

1985 ~~(4) Affected by other error of law;~~

1986 ~~(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the~~
 1987 ~~whole record; or~~

1988 ~~(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted~~
 1989 ~~exercise of discretion.~~

1990 10-1-399.

1991 (a) Any person who suffers injury or damages as a result of a violation of Chapter 5B of
 1992 this title, as a result of consumer acts or practices in violation of this part, as a result of
 1993 office supply transactions in violation of this part or whose business or property has been
 1994 injured or damaged as a result of such violations may bring an action individually, but not
 1995 in a representative capacity, against the person or persons engaged in such violations under
 1996 the rules of civil procedure to seek equitable injunctive relief and to recover his or her
 1997 general and exemplary damages sustained as a consequence thereof in any court having
 1998 jurisdiction over the defendant; provided, however, exemplary damages shall be awarded
 1999 only in cases of intentional violation. Notwithstanding any other provisions of law, a
 2000 debtor seeking equitable relief to redress an injury resulting from a violation of paragraph
 2001 (20) of subsection (b) of Code Section 10-1-393, upon facts alleged showing a likelihood
 2002 of success on the merits, may not, within the discretion of the court, be required to make
 2003 a tender. Nothing in this subsection or paragraph (20) of subsection (b) of Code Section
 2004 10-1-393 shall be construed to interfere with the obligation of the debtor to a lender who
 2005 is not in violation of paragraph (20) of subsection (b) of Code Section 10-1-393. A claim

2006 under this Code section may also be asserted as a defense, setoff, cross-claim, or
2007 counterclaim or third-party claim against such person.

2008 (b) At least 30 days prior to the filing of any such action, a written demand for relief,
2009 identifying the claimant and reasonably describing the unfair or deceptive act or practice
2010 relied upon and the injury suffered, shall be delivered to any prospective respondent. Any
2011 person receiving such a demand for relief who, within 30 days of the delivering of the
2012 demand for relief, makes a written tender of settlement which is rejected by the claimant
2013 may, in any subsequent action, file the written tender and an affidavit concerning this
2014 rejection and thereby limit any recovery to the relief tendered if the court finds that the
2015 relief tendered was reasonable in relation to the injury actually suffered by the petitioner.
2016 The demand requirements of this subsection shall not apply if the prospective respondent
2017 does not maintain a place of business or does not keep assets within the state. The 30 day
2018 requirement of this subsection shall not apply to a debtor seeking a temporary restraining
2019 order to redress or prevent an injury resulting from a violation of paragraph (20) of
2020 subsection (b) of Code Section 10-1-393, provided that said debtor gives, or attempts to
2021 give the written demand required by this subsection at least 24 hours in advance of the time
2022 set for the hearing of the application for the temporary restraining order. Such respondent
2023 may otherwise employ the provisions of this Code section by making a written offer of
2024 relief and paying the rejected tender into court as soon as practicable after receiving notice
2025 of an action commenced under this Code section. All written tenders of settlement such
2026 as described in this subsection shall be presumed to be offered without prejudice in
2027 compromise of a disputed matter.

2028 (c) Subject to subsection (b) of this Code section, a court shall award three times actual
2029 damages for an intentional violation.

2030 (d) If the court finds in any action that there has been a violation of this part, the person
2031 injured by such violation shall, in addition to other relief provided for in this Code section
2032 and irrespective of the amount in controversy, be awarded reasonable attorneys' fees and
2033 expenses of litigation incurred in connection with said action; provided, however, the court
2034 shall deny a recovery of attorneys' fees and expenses of litigation which are incurred after
2035 the rejection of a reasonable written offer of settlement made within 30 days of the mailing
2036 or delivery of the written demand for relief required by this Code section; provided, further,
2037 that, if the court finds the action continued past the rejection of such reasonable written
2038 offer of settlement in bad faith or for the purposes of harassment, the court shall award
2039 attorneys' fees and expenses of litigation to the adverse party. Any award of attorneys' fees
2040 and expenses of litigation shall become a part of the judgment and subject to execution as
2041 the laws of Georgia allow.

2042 (e) Any manufacturer or supplier of merchandise whose act or omission, whether negligent
 2043 or not, is the basis for action under this part shall be liable for the damages assessed against
 2044 or suffered by retailers charged under this part. A claim of such liability may be asserted
 2045 by cross-claim, third-party complaint, or by separate action.

2046 (f) It shall not be a defense in any action under this part that others were, are, or will be
 2047 engaged in like practices.

2048 (g) In any action brought under this Code section the ~~administrator~~ Attorney General shall
 2049 be served by certified or registered mail or statutory overnight delivery with a copy of the
 2050 initial complaint and any amended complaint within 20 days of the filing of such
 2051 complaint. The ~~administrator~~ Attorney General shall be entitled to be heard in any such
 2052 action, and the court where such action is filed may enter an order requiring any of the
 2053 parties to serve a copy of any other pleadings in an action upon the ~~administrator~~ Attorney
 2054 General.

2055 10-1-400.

2056 In any action in which damages are demanded under Code Section 10-1-399, recovery will
 2057 be limited to the amount, if any, by which the injured party suffered injury or damage
 2058 caused by the violation if the adverse party proves that the violation resulted from a bona
 2059 fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any
 2060 such error and that such error was not the result of negligence in the maintenance of such
 2061 procedures.

2062 10-1-401.

2063 (a) No private right of action shall be ~~brought~~ arise under this part:

2064 (1) More than two years after the person bringing the action knew or should have known
 2065 of the occurrence of the alleged violation; or

2066 (2) More than two years after the termination of any proceeding or action by the State
 2067 of Georgia, whichever is later.

2068 (b) Damages or penalties to which a person is entitled pursuant to this part may be set off
 2069 against the allegation of the person to the seller and may be raised as a defense to a suit on
 2070 the obligation without regard to the time limitations prescribed by this Code section.

2071 10-1-402.

2072 In the administration of this part the ~~administrator~~ Attorney General may accept an
 2073 assurance of voluntary compliance with respect to any act or practice deemed to be
 2074 violative of this part from any person who has engaged or was about to engage in such act
 2075 or practice. Any such assurance shall be in writing and be filed with the clerk of the

2076 superior court of the county in which the alleged violator resides or has his or her principal
 2077 place of business or with the clerk of the Superior Court of Fulton County. Such assurance
 2078 of voluntary compliance shall not be considered an admission of violation for any purpose.
 2079 Matters thus processed may at any time be reopened by the ~~administrator~~ Attorney General
 2080 for further proceedings in the public interest, pursuant to Code Section 10-1-397. This
 2081 Code section shall not bar any claim against any person who has engaged in any act or
 2082 practice in violation of this part.

2083 10-1-403.

2084 (a) When it reasonably appears to the ~~administrator~~ Attorney General that a person has
 2085 engaged in, is engaging in, or is about to engage in any act or practice declared to be
 2086 unlawful by this part or when he believes it to be in the public interest that an investigation
 2087 should be made to ascertain whether a person in fact has engaged in, is engaging in, or is
 2088 about to engage in any act or practice declared to be unlawful by this part, he may, ~~with the~~
 2089 ~~consent of the Attorney General~~, execute in writing and cause to be served upon any person
 2090 who is believed to have information, documentary material, or physical evidence relevant
 2091 to the alleged or suspected violation an investigative demand requiring such person to
 2092 furnish, under oath or otherwise, a report in writing setting forth the relevant facts and
 2093 circumstances of which he has knowledge or to appear and testify or to produce relevant
 2094 documentary material or physical evidence for examination at such reasonable time and
 2095 place as may be stated in the investigative demand, concerning the advertisement, sale, or
 2096 offering for sale of any goods or services or the conduct of any trade or commerce that is
 2097 the subject matter of the investigation.

2098 (b) If a matter that the ~~administrator~~ Attorney General makes the subject of an
 2099 investigative demand is located outside the state, the person receiving the investigative
 2100 demand may either make it available to the ~~administrator~~ Attorney General at a convenient
 2101 location within this state or pay the reasonable and necessary expenses for the ~~administrator~~
 2102 Attorney General or his or her representative to examine the matter at the place where it
 2103 is located. The ~~administrator~~ Attorney General may designate representatives, including
 2104 officials of the state in which the matter is located, to inspect the matter on his or her
 2105 behalf, and he may respond to similar requests from officials of other states.

2106 (c)(1) Each such investigative demand shall state the nature of the conduct constituting
 2107 the alleged violation of this part which is under investigation and the provision of law
 2108 applicable thereto; describe the class or classes of documentary material to be produced
 2109 thereunder with such definiteness and certainty as to permit such material to be fairly
 2110 identified; describe the nature, scope, and purpose of the investigation with such
 2111 definiteness and certainty as to permit any person whose testimony is sought to be fairly

2112 appraised of the subject matter of the inquiry; prescribe a return date which will provide
 2113 a reasonable period of time within which the material so demanded may be assembled
 2114 and made available for inspection and copying or reproduction and the person or persons
 2115 whose testimony is sought may prepare for the same; and identify the person to whom
 2116 such material shall be made available.

2117 (2) No such investigative demand shall:

2118 (A) Contain any requirement which would be held to be unreasonable as contained in
 2119 a subpoena for the production of documentary evidence issued by a court of this state
 2120 in aid of a grand jury investigation of such alleged violation; or

2121 (B) Require the production of any documentary evidence or oral testimony which
 2122 would be privileged from disclosure if demanded by a subpoena for the production of
 2123 documentary evidence issued by a court of this state in aid of a grand jury investigation
 2124 of such alleged violation;

2125 provided, however, that the limitations on the scope of demand contained in this
 2126 paragraph do not require as a condition to the issuance of an investigative demand that
 2127 the alleged violation be of sufficient seriousness as to constitute a violation of the
 2128 criminal laws of this state, as opposed to the civil provisions of this part.

2129 10-1-404.

2130 (a) To carry out the duties prescribed by Code Sections 10-1-394, 10-1-395, 10-1-397,
 2131 10-1-398, and 10-1-403, the ~~administrator~~ Attorney General, in addition to other powers
 2132 conferred upon him or her by this part, ~~may, with the consent of the Attorney General,~~
 2133 issue subpoenas to any person, administer an oath or affirmation to any person, conduct
 2134 hearings in aid of any investigation or inquiry, prescribe such forms, and promulgate such
 2135 procedural rules and regulations as may be necessary, which procedural rules and
 2136 regulations shall have the force of law.

2137 (b) The recipient of an investigative demand or subpoena may file an objection with the
 2138 Attorney General within the reasonable time allotted for responding on grounds that it fails
 2139 to comply with this part or upon any constitutional or other legal right or privilege of such
 2140 person. Upon failure of a person without lawful excuse to obey an investigative demand
 2141 or subpoena, the ~~administrator~~ Attorney General may apply to a superior court having
 2142 jurisdiction for an order compelling compliance. ~~Such person may object to the~~
 2143 ~~investigative demand or subpoena on grounds that it fails to comply with this part or upon~~
 2144 ~~any constitutional or other legal right or privilege of such person.~~ The court may issue an
 2145 order ~~modifying or setting aside such demand or subpoena or directing compliance with~~
 2146 ~~the original demand or subpoena~~ or modifying or setting aside such demand or subpoena
 2147 based on any objection that was raised before the Attorney General.

2148 (c) The Attorney General may request that a natural person who refuses to testify or to
 2149 produce relevant matter on the ground that the testimonial matter may incriminate him be
 2150 ordered by the court to provide the testimonial matter. With the exception of a prosecution
 2151 for perjury and an action under Code Section 10-1-397, 10-1-398, 10-1-399, or 10-1-405,
 2152 a natural person who complies with the court order to provide a testimonial matter after
 2153 asserting a privilege against self-incrimination to which he is entitled by law shall not be
 2154 prosecuted or subjected to any penalty or forfeiture for or on account of any transaction,
 2155 matter, or thing concerning which he may testify or produce evidence, documentary or
 2156 otherwise.

2157 (d)(1) Information obtained pursuant to investigative demands, subpoenas, oaths,
 2158 affirmations, or hearings enforced by this part shall not be made public or, except as
 2159 authorized in paragraph (2) of this subsection, disclosed by the ~~administrator~~ Attorney
 2160 General or his or her employees beyond the extent necessary for the enforcement of this
 2161 part.

2162 (2) The ~~administrator~~ Attorney General or his or her employees shall be authorized to
 2163 provide to any federal, state, or local law enforcement agency any information acquired
 2164 under this part which is ~~subpoenaed~~ sought pursuant to an investigative demand or
 2165 subpoena by such agency. State or local law enforcement agencies shall be authorized
 2166 to provide any information to the ~~administrator~~ Attorney General when the ~~administrator~~
 2167 Attorney General issues an investigative demand or subpoena for such information.

2168 10-1-405.

2169 (a) Any person who violates the terms of an injunction issued under Code Section
 2170 10-1-397 shall forfeit and pay to the state a civil penalty of not more than \$25,000.00 per
 2171 violation. For purposes of this Code section, the superior court issuing an injunction shall
 2172 retain jurisdiction and the cause shall be continued and in such cases the ~~administrator~~
 2173 Attorney General, acting in the name of the state, may petition for recovery of civil
 2174 penalties.

2175 (b) In the case of a continuing violation under this part, each day shall be regarded as a
 2176 separate violation.

2177 (c) Any intentional violation by a corporation, partnership, or association shall be deemed
 2178 to be also that of the individual directors, officers, partners, employees, or agents of the
 2179 corporation, partnership, or association who ~~had actual knowledge~~ knew or should have
 2180 known of the acts constituting the violation and who directly authorized, supervised,
 2181 ordered, or did any of the acts constituting in whole or in part the violation; provided,
 2182 however, no such individual directors, officers, partners, employees, or agents shall have
 2183 any individual liability under this subsection unless the corporation, partnership, or

2184 association, as the case may be, which has committed the intentional violation shall fail to
 2185 pay into the court within 30 days after judgment sufficient moneys or assets to satisfy the
 2186 judgment.

2187 (d) The ~~administrator~~ Attorney General shall have the authority to compromise or settle
 2188 claims for penalty brought under this Code section.

2189 10-1-406.

2190 Whenever an investigation has been conducted under this article and such investigation
 2191 reveals conduct which constitutes a criminal offense, the ~~administrator~~ Attorney General
 2192 shall forward the results of such investigation to a prosecuting attorney of this state who
 2193 shall commence any criminal prosecution that such prosecuting attorney deems
 2194 appropriate.

2195 10-1-407.

2196 This part is cumulative with other laws and is not exclusive. The rights or remedies
 2197 provided for in this part shall be in addition to any other procedures, rights, remedies, or
 2198 duties provided for in any other law or in decisions of the courts of this state dealing with
 2199 the subject matter.

2200 10-1-408.

2201 Rules, orders, actions, and regulations previously adopted which relate to functions
 2202 performed by the administrator appointed pursuant to the Fair Business Practices Act of
 2203 1975 which were transferred under this article to the Attorney General shall remain of full
 2204 force and effect as rules, orders, actions, and regulations of the Attorney General until
 2205 amended, repealed, or superseded by rules or regulations adopted by the Attorney General."

2206 **SECTION 3.**

2207 Said title is further amended by revising Code Section 10-1-414, relating to prohibited acts
 2208 by sellers of business opportunities, as follows:

2209 "10-1-414.

2210 Sellers shall not:

2211 (1) Represent that a business opportunity or multilevel program provides income or
 2212 earning potential of any kind unless the seller has documented data to substantiate the
 2213 claims of income or earning potential, which data shall be furnished to the ~~administrator~~
 2214 Attorney General or his or her representatives upon request;

2215 (2) Use the trademark, service mark, trade name, logotype, advertising, or other
 2216 commercial symbol of any business which does not either control the ownership interest

2217 in the seller or accept responsibility for all representations made by the seller unless it is
 2218 clear from the circumstances that the owner of the commercial symbol is not involved in
 2219 the business opportunity or multilevel distribution company; or
 2220 (3) Make or authorize the making of any reference to its compliance with this part in any
 2221 advertisement or other contract with purchasers or participants or in any manner
 2222 represent, explicitly or implicitly, that the State of Georgia or any department, agency,
 2223 officer, or employee has reviewed, approved, sanctioned, or endorsed a business
 2224 opportunity or multilevel program."

2225 SECTION 4.

2226 Said title is further amended by revising Code Section 10-1-427, relating to false advertising
 2227 of legal services, as follows:

2228 "10-1-427.

2229 (a) No person, firm, corporation, or association or any employee thereof, with intent
 2230 directly or indirectly to perform legal services or to do anything of any nature whatsoever
 2231 to induce the public to enter into any obligation relating thereto, shall make or disseminate
 2232 or cause to be made or disseminated before the public in this state, in any newspaper or
 2233 other publication, radio, television, or advertising device or by public outcry or
 2234 proclamation or any other manner or means whatever, any statement concerning such legal
 2235 services or concerning any circumstances or matter of fact connected with the proposed
 2236 performance thereof which is untrue, fraudulent, deceptive, or misleading and which is
 2237 known or which by the exercise of reasonable care should be known to be untrue,
 2238 fraudulent, deceptive, or misleading.

2239 (b) Nothing in this Code section shall apply to any visual or sound broadcasting station or
 2240 to any publisher or printer of a newspaper, magazine, or other form of printed advertising
 2241 who broadcasts, telecasts, publishes, or prints such advertisement in good faith without
 2242 knowledge of its false, fraudulent, deceptive, or misleading character.

2243 (c) The ~~Governor's Office of Consumer Affairs~~ Attorney General is authorized and
 2244 empowered, upon the receipt of a complaint or upon its his or her own initiative, to
 2245 investigate any advertising which might be in violation of subsection (a) of this Code
 2246 section. If the ~~office~~ Attorney General determines that any advertising is in violation of
 2247 subsection (a) of this Code section, it he or she is authorized and empowered, after
 2248 providing the offender with reasonable notice and an opportunity for a hearing, to issue a
 2249 public reprimand, to issue a cease and desist order against the offender, to report any such
 2250 action to any board, agency, commission, association, or other entity governing or
 2251 supervising the legal profession, and to publicize any such action in a medium or media
 2252 likely to reach the recipients of the improper advertising. Any person against whom the

2253 ~~office~~ Attorney General issues an adverse decision may, as his or her sole remedy in equity
 2254 or at law, seek a restraining order against such adverse decision in the superior court.
 2255 (d) Any person who violates a cease and desist order issued pursuant to subsection (c) of
 2256 this Code section shall be guilty of a misdemeanor in the county in which such person
 2257 resides. Nothing in this subsection shall prohibit any board, agency, commission,
 2258 association, or other entity governing or supervising the legal profession from taking any
 2259 lawful action against such person as a result of such improper practices. Each publication
 2260 of an advertisement in violation of any such cease and desist order shall constitute a
 2261 separate offense."

2262 SECTION 5.

2263 Said title is further amended by revising Code Section 10-1-438, relating to definitions
 2264 relative to disaster related selling violations, as follows:

2265 "10-1-438.

2266 (a) As used in this part, the term:

2267 (1) 'Attorney General' means the Attorney General or his or her designee.

2268 ~~'Administrator' means the administrator appointed pursuant to Code Section 10-1-395.~~

2269 (2) 'Disaster related violation' means any violation of Part 1, 2, or 4 of this article, which
 2270 violation involves:

2271 (A) The sale or offer for sale of supplies for use in the salvage, repair, or rebuilding of
 2272 a structure damaged as a result of a natural disaster; or

2273 (B) The performance of or offer to perform services for the salvage, repair, or
 2274 rebuilding of a structure damaged as a result of a natural disaster.

2275 (3) 'Natural disaster' means any natural disaster for which a state of emergency is
 2276 proclaimed by the Governor.

2277 (b) Whenever the ~~administrator~~ Attorney General or any court is imposing a penalty for
 2278 any violations of Part 1, 2, or 4 of this article and the violation is a disaster related
 2279 violation, in addition to any other applicable penalty there may be imposed an additional
 2280 civil penalty not to exceed \$10,000.00 for each transaction.

2281 (c) Any person who suffers damage or injury as a result of a disaster related violation shall
 2282 have a cause of action to recover actual damages, punitive damages, if appropriate, and
 2283 reasonable attorney's fees. Amounts recovered in such an action shall have priority over
 2284 a civil penalty imposed under this Code section."

2285 SECTION 6.

2286 Said title is further amended by revising Article 21 of Chapter 1, relating to buying services,
 2287 as follows:

2288 "ARTICLE 21

2289 10-1-590.

2290 This article shall be known and may be cited as the 'Buying Services Act of 1975.'

2291 10-1-591.

2292 As used in this article, the term:

2293 (1) 'Attorney General' means the Attorney General or his or her designee.2294 ~~'Administrator' means the administrator appointed pursuant to subsection (a) of Code~~
2295 ~~Section 10-1-395 or his delegate.~~

2296 (2) 'Business day' means any day other than a Saturday, Sunday, or legal holiday.

2297 (3) 'Buying service,' 'buying club,' or 'club' means any corporation, partnership,
2298 unincorporated association, or other business enterprise which is organized with the
2299 primary purpose of providing benefits to members from the cooperative purchase of
2300 service or merchandise and which desires to effect such purpose through direct
2301 solicitation or other business activity in this state.2302 (4) 'Contract' means any contract or agreement by which a person becomes a member of
2303 a buying service or club.2304 (5) 'Member' means any natural person who is entitled to any of the benefits of a buying
2305 service or buying club.

2306 10-1-592.

2307 No buying service or club nor any officer, official, employee, or agent thereof shall sell,
2308 advertise, or solicit the sale or purchase of memberships or contracts within this state
2309 without having first obtained a license to do business in this state from the ~~administrator~~
2310 Attorney General.

2311 10-1-593.

2312 As a condition to the issuance or retention of a license required by this article, each buying
2313 service or club shall:2314 (1) Comply with such reasonable conditions for the issuance of a license as may be
2315 required by the ~~administrator~~ Attorney General pursuant to this article;2316 (2) Maintain a bond in the amount of \$25,000.00 with a surety company duly authorized
2317 to do business in this state or post a cash bond in such amount, payable to the Governor
2318 of this state; in either case, such bond shall be for the use and benefit of any person who
2319 has entered into a contract for membership in a buying service or club. Such bond shall
2320 be conditioned to pay all losses, damages, and expenses that may be sustained by such

2321 member by reason of any fraudulent misrepresentation or by reason of any breach of
2322 contract by the club; and

2323 (3) Furnish, if the buying service or club operates buying service activities at more than
2324 one physical location in this state, a surety bond for each location of buying service
2325 activity, each bond to be in the amount and subject to the conditions stated in paragraph
2326 (2) of this Code section.

2327 10-1-594.

2328 (a) Application for a license as a buying service or club shall be made on forms prescribed
2329 by the ~~administrator~~ Attorney General and shall contain such information and supporting
2330 documents as he may require.

2331 (b) Licenses shall be issued for a period of one year and shall be renewable within 90 days
2332 preceding the expiration thereof.

2333 (c) The fee for a license or for the renewal thereof shall be \$50.00, payable to the
2334 ~~administrator~~ Attorney General for deposit by the Office of the State Treasurer in the
2335 general fund of the state.

2336 10-1-595.

2337 (a) Licenses issued under this article may be revoked, suspended, or not renewed by the
2338 ~~administrator~~ Attorney General for:

2339 (1) Any violation of the substantive provisions of this article;

2340 (2) A violation of any rule or regulation issued by the ~~administrator~~ Attorney General
2341 pursuant to this article; or

2342 (3) A violation of any law of this state.

2343 (b) Licenses shall be revoked or suspended by the ~~administrator~~ Attorney General only
2344 following notice and hearing pursuant to Chapter 13 of Title 50, the 'Georgia
2345 Administrative Procedure Act.'

2346 10-1-596.

2347 No contract of membership shall be used by any buying service or club unless such
2348 contract is first approved by the ~~administrator~~ Attorney General as to form. Any contract
2349 or agreement used in violation of this Code section shall be null, void, and of no effect.

2350 10-1-597.

2351 (a) Any person who has elected to become a member of a club may cancel such
2352 membership by giving written notice of cancellation any time before 12:00 Midnight of the
2353 third business day following the date on which membership was attained.

2354 (b) Notice of cancellation may be given personally or by mail. If given by mail, the notice
 2355 is effective upon deposit in a mailbox, properly addressed and postage prepaid. Notice of
 2356 cancellation need not take a particular form and is sufficient if it indicates, by any form of
 2357 written expression, the intention of the member not to be bound by the contract.

2358 (c) Cancellation shall be without liability on the part of the member. The member will be
 2359 entitled to a total refund, within ten days after notice of cancellation is given, of the entire
 2360 consideration paid for the contract.

2361 (d) Rights of cancellation may not be waived or otherwise surrendered.

2362 10-1-598.

2363 (a) A copy of every contract shall be delivered to the member at the time the contract is
 2364 signed.

2365 (b) Every contract must be in writing, must be signed by the member, must designate the
 2366 date on which the member signed the contract, and must state, clearly and conspicuously
 2367 in boldface type of a minimum size of 14 points, the following:

2368 **'MEMBER'S RIGHT TO CANCEL**

2369 If you wish to cancel this contract, you may cancel by delivering or mailing a written
 2370 notice to the club. To prove that you canceled, it is recommended that you send the
 2371 notice by certified mail or statutory overnight delivery. The notice must say that you do
 2372 not wish to be bound by the contract and must be delivered or mailed before 12:00
 2373 Midnight of the third business day after you sign this contract. The notice must be
 2374 delivered or mailed to: (insert name and mailing address of club). If you cancel, the club
 2375 will return, within ten days of the date on which you give notice of cancellation, a total
 2376 refund. It is recommended that you mail the notice of cancellation by certified mail or
 2377 statutory overnight delivery, return receipt requested; check with your post office as to
 2378 the time when you will be able to mail a certified letter. Be sure to keep a photocopy of
 2379 the notice of cancellation which you mail.'

2380 (c) Every contract which does not contain the notice specified in subsection (b) of this
 2381 Code section may be canceled by the member at any time, without liability, by giving
 2382 notice of cancellation by any means. Nothing contained in this Code section shall be
 2383 construed to require that a member's cancellation notice be sent by certified mail or
 2384 statutory overnight delivery in order to effect a cancellation.

2385 10-1-599.

2386 No contract shall be valid for a term longer than 18 months from the date upon which the
 2387 contract is signed. However, a club may allow a member to convert his or her contract into
 2388 a contract for a period longer than 18 months after the member has been a member of the

2389 club for a period of at least six months. The duration of the contract shall be clearly and
 2390 conspicuously disclosed in the contract in boldface type of a minimum size of 14 points.

2391 10-1-600.

2392 (a) Each buying service or club licensed in this state shall keep and maintain:

2393 (1) Accurate accounts, books, and records of all transactions in this state;

2394 (2) Copies of all agreements;

2395 (3) Dates and amounts of payments made and accepted thereon; and

2396 (4) The names and addresses of all members in this state.

2397 (b) Such accounts, books, and records shall be open for inspection by the ~~administrator or~~

2398 ~~his delegates~~ Attorney General during normal business hours on all normal business days.

2399 10-1-601.

2400 The ~~administrator~~ Attorney General is authorized to promulgate, adopt, and issue rules,
 2401 regulations, and orders necessary or convenient to carry out the provisions and purposes
 2402 of this article. ~~Any such rules of a substantive nature shall be promulgated only when it~~
 2403 ~~is determined by the administrator, in the reasonable exercise of his discretion and on the~~
 2404 ~~basis of his expertise and the facts, submissions, evidence, and all information before him,~~
 2405 ~~that such rules are needed to prohibit or control acts or practices which create the~~
 2406 ~~probability of actual injury to consumers. No rule shall be promulgated where it is~~
 2407 ~~reasonably certain that the burden of complying with such rule will outweigh the public~~
 2408 ~~interest in prohibiting or controlling the practice which would be so prohibited or~~
 2409 ~~controlled. No such rule so promulgated shall be arbitrary or capricious nor shall its~~
 2410 ~~promulgation be characterized by an abuse of discretion or an unwarranted exercise of~~
 2411 ~~discretion.~~ Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall apply
 2412 to the promulgation of rules and regulations by the Attorney General pursuant to this Code
 2413 section.

2414 10-1-602.

2415 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall apply to all
 2416 actions and proceedings of an administrative nature taken by the ~~administrator~~ Attorney
 2417 General pursuant to this article, except where the ~~administrator~~ Attorney General is acting
 2418 under Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act of 1975.' A
 2419 violation of this article shall also be considered a violation of Part 2 of Article 15 of this
 2420 chapter, the 'Fair Business Practices Act of 1975.'

2421 10-1-603.

2422 In addition to any other proceedings authorized by this article, the ~~administrator~~ Attorney
2423 General may bring a civil action in the superior courts to enjoin any violation or threatened
2424 violation of any provision of this article or any rule, regulation, or order issued or enforced
2425 by the ~~administrator~~ Attorney General pursuant to this article.

2426 10-1-604.

2427 (a) In order to enforce this article or any orders, rules, and regulations promulgated
2428 pursuant thereto, the ~~administrator~~ Attorney General may issue an administrative order
2429 imposing a penalty not to exceed \$1,000.00 for each violation, whenever he or she
2430 determines, after a hearing, that any person has violated any provisions of this article or any
2431 rules, regulations, or orders promulgated under this article.

2432 (b) The hearing and any administrative review thereof shall be conducted in accordance
2433 with the procedure for contested cases under Chapter 13 of Title 50, the 'Georgia
2434 Administrative Procedure Act.' Any person who has exhausted all administrative remedies
2435 available and who is aggrieved or adversely affected by a final order or action of the
2436 ~~administrator~~ Attorney General shall have the right of judicial review thereof in accordance
2437 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' All penalties
2438 recovered as provided in this Code section shall be paid into the state treasury.

2439 (c) The ~~administrator~~ Attorney General may file, in the superior court of the county in
2440 which the person under an order resides, or if the person is a corporation, in the superior
2441 court of the county in which the corporation under an order maintains its principal place
2442 of business, or in the superior court of the county in which the violation occurred, a
2443 certified copy of the final order of the ~~administrator~~ Attorney General unappealed from or
2444 of a final order of the ~~administrator~~ Attorney General affirmed upon appeal. Thereupon,
2445 the court shall render judgment in accordance therewith and shall notify the parties. Such
2446 judgment shall have the same effect and proceedings in relation thereto shall thereafter be
2447 the same as though the judgment had been rendered in an action duly heard and determined
2448 by such court.

2449 (d) The penalty prescribed in this Code section shall be concurrent, alternative, and
2450 cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures,
2451 or penalties provided, allowed, or available to the ~~administrator~~ Attorney General with
2452 respect to any violation of this article and any order, rules, or regulations promulgated
2453 pursuant thereto.

2454 10-1-605.

2455 Any person, firm, corporation, organization, partnership, entity, buying club, or buying
2456 service violating any provision of this article shall be guilty of a misdemeanor.

2457 10-1-606.

2458 Rules, orders, actions, and regulations previously adopted which relate to functions
2459 performed by the administrator appointed pursuant to the Fair Business Practices Act of
2460 1975 which were transferred under this article to the Attorney General shall remain of full
2461 force and effect as rules, orders, actions, and regulations of the Attorney General until
2462 amended, repealed, or superseded by rules or regulations adopted by the Attorney General."

2463

SECTION 7.

2464 Said title is further amended in Article 27 of Chapter 1, relating to bad faith assertions of
2465 patent infringement, by revising Code Section 10-1-773, relating to enforcement and relief
2466 from damages, as follows:

2467 "10-1-773.

2468 (a) A violation of this article shall constitute an unfair and deceptive act or practice in the
2469 conduct of consumer transactions under Part 2 of Article 15 of this chapter, the 'Fair
2470 Business Practices Act,' and the enforcement against any such violation shall be by public
2471 enforcement by the ~~administrator~~ Attorney General and shall be enforceable through
2472 private action.

2473 (b) Whenever it may appear to the ~~administrator~~ Attorney General that any person is using
2474 or has used any method, act, or practice declared by this article to be unlawful and that
2475 proceedings would be in the public interest, the ~~administrator~~ Attorney General may bring
2476 action in a court of competent jurisdiction. Upon a showing by the ~~administrator~~ Attorney
2477 General that a person has violated this article, the court may enter or grant any or all of the
2478 relief provided for in Code Section 10-1-397.

2479 (c) Any person who suffers injury or damages as a result of a violation of this article may
2480 bring an action individually against the person or persons engaged in such violation under
2481 the rules of civil procedure to seek equitable injunctive relief and to recover his or her
2482 general and exemplary damages sustained as a consequence thereof in any court having
2483 jurisdiction over the defendant. Such relief may include:

2484 (1) Restitution to any person or persons adversely affected by a defendant's actions in
2485 violation of this article;

2486 (2) Punitive damages in an amount equal to \$50,000.00 or three times the combined total
2487 of damages, costs, and fees, whichever is greater;

2488 (3) Expenses of litigation, including reasonable attorney's fees; and

2489 (4) Other relief as the court deems just and equitable.

2490 (d) Except as otherwise provided, this article is cumulative with other laws and is not
2491 exclusive."

2492 **SECTION 8.**

2493 Said title is further amended by revising Article 28 of Chapter 1, relating to the "Georgia
2494 Lemon Law," as follows:

2495 "ARTICLE 28

2496 10-1-780.

2497 This article shall be known and may be cited as the 'Georgia Lemon Law.'

2498 10-1-781.

2499 The General Assembly recognizes that a new motor vehicle is a major consumer purchase
2500 and that a defectively manufactured new motor vehicle is likely to create hardship for, or
2501 may cause injury to, the consumer. It is the intent of the General Assembly to create a
2502 procedure for expeditious resolution of complaints and disputes concerning nonconforming
2503 new motor vehicles, to provide a method for notifying consumers of their rights under this
2504 article, and to ensure that consumers receive information, documents, and service necessary
2505 to enable them to exercise their rights under this article. In enacting these comprehensive
2506 measures, the General Assembly intends to encourage manufacturers to take all steps
2507 necessary to correct nonconformities in new motor vehicles and to create the proper blend
2508 of private and public remedies necessary to enforce this article.

2509 10-1-782.

2510 Unless the context clearly requires otherwise, as used in this article, the term:

2511 (1) 'Adjusted capitalized cost' means the amount shown as the adjusted capitalized cost
2512 in the lease agreement.

2513 (2) 'Attorney General' means the Attorney General or his or her designee.
2514 ~~'Administrator' means the administrator appointed pursuant to Code Section 10-1-395 or~~
2515 ~~his or her designee.~~

2516 (3) 'Authorized agent' means any person, including a franchised motor vehicle dealer,
2517 who is authorized by the manufacturer to service motor vehicles.

2518 (4) 'Collateral charges' means charges incurred by a consumer as a result of the purchase
2519 of a new motor vehicle including, but not limited to, charges attributable to factory or
2520 dealer installed options, sales tax and title charges, and earned finance charges.

- 2521 (5) 'Consumer' means each of the following:
- 2522 (A) A person who purchases or leases a new motor vehicle for personal, family, or
- 2523 household use and not for the purpose of selling or leasing the new motor vehicle to
- 2524 another person; and
- 2525 (B) A person who purchases or leases ten or fewer new motor vehicles a year for
- 2526 business purposes other than limousine rental services.
- 2527 (6) 'Days' means calendar days.
- 2528 (7) 'Express warranty' means a warranty which is given by the manufacturer in writing.
- 2529 (8) 'Incidental costs' means any reasonable expenses incurred by a consumer in
- 2530 connection with the repair of a new motor vehicle, including, but not limited to, payments
- 2531 to new motor vehicle dealers for the attempted repair of nonconformities, towing charges,
- 2532 and the costs of obtaining alternative transportation.
- 2533 (9) 'Informal dispute settlement mechanism' means any procedure established, employed,
- 2534 utilized, or sponsored by a manufacturer for the purpose of resolving disputes with
- 2535 consumers under this article.
- 2536 (10) 'Lemon law rights period' means the period ending two years after the date of the
- 2537 original delivery of a new motor vehicle to a consumer or the first 24,000 miles of
- 2538 operation after delivery of a new motor vehicle to the original consumer, whichever
- 2539 occurs first. The lemon law rights period shall be extended by one day for each day that
- 2540 repair services are not available to the consumer as a direct result of a strike, war,
- 2541 invasion, terrorist act, blackout, fire, flood, other disaster, or declared state of emergency.
- 2542 (11) 'Lessee' means any consumer who enters into a written lease agreement or contract
- 2543 to lease a new motor vehicle for a period of at least one year and is responsible for repairs
- 2544 to such vehicle.
- 2545 (12) 'Lessee cost' means the aggregate payment made by the lessee at the inception of
- 2546 the lease agreement or contract, inclusive of any allowance for a trade-in vehicle, and all
- 2547 other lease payments made by or on behalf of the lessee to the lessor.
- 2548 (13) 'Lessor' means a person who holds title to a new motor vehicle that is leased to a
- 2549 consumer under a written lease agreement or contract or who holds the lessor's rights
- 2550 under such agreement.
- 2551 (14) 'Manufacturer' means any person engaged in the business of constructing or
- 2552 assembling new motor vehicles or engaged in the business of importing or receiving
- 2553 imports of new motor vehicles into the United States for the purpose of selling or
- 2554 distributing them to new motor vehicle dealers.
- 2555 (15) 'New motor vehicle' means any self-propelled vehicle primarily designed for the
- 2556 transportation of persons or property over the public highways that was leased,
- 2557 purchased, or registered in this state by the consumer or lessor to whom the original

2558 motor vehicle title was issued without previously having been issued to any person other
2559 than a new motor vehicle dealer. The term 'new motor vehicle' does not include any
2560 vehicle on which the title and other transfer documents show a used, rather than new,
2561 vehicle. The term 'new motor vehicle' also does not include trucks with more than 12,000
2562 pounds gross vehicle weight rating, motorcycles, or golf carts. If a new motor vehicle is
2563 a motor home, this article shall apply to the self-propelled vehicle and chassis, but does
2564 not include those portions of the vehicle designated, used, or maintained primarily as
2565 living quarters, office, or commercial space.

2566 (16) 'New motor vehicle dealer' means a person who holds a dealer agreement with a
2567 manufacturer for the sale of new motor vehicles, who is engaged in the business of
2568 purchasing, selling, servicing, exchanging, leasing, or dealing in new motor vehicles, or
2569 who is licensed or otherwise authorized to utilize trademarks or service marks associated
2570 with one or more makes of motor vehicles in connection with such sales.

2571 (17) 'Nonconformity' means a defect, a serious safety defect, or a condition, any of which
2572 substantially impairs the use, value, or safety of a new motor vehicle to the consumer or
2573 renders the new motor vehicle nonconforming to a warranty. A nonconformity does not
2574 include a defect, a serious safety defect, or a condition that is the result of abuse, neglect,
2575 or unauthorized modification or alteration of the new motor vehicle.

2576 (18) 'Panel' means the new motor vehicle arbitration panel as designated in this article.

2577 (19) 'Person' shall have the same meaning as provided in Code Section 10-1-392.

2578 (20) 'Purchase price' means, in the case of a sale of a new motor vehicle to a consumer,
2579 the cash price of the new motor vehicle appearing in the sales agreement or contract,
2580 inclusive of any reasonable allowance for a trade-in vehicle. In the case of a lease
2581 executed by a consumer, 'purchase price' refers to the agreed upon value of the vehicle
2582 as shown in the lease agreement or contract.

2583 (21) 'Reacquired vehicle' means a new motor vehicle with an alleged nonconformity that
2584 has been replaced or repurchased by the manufacturer as the result of any court order or
2585 judgment, arbitration decision, voluntary settlement entered into between a manufacturer
2586 and the consumer, or voluntary settlement between a new motor vehicle dealer and a
2587 consumer in which the manufacturer directly or indirectly participated.

2588 (22) 'Reasonable number of attempts' under the lemon law rights period shall be as set
2589 forth in subsection (a) of Code Section 10-1-784.

2590 (23) 'Reasonable offset for use' means an amount calculated by multiplying the purchase
2591 price of a vehicle by the number of miles directly attributable to consumer use as of the
2592 date on which the consumer first delivered the vehicle to the manufacturer, its authorized
2593 agent, or the new motor vehicle dealer for repair of a nonconformity and dividing the
2594 product by 120,000, or in the case of a motor home 90,000.

2595 (24) 'Replacement motor vehicle' means a new motor vehicle that is identical or at least
 2596 equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed
 2597 at the time of purchase or execution of the lease.

2598 (25) 'Serious safety defect' means a life-threatening defect or a malfunction that impedes
 2599 the consumer's ability to control or operate the motor vehicle for ordinary use or
 2600 reasonable intended purposes or creates a risk of fire or explosion.

2601 (26) 'Superior court' means the superior court in the county where the consumer resides,
 2602 except if the consumer does not reside in this state, then the superior court in the county
 2603 where an arbitration hearing was conducted pursuant to this article.

2604 (27) 'Warranty' means any manufacturer's express warranty or any affirmation of fact or
 2605 promise made by the manufacturer in connection with the sale of a new motor vehicle to
 2606 a consumer concerning the vehicle's materials, workmanship, operation, or performance
 2607 which becomes part of the basis of the bargain. The term shall not include any extended
 2608 coverage purchased by the consumer as a separate item or any statements made by the
 2609 dealer in connection with the sale of a motor vehicle to a consumer which relate to the
 2610 nature of the material or workmanship and affirm or promise that such material or
 2611 workmanship is free of defects or will meet a specified level of performance.

2612 10-1-783.

2613 (a) The manufacturer shall publish an owner's manual and provide it to the new motor
 2614 vehicle dealer. The owner's manual shall include a clear and conspicuous listing of
 2615 addresses, e-mail addresses, facsimile numbers, and toll-free telephone numbers for the
 2616 manufacturer's customer service personnel who are authorized to direct activities regarding
 2617 repair of the consumer's vehicle. A manufacturer shall also provide all applicable
 2618 manufacturer's written warranties to the new motor vehicle dealer, who shall transfer the
 2619 owner's manual and all applicable manufacturer's written warranties to the consumer at the
 2620 time of purchase or vehicle acquisition.

2621 (b) At the time of purchase or vehicle acquisition, the new motor vehicle dealer shall
 2622 provide the consumer with a written statement that explains the consumer's rights under
 2623 this article. The statement shall be written by the ~~administrator~~ Attorney General and shall
 2624 contain information regarding the procedures and remedies under this article.

2625 (c) By October 1 of each year, the manufacturer shall forward to the ~~administrator~~
 2626 Attorney General one copy of the owner's manual and the express warranty for each make
 2627 and model of current year new motor vehicles it sells in this state. To the extent the
 2628 instructions, terms, and conditions in the owner's manuals and express warranties for other
 2629 models of the same make are substantially the same, submission of the owner's manual and

2630 express warranty for one model and a list of all other models for that make will satisfy the
 2631 requirements of this subsection.

2632 (d) Each time the consumer's new motor vehicle is returned from being diagnosed or
 2633 repaired, the manufacturer, its authorized agent, or the new motor vehicle dealer shall
 2634 provide to the consumer a fully itemized and legible statement or repair order containing
 2635 a general description of the problem reported by the consumer; the date and the odometer
 2636 reading when the vehicle was submitted for repair; the date and odometer reading when the
 2637 vehicle was made available to the consumer; the results of any diagnostic test, inspection,
 2638 or test drive; a description of any diagnosis or problem identified by the manufacturer, its
 2639 authorized agent, or the new motor vehicle dealer; and an itemization of all work
 2640 performed on the vehicle, including, but not limited to, parts and labor.

2641 (e) Upon request of the consumer, the manufacturer, its authorized agent, or the new motor
 2642 vehicle dealer shall provide a copy of any report or computer reading compiled by the
 2643 manufacturer's representative regarding inspection, diagnosis, or test drive of the
 2644 consumer's new motor vehicle.

2645 10-1-784.

2646 (a)(1) If a consumer reports a nonconformity during the lemon law rights period, the
 2647 manufacturer, its authorized agent, or the new motor vehicle dealer shall be allowed a
 2648 reasonable number of attempts to repair and correct the nonconformity. A reasonable
 2649 number of attempts shall be deemed to have been undertaken by the manufacturer, its
 2650 authorized agent, or the new motor vehicle dealer if, during the lemon law rights period:

2651 (A) A serious safety defect has been subject to repair one time and the serious safety
 2652 defect has not been corrected;

2653 (B) The same nonconformity has been subject to repair three times, and the
 2654 nonconformity has not been corrected; or

2655 (C) The vehicle is out of service by reason of repair of one or more nonconformities
 2656 for a cumulative total of 30 days.

2657 If the vehicle is being repaired by the manufacturer through an authorized agent or a new
 2658 motor vehicle dealer on the date that the lemon law rights period expires, the lemon law
 2659 rights period shall be extended until that repair attempt has been completed.

2660 (2)(A) If the manufacturer through an authorized agent or a new motor vehicle dealer
 2661 is unable to repair and correct a nonconformity after a reasonable number of attempts,
 2662 the consumer shall notify the manufacturer by statutory overnight delivery or certified
 2663 mail, return receipt requested, of the need to repair and correct the nonconformity. The
 2664 notice shall be sent to the address provided by the manufacturer in the owner's manual.

2665 The manufacturer shall have 28 days from its receipt of the notice to make a final
2666 attempt to repair and correct the nonconformity.

2667 (B) By not later than the close of business on the seventh day following receipt of
2668 notice from the consumer, the manufacturer shall notify the consumer of the location
2669 of a repair facility that is reasonably accessible to the consumer. By not later than the
2670 close of business on the fourteenth day following the manufacturer's receipt of notice,
2671 the consumer shall deliver the nonconforming new motor vehicle to the designated
2672 repair facility.

2673 (C) If the manufacturer fails to notify the consumer of the location of a reasonably
2674 accessible repair facility within seven days of its receipt of notice, or fails to complete
2675 the final attempt to repair and correct the nonconformity with the 28 day time period,
2676 the requirement that it be given a final attempt to repair and correct the nonconformity
2677 shall not apply. However, if the consumer delivers the nonconforming new motor
2678 vehicle to the designated repair facility more than 14 days from the date the
2679 manufacturer receives notice from the consumer, the 28 day time period shall be
2680 extended and the manufacturer shall have 14 days from the date the nonconforming
2681 new motor vehicle is delivered to the repair facility to complete the final attempt to
2682 repair and correct the nonconformity.

2683 (3) No manufacturer, its authorized agent, or new motor vehicle dealer may refuse to
2684 diagnose or repair any alleged nonconformity for the purpose of avoiding liability under
2685 this article.

2686 (b)(1) If the manufacturer, through an authorized agent or new motor vehicle dealer to
2687 whom the manufacturer directs the consumer to deliver the vehicle, is unable to correct
2688 a nonconformity ~~after~~ during the final attempt, or if a vehicle has been out of service by
2689 reason of repair of one or more nonconformities for 30 days during the lemon law rights
2690 period, the manufacturer shall, at the option of the consumer, repurchase or replace the
2691 vehicle. The consumer shall notify the manufacturer, in writing by statutory overnight
2692 delivery or certified mail, return receipt requested, of which option the consumer elects.
2693 The manufacturer shall have 20 days from receipt of the notice to repurchase or replace
2694 the vehicle.

2695 (2)(A) If a consumer who is a lessee elects to receive a replacement motor vehicle, in
2696 addition to providing the replacement motor vehicle, the manufacturer shall pay to the
2697 lessor an amount equal to all charges that the lessor will incur as a result of the
2698 replacement transaction and shall pay the lessee an amount equal to all incidental costs
2699 that have been incurred by the lessee plus all charges that the lessee will incur as a
2700 result of the replacement transaction. If a lessee elects to receive a replacement motor
2701 vehicle, all terms of the existing lease agreement or contract shall remain in force and

2702 effect, except that the vehicle identification information contained in the lease
2703 agreement or contract shall be changed to conform to the vehicle identification
2704 information of the replacement vehicle.

2705 (B) If a consumer who is not a lessee elects to receive a replacement motor vehicle, in
2706 addition to providing the replacement motor vehicle, the manufacturer shall pay to the
2707 consumer an amount equal to all incidental costs incurred by the consumer plus all
2708 charges that the consumer will incur as a result of the replacement transaction.

2709 (3)(A) If a consumer who is a lessee elects a repurchase, the manufacturer shall pay to
2710 the lessee an amount equal to all payments made by the lessee under the lease
2711 agreement or contract, including, but not limited to, the lessee cost, plus all incidental
2712 costs, less a reasonable offset for use of the nonconforming new motor vehicle. The
2713 manufacturer shall pay to the lessor an amount equal to 110 percent of the adjusted
2714 capitalized cost of the nonconforming new motor vehicle. After the lessor has received
2715 payment from the manufacturer as specified in this subparagraph and payment from the
2716 consumer of all past due charges, if any, the consumer shall have no further obligation
2717 to the lessor.

2718 (B) If a consumer who is not a lessee elects a repurchase, the manufacturer shall pay
2719 to the consumer an amount equal to the purchase price of the nonconforming new
2720 motor vehicle plus all collateral charges and incidental costs, less a reasonable offset
2721 for use of the nonconforming new motor vehicle. Payment shall be made to the
2722 consumer and lienholder of record, if any, as their interests may appear on the records
2723 of ownership.

2724 10-1-785.

2725 (a)(1) If a manufacturer does not replace or repurchase a nonconforming new motor
2726 vehicle after being requested to do so under subsection (b) of Code Section 10-1-784, the
2727 consumer may move to compel replacement or repurchase by applying for arbitration
2728 pursuant to Code Section 10-1-786. However, if a manufacturer has established an
2729 informal dispute settlement mechanism which the ~~administrator~~ Attorney General has
2730 certified as complying with the provisions and rules of this article, the consumer shall be
2731 eligible to apply for arbitration only after submitting a dispute under this article to the
2732 informal dispute settlement mechanism.

2733 (2) A consumer must file a claim with the manufacturer's certified informal dispute
2734 settlement mechanism no later than one year after expiration of the lemon law rights
2735 period.

2736 (3) After a decision has been rendered by the certified informal dispute settlement
2737 mechanism, the consumer is eligible to apply for arbitration pursuant to Code Section
2738 10-1-786.

2739 (4) If a decision is not rendered by the certified informal dispute settlement mechanism
2740 within 40 days of filing, the requirement that the consumer submit his or her dispute to
2741 the certified informal dispute settlement mechanism shall not apply and the consumer is
2742 eligible to apply for arbitration under Code Section 10-1-786.

2743 (b) Certified informal dispute settlement mechanisms shall be required to take into account
2744 the principles contained in and any rules promulgated under this article and shall take into
2745 account all legal and equitable factors germane to a fair and just decision. A decision shall
2746 include any remedies appropriate under the circumstances, including repair, replacement,
2747 refund, and reimbursement for collateral charges and incidental costs. For purposes of this
2748 Code section, the phrase 'take into account the principles contained in and any rules
2749 promulgated under this article' means to be aware of the provisions of this article, to
2750 understand how they might apply to the circumstances of the particular dispute, and to
2751 apply them if it is appropriate and fair to both parties to do so.

2752 (c) A certified informal dispute settlement mechanism shall keep such records as
2753 prescribed by the ~~administrator~~ Attorney General in rules promulgated under this article
2754 and shall allow the ~~administrator~~ Attorney General, without notice, to inspect and obtain
2755 copies of the records. Copies of any records requested by the ~~administrator~~ Attorney
2756 General shall be provided promptly to the ~~administrator~~ Attorney General at no cost.

2757 (d) A manufacturer may apply to the ~~administrator~~ Attorney General for certification of
2758 its informal dispute settlement mechanism. The ~~administrator~~ Attorney General may, in
2759 his or her discretion, impose requirements on an informal dispute settlement mechanism
2760 in order for it to be certified. Within a reasonable time following receipt of the application,
2761 the ~~administrator~~ Attorney General shall certify the informal dispute settlement mechanism
2762 or notify the manufacturer of the reason or reasons for denial of the requested certification.

2763 (e) At any time the ~~administrator~~ Attorney General has reason to believe that a certified
2764 informal dispute settlement mechanism is no longer in compliance with this article, he or
2765 she may notify the manufacturer of intent to revoke the informal dispute settlement
2766 mechanism's certification. The notice shall contain a statement of the reason or reasons for
2767 the revocation.

2768 (f) The manufacturer shall have ten days from its receipt of notice of denial of requested
2769 certification or notice of intent to revoke certification to submit a written request for a
2770 hearing to contest the denial or intended revocation. If a hearing is requested, it shall be
2771 held within 30 days of the ~~administrator's~~ Attorney General's receipt of the hearing request.
2772 The hearing shall be conducted by the Office of State Administrative Hearings following

2773 the procedures set forth in Chapter 13 of Title 50, the 'Georgia Administrative Procedure
2774 Act.'

2775 (g) No representation shall be made to a consumer that his or her dispute must be
2776 submitted to an informal dispute settlement mechanism that is not certified by the
2777 ~~administrator~~ Attorney General pursuant to this Code section.

2778 10-1-786.

2779 (a) A consumer shall request arbitration by filing a written application for arbitration with
2780 the ~~administrator~~ Attorney General. The application must be filed no later than one year
2781 from the date of expiration of the lemon law rights period or 60 days from the conclusion
2782 of the certified informal dispute settlement mechanism's proceeding, whichever occurs
2783 later.

2784 (b)(1) After receiving an application for arbitration, the ~~administrator~~ Attorney General
2785 shall determine whether the dispute is eligible for arbitration. Manufacturers shall be
2786 required to submit to arbitration under this article if the consumer's dispute is deemed
2787 eligible for arbitration by the ~~administrator~~ Attorney General. Disputes deemed eligible
2788 for arbitration shall be assigned to an arbitrator or arbitrators appointed pursuant to Code
2789 Section 10-1-789.

2790 (2)(A) A consumer whose dispute is determined to be ineligible for arbitration by the
2791 ~~administrator~~ Attorney General may appeal the determination of ineligibility to an
2792 arbitrator or arbitrators appointed pursuant to Code Section 10-1-789.

2793 (B) If the arbitrator or arbitrators determine that the consumer's dispute is eligible for
2794 arbitration, the arbitrator or arbitrators shall retain jurisdiction and the consumer's
2795 dispute shall proceed in accordance with this Code section.

2796 (C) If the arbitrator or arbitrators determine that the consumer's dispute is not eligible
2797 for arbitration, a written decision shall be prepared and sent to the consumer and
2798 manufacturer by certified mail, return receipt requested.

2799 (D) The decision of ineligibility may be appealed by the consumer under the provisions
2800 set forth in subsection (a) of Code Section 10-1-787. On appeal, the court shall
2801 consider only the issue of eligibility for arbitration.

2802 (3) If the court finds that a consumer's appeal from a determination of ineligibility is
2803 frivolous or has been filed in bad faith or for the purpose of harassment, the court may
2804 require the consumer to pay to the ~~administrator~~ Attorney General all costs incurred as
2805 a direct result of the appeals from the ~~administrator's~~ Attorney General's determination
2806 of ineligibility.

2807 (c) A lessee shall notify the lessor of the pending arbitration, in writing, within ten days
2808 of the lessee's receipt of notice that a dispute has been deemed eligible for arbitration and

2809 shall provide to the arbitrator or arbitrators proof that notice was given to the lessor.
2810 Within ten days of its receipt of notice from the lessee, a lessor may petition the arbitrator
2811 or arbitrators to be a party to the arbitration proceeding.

2812 (d) The arbitrator or arbitrators shall make every effort to conduct the arbitration hearing
2813 within 40 days from the date the dispute is deemed eligible for arbitration. The hearing
2814 shall be held at a location that is reasonably convenient to the Georgia consumer. Failure
2815 to hear the case within 40 days shall not divest authority of the arbitrator or arbitrators to
2816 hear the dispute or void any decision ultimately rendered.

2817 (e) If the arbitrator or arbitrators determine:

2818 (1) That a reasonable number of attempts has been undertaken to repair and correct the
2819 nonconformity and that the manufacturer was given the opportunity to make a final
2820 attempt to repair and correct the nonconformity and was unable to correct it; or

2821 (2) That a new motor vehicle was out of service by reason of repair of one or more
2822 nonconformities for a cumulative total of 30 days within the lemon law rights period,
2823 the consumer shall be awarded replacement or repurchase of the new motor vehicle as
2824 provided under Code Section 10-1-784. The arbitrator or arbitrators also may award
2825 attorney's fees and technical or expert witness fees to a consumer who prevails.

2826 (f) The decision of the arbitrator or arbitrators shall be in writing, be signed, and contain
2827 findings of fact and conclusions of law. The original signed decision shall be filed with the
2828 ~~administrator~~ Attorney General and copies shall be sent to all parties. The filing of the
2829 decision with the ~~administrator~~ Attorney General constitutes entry of the decision.

2830 (g) A decision of the arbitrator or arbitrators that has become final under the provisions of
2831 subsection (a) of Code Section 10-1-787 may be filed with the clerk of the superior court,
2832 shall have all the force and effect of a judgment or decree of the court, and may be enforced
2833 in the same manner as any other judgment or decree.

2834 (h) No arbitrator may be required to testify concerning any arbitration and the arbitrator's
2835 notes or other records are not subject to discovery. This provision does not extend to
2836 testimony or documents sought in connection with legal claims brought against an
2837 arbitrator arising out of an arbitration proceeding.

2838 10-1-787.

2839 (a) The decision of the arbitrator or arbitrators is final unless a party to the arbitration,
2840 within 30 days of entry of the decision, appeals the decision to the superior court. A party
2841 who appeals a decision shall follow the procedures set forth in Article 2 of Chapter 3 of
2842 Title 5, and any appeal shall be de novo; however, the decision of the arbitrator or
2843 arbitrators shall be admissible in evidence.

2844 (b) If the manufacturer appeals, the court may require the manufacturer to post security for
 2845 the consumer's financial loss due to the passage of time for review.

2846 (c) If the manufacturer appeals and the consumer prevails, recovery, in addition to the
 2847 arbitrator's award, shall include all charges incurred by the consumer during the pendency
 2848 of, or as a result of, the appeal, including, but not limited to, continuing collateral and
 2849 incidental costs, technical or expert witness fees, attorney's fees, and court costs.

2850 (d) A manufacturer which does not appeal a decision in favor of a consumer must fully
 2851 comply with the decision within 40 days of entry thereof. If a manufacturer does not fully
 2852 comply within the 40 day time period, the ~~administrator~~ Attorney General may issue an
 2853 order imposing a civil penalty of up to \$1,000.00 per day for each day that the
 2854 manufacturer remains out of compliance. The provisions of Code Sections 10-1-398 and
 2855 10-1-398.1 shall apply in connection with the imposition of a civil penalty under this
 2856 subsection. It shall be an affirmative defense to the imposition of a civil penalty under this
 2857 subsection that a delay or failure to comply was beyond the manufacturer's control or that
 2858 a delay was acceptable to the consumer.

2859 10-1-788.

2860 The provisions of this article are not available to a consumer in a civil action unless the
 2861 consumer has first exhausted all remedies provided for in this article.

2862 10-1-789.

2863 (a) ~~A The administrator shall establish a new~~ motor vehicle arbitration panel to shall
 2864 resolve disputes between consumers and manufacturers arising under this article. The
 2865 ~~administrator~~ Attorney General, in his or her discretion, may operate the panel by
 2866 contracting with public or private entities to conduct arbitrations under this article or by
 2867 appointing individuals to serve as panel member arbitrators. An arbitrator shall be licensed
 2868 to practice law in the State of Georgia and a member in good standing of the State Bar of
 2869 Georgia or shall have at least two years' experience in professional arbitration or dispute
 2870 resolution. No arbitrator shall be affiliated with or involved in the manufacture,
 2871 distribution, sale, lease, or servicing of motor vehicles.

2872 (b) Panel member arbitrators and entities that contract with the ~~administrator~~ Attorney
 2873 General to provide arbitration services shall be compensated for time and expenses at a rate
 2874 to be determined by the ~~administrator~~ Attorney General.

2875 (c) Each arbitration proceeding shall be conducted by either one or three arbitrators, each
 2876 of whom is to be assigned by the ~~administrator~~ Attorney General or contracted entity.

2877 (d) Neither the ~~administrator~~ Attorney General, an entity with which the ~~administrator~~
 2878 Attorney General has contracted, nor any arbitrator shall be civilly liable for any decision,

2879 action, statement, or omission made in connection with any proceeding under this article,
 2880 except in circumstances where the decision, action, statement, or omission was made with
 2881 malice or gross negligence.

2882 10-1-790.

2883 (a) No manufacturer, its authorized agent, new motor vehicle dealer, or other transferor
 2884 shall knowingly resell, either at wholesale or retail, lease, transfer a title, or otherwise
 2885 transfer a reacquired vehicle, including a vehicle reacquired under a similar statute of any
 2886 other state, unless the vehicle is being sold for scrap and the manufacturer has notified the
 2887 ~~administrator~~ Attorney General of the proposed sale or:

2888 (1) The fact of the reacquisition and nature of any alleged nonconformity are clearly and
 2889 conspicuously disclosed in writing to the prospective transferee, lessee, or buyer; and

2890 (2) The manufacturer warrants to correct such nonconformity for a term of one year or
 2891 12,000 miles, whichever occurs first.

2892 A knowing violation of this subsection shall constitute an unfair or deceptive act or practice
 2893 in the conduct of consumer transactions under Part 2 of Article 15 of Chapter 1 of Title 10
 2894 and will subject the violator to an action by a consumer under Code Section 10-1-399.

2895 (b) The manufacturer shall have 30 days to notify the ~~administrator~~ Attorney General that
 2896 a vehicle has been reacquired in this state under the provisions of this article. The notice
 2897 shall be legible and include, at a minimum, the vehicle year, make, model, and
 2898 identification number; the date and mileage at the time the vehicle was reacquired; the
 2899 nature of the alleged nonconformity; the reason for reacquisition; and the name and address
 2900 of the original consumer. When the manufacturer resells, leases, transfers, or otherwise
 2901 disposes of a reacquired vehicle, the manufacturer shall, within 30 days of the resale, lease,
 2902 transfer, or disposition, notify the ~~administrator~~ Attorney General of the vehicle year,
 2903 make, model, and identification number; the date of the sale, lease, transfer, or disposition
 2904 of the vehicle; and the name and address of the buyer, lessee, or transferee.

2905 (c) If a manufacturer resells, leases, transfers, or otherwise disposes of a motor vehicle in
 2906 this state that it reacquired under a similar statute of any other state, the manufacturer shall,
 2907 within 30 days of the resale, lease, transfer, or disposition, notify the ~~administrator~~
 2908 Attorney General of the transaction. The contents of the notice shall comply with the
 2909 requirements of subsection (b) of this Code section.

2910 (d) Manufacturers shall use forms approved by the ~~administrator~~ Attorney General. The
 2911 forms shall contain the information required under this Code section and any other
 2912 information the ~~administrator~~ Attorney General deems necessary for implementation of this
 2913 Code section.

2914 10-1-791.

2915 (a) A fee of \$3.00 shall be collected by the new motor vehicle dealer from the consumer
 2916 at completion of a sale or execution of a lease of each new motor vehicle. The fee shall be
 2917 forwarded quarterly to the Office of Planning and Budget for deposit in the new motor
 2918 vehicle arbitration account created in the state treasury. The payments are due and payable
 2919 the first day of the month in each quarter for the previous quarter's collection and shall be
 2920 mailed by the new motor vehicle dealer not later than the twentieth day of such month.
 2921 The first day of the month in each quarter is July 1, October 1, January 1, and April 1 for
 2922 each year. Consumer fees in the account shall be used for the purposes of this article.
 2923 Funds in excess of the appropriated amount remaining in the new motor vehicle arbitration
 2924 account at the end of each fiscal year shall be transferred to the general treasury. The new
 2925 motor vehicle dealer shall retain \$1.00 of each fee collected to cover administrative costs.

2926 (b) ~~The administrator appointed pursuant to subsection (g) of Code Section 10-1-395~~
 2927 Attorney General shall have the power to enforce the provisions of this Code section. The
 2928 ~~administrator's~~ Attorney General's enforcement power shall include:

2929 (1) The authority to investigate alleged violations through use of all investigative powers
 2930 available under Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act'; and
 2931 (2) The authority to initiate proceedings, pursuant to Code Section 10-1-397, in the event
 2932 of a violation of this Code section. Such proceedings include, without limitation,
 2933 issuance of a cease and desist order, a civil penalty order imposing a civil penalty up to
 2934 a maximum of \$2,000.00 for each violation, and proceedings to seek additional relief in
 2935 any superior court of competent jurisdiction. The provisions of Code Sections 10-1-398,
 2936 10-1-398.1, 10-1-402, and 10-1-405 shall apply to proceedings initiated by the
 2937 ~~administrator~~ Attorney General under this Code section.

2938 10-1-792.

2939 (a) Except as provided in subsection (a) of Code Section 10-1-790, this article shall not
 2940 create or give rise to any cause of action by manufacturers or consumers against new motor
 2941 vehicle dealers. No new motor vehicle dealer shall be held liable by a manufacturer or a
 2942 consumer for any collateral charges, incidental charges, costs, purchase price refunds, or
 2943 vehicle replacements. Manufacturers and consumers shall not make new motor vehicle
 2944 dealers party to an arbitration proceeding or any other proceeding under this article. A new
 2945 motor vehicle dealer that is named as a party in any proceeding brought by a consumer or
 2946 a manufacturer under this article, except as provided in subsection (a) of Code Section
 2947 10-1-790, shall be entitled to an award of reasonable attorney's fees and expenses of
 2948 litigation incurred in connection with such proceeding.

2949 (b) The provisions of this article shall not impair any obligation under any
 2950 manufacturer-dealer franchise agreement; provided, however, that any provision of any
 2951 manufacturer-dealer franchise agreement which attempts to shift any duty, obligation,
 2952 responsibility, or liability imposed upon a manufacturer by this article to a new motor
 2953 vehicle dealer, either directly or indirectly, shall be void and unenforceable, except for any
 2954 liability imposed upon a manufacturer by this article which is directly caused by the gross
 2955 negligence of the dealer in attempting to repair the motor vehicle after such gross
 2956 negligence has been determined by the hearing officer, as provided in Article 22 of this
 2957 chapter, the 'Georgia Motor Vehicle Franchise Practices Act.'

2958 10-1-793.

2959 (a) A violation of this article shall constitute an unfair and deceptive act or practice in the
 2960 conduct of consumer transactions under Part 2 of Article 15 of this chapter, the 'Fair
 2961 Business Practices Act'; provided, however, that enforcement against such violations shall
 2962 be by public enforcement by the ~~administrator~~ Attorney General and, except as provided
 2963 in subsection (a) of Code Section 10-1-790, shall not be enforceable through private action
 2964 under Code Section 10-1-399.

2965 (b) Except as otherwise provided, this article is cumulative with other laws and is not
 2966 exclusive. The rights and remedies provided for in this article shall be in addition to any
 2967 other rights and remedies that are otherwise available to a consumer under any other law.

2968 10-1-794.

2969 Reserved.

2970 ~~All administrative staff hired by the administrator to aid in the administration of this article~~
 2971 ~~shall be in the unclassified service and compensated at a salary determined by the~~
 2972 ~~administrator.~~

2973 10-1-795.

2974 The ~~administrator~~ Attorney General shall promulgate rules and regulations and establish
 2975 procedures necessary to carry into effect, implement, and enforce the provisions of this
 2976 article. The authority granted to the ~~administrator~~ Attorney General pursuant to this Code
 2977 section shall be exercised at all times in conformity with Chapter 13 of Title 50, the
 2978 'Georgia Administrative Procedure Act.'

2979 10-1-796.

2980 If any provision of this article or its application to any person or circumstance is held
 2981 invalid, the invalidity does not affect other provisions or applications of this article which

2982 can be given effect without the invalid provision or application, and to this end the
 2983 provisions of this article are severable.

2984 10-1-797.

2985 Any agreement entered into by a consumer that waives, limits, or disclaims the rights set
 2986 forth in this article shall be unenforceable as contrary to public policy.

2987 10-1-798.

2988 Rules, orders, actions, and regulations previously adopted which relate to functions
 2989 performed by the administrator appointed pursuant to Part 2 of Article 15 of this chapter,
 2990 the 'Fair Business Practices Act of 1975,' which were transferred under this article to the
 2991 Attorney General shall remain of full force and effect as rules, orders, actions, and
 2992 regulations of the Attorney General until amended, repealed, or superseded by rules or
 2993 regulations adopted by the Attorney General."

2994 **SECTION 9.**

2995 Said title is further amended by revising Code Section 10-1-835, relating to civil violations
 2996 relative to provisions regulating beauty pageants, as follows:

2997 "10-1-835.

2998 Any violation of this article shall be considered a violation of Part 2 of Article 15 of this
 2999 chapter, the 'Fair Business Practices Act of 1975,' as administered by the ~~Governor's Office~~
 3000 ~~of Consumer Affairs~~ Attorney General, and all public and private remedies available under
 3001 such part shall be available regarding violations of this article."

3002 **SECTION 10.**

3003 Said title is further amended by revising Article 31 of Chapter 1, relating to unfair or
 3004 deceptive practices toward the elderly, as follows:

3005 "ARTICLE 31

3006 10-1-850.

3007 As used in this article, the term:

3008 (1) 'Disabled person' means a person who has a physical or mental impairment which
 3009 substantially limits one or more of such person's major life activities. As used in this
 3010 paragraph, 'physical or mental impairment' means any of the following:

3011 (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical
 3012 loss substantially affecting one or more of the following body systems: neurological;

3013 musculoskeletal; special sense organs; respiratory, including speech organs;
 3014 cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or
 3015 endocrine; and

3016 (B) Any mental or psychological disorder, such as mental retardation, organic brain
 3017 syndrome, emotional or mental illness, and specific learning disabilities. The term
 3018 'physical or mental impairment' includes, but is not limited to, such diseases and
 3019 conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy,
 3020 epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental
 3021 retardation, and emotional illness.

3022 (2) 'Elder person' means a person who is 60 years of age or older.

3023 (3) 'Major life activities' includes functions such as caring for one's self, performing
 3024 manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

3025 (4) 'Substantially limits' means interferes with or affects over an extended period of time.
 3026 Minor temporary ailments or injuries shall not be considered physical or mental
 3027 impairments which substantially limit a person's major life activities. Examples of minor
 3028 temporary ailments are colds, influenza, or sprains or minor injuries.

3029 10-1-851.

3030 When any person who is found to have conducted business in violation of Article 15, 17,
 3031 or 21 of this chapter is found to have committed said violation against elder or disabled
 3032 persons, in addition to any civil penalty otherwise set forth or imposed, the court may
 3033 impose an additional civil penalty not to exceed \$10,000.00 for each violation.

3034 10-1-852.

3035 In determining whether to impose a civil penalty under Code Section 10-1-851 and the
 3036 amount thereof, the court shall consider the extent to which one or more of the following
 3037 factors are present:

3038 (1) Whether the defendant's conduct was in disregard of the rights of the elder or
 3039 disabled persons;

3040 (2) Whether the defendant knew or should have known that the defendant's conduct was
 3041 directed to an elder person or disabled person;

3042 (3) Whether the elder or disabled person was more vulnerable to the defendant's conduct
 3043 because of age, poor health, infirmity, impaired understanding, restricted mobility, or
 3044 disability than other persons and whether the elder or disabled person actually suffered
 3045 substantial physical, emotional, or economic damage resulting from the defendant's
 3046 conduct;

- 3047 (4) Whether the defendant's conduct caused an elder or disabled person to suffer any of
3048 the following:
- 3049 (A) Mental or emotional anguish;
 - 3050 (B) Loss of or encumbrance upon a primary residence of the elder or disabled person;
 - 3051 (C) Loss of or encumbrance upon the elder or disabled person's principal employment
3052 or principal source of income;
 - 3053 (D) Loss of funds received under a pension or retirement plan or a government benefits
3054 program;
 - 3055 (E) Loss of property set aside for retirement or for personal or family care and
3056 maintenance; or
 - 3057 (F) Loss of assets essential to the health and welfare of the elder or disabled person;
3058 or
- 3059 (5) Any other factors the court deems appropriate.

3060 10-1-853.

3061 An elder or disabled person who suffers damage or injury as a result of an offense or
3062 violation described in this article has a cause of action to recover actual damages, punitive
3063 damages, if appropriate, and reasonable attorney's fees. Restitution ordered pursuant to this
3064 Code section has priority over a civil penalty imposed pursuant to this article.

3065 10-1-854.

3066 The ~~administrator~~ Attorney General may develop and implement state-wide educational
3067 initiatives to inform elder persons and disabled persons, law enforcement agencies, the
3068 judicial system, social services professionals, and the general public as to the prevalence
3069 and prevention of consumer crimes against elder and disabled persons, the provisions of
3070 Part 1 of Article 15 of this chapter, the 'Uniform Deceptive Trade Practices Act,' and
3071 Articles 17 and 21 of this chapter, the penalties for violations of such articles, and the
3072 remedies available for victims of such violations.

3073 10-1-855.

3074 The administrator may establish and maintain referral procedures with the Division of
3075 Aging Services within the Department of Human Services in order to provide any
3076 necessary intervention and assistance to elder or disabled persons who may have been
3077 victimized by violations of this article.

3078 10-1-856.

3079 Nothing in this article shall serve to prevent the ~~administrator appointed under Code~~
 3080 ~~Section 10-1-395~~ Attorney General from investigating and pursuing unfair and deceptive
 3081 acts or practices committed under Part 2 of Article 15 of this chapter, the 'Fair Business
 3082 Practices Act of 1975.' Notwithstanding any other provision of law to the contrary, the
 3083 names, addresses, telephone numbers, social security numbers, or any other information
 3084 which could reasonably serve to identify any person making a complaint about unfair or
 3085 deceptive practices under Part 2 of Article 15 of this chapter, the 'Fair Business Practices
 3086 Act of 1975,' shall be confidential. However, the complaining party may consent to public
 3087 release of his or her identity by giving such consent expressly, affirmatively, and directly
 3088 to the ~~administrator or the administrator's employees~~ Attorney General. Nothing contained
 3089 in this Code section shall be construed to ~~prevent the subject of the complaint, or any other~~
 3090 ~~person to whom disclosure of the complainant's identity may aid in resolution of the~~
 3091 ~~complaint, from being informed of the identity of the complainant,~~ to prohibit any valid
 3092 discovery under the relevant discovery rules, or to prohibit the lawful subpoena of such
 3093 information.

3094 10-1-857.

3095 The ~~administrator~~ Attorney General shall receive all complaints under this article. He or
 3096 she shall refer all complaints or inquiries concerning conduct specifically approved or
 3097 prohibited by the Secretary of State, Department of Agriculture, Commissioner of
 3098 Insurance, Public Service Commission, Department of Natural Resources, Department of
 3099 Banking and Finance, or other appropriate agency or official of this state to that agency or
 3100 official for initial investigation and corrective action other than litigation."

3101 **SECTION 11.**

3102 Said title is further amended by revising Chapter 15, relating to business administration, as
 3103 follows:

3104 "CHAPTER 15

3105 10-15-1.

3106 As used in this chapter, the term:

3107 (1) 'Attorney General' means the Attorney General or his or her designee.
 3108 ~~'Administrator' means the administrator of the 'Fair Business Practices Act of 1975'~~
 3109 ~~appointed pursuant to subsection (a) of Code Section 10-1-395, or the administrator's~~
 3110 ~~designee.~~

3111 (2) 'Business' means a sole proprietorship, partnership, corporation, association, or other
3112 group, however organized and whether or not organized to operate at a profit. The term
3113 includes a financial institution organized, chartered, or holding a license or authorization
3114 certificate under the laws of this state, any other state, the United States, or any other
3115 country, or the parent or the subsidiary of any such financial institution. The term also
3116 includes an entity that destroys records. However, for purposes of this chapter, the term
3117 shall not include any bank or financial institution that is subject to the privacy and
3118 security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq., as amended,
3119 and as it existed on January 31, 2002, nor shall it include any hospital or health care
3120 institution licensed under Title 31 which is subject to the privacy and security provisions
3121 of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191,
3122 nor any other entity which is governed by federal law, provided that the federal law
3123 governing the business requires the business to discard a record containing personal
3124 information in the same manner as Code Section 10-15-2.

3125 (3) 'Cardholder' means any person or organization named on the face of a payment card
3126 to whom or for whose benefit the payment card is issued.

3127 (4) 'Customer' means an individual who provides personal information to a business for
3128 the purpose of purchasing or leasing a product or obtaining a service from the business.

3129 (5) 'Discard' means to throw away, get rid of, or eliminate.

3130 (6) 'Dispose' means the sale or transfer of a record for value to a company or business
3131 engaged in the business of record destruction.

3132 (7) 'Merchant' means any person or governmental entity which receives from a
3133 cardholder a payment card or information from a payment card as the instrument for
3134 obtaining, purchasing, or receiving goods, services, money, or anything else of value
3135 from a person or governmental entity.

3136 (8) 'Payment card' means a credit card, charge card, debit card, or any other card that is
3137 issued to a cardholder and that allows the cardholder to obtain, purchase, or receive
3138 goods, services, money, or anything else of value from a merchant.

3139 (9) 'Personal information' means:

3140 (A) Personally identifiable data about a customer's medical condition, if the data are
3141 not generally considered to be public knowledge;

3142 (B) Personally identifiable data which contain a customer's account or identification
3143 number, account balance, balance owing, credit balance, or credit limit, if the data
3144 relate to a customer's account or transaction with a business;

3145 (C) Personally identifiable data provided by a customer to a business upon opening an
3146 account or applying for a loan or credit; or

3147 (D) Personally identifiable data about a customer's federal, state, or local income tax
3148 return.

3149 (10)(A) 'Personally identifiable' means capable of being associated with a particular
3150 customer through one or more identifiers, including, but not limited to, a customer's
3151 fingerprint, photograph, or computerized image, social security number, passport
3152 number, driver identification number, personal identification card number, date of birth,
3153 medical information, or disability information.

3154 (B) A customer's name, address, and telephone number shall not be considered
3155 personally identifiable data unless one or more of them are used in conjunction with
3156 one or more of the identifiers listed in subparagraph (A) of this paragraph.

3157 (11) 'Record' means any material on which written, drawn, printed, spoken, visual, or
3158 electromagnetic information is recorded or preserved, regardless of physical form or
3159 characteristics.

3160 (12) 'Reencoder' means an electronic device that places encoded information from the
3161 magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different
3162 payment card.

3163 (13) 'Scanning device' means a scanner, reader, or any other electronic device that is used
3164 to access, read, scan, obtain, memorize, or store, temporarily or permanently, information
3165 encoded on the magnetic strip or stripe of a payment card.

3166 10-15-2.

3167 A business may not discard a record containing personal information unless it:

3168 (1) Shreds the customer's record before discarding the record;

3169 (2) Erases the personal information contained in the customer's record before discarding
3170 the record;

3171 (3) Modifies the customer's record to make the personal information unreadable before
3172 discarding the record; or

3173 (4) Takes actions that it reasonably believes will ensure that no unauthorized person will
3174 have access to the personal information contained in the customer's record for the period
3175 between the record's disposal and the record's destruction.

3176 10-15-3.

3177 (a) A merchant who accepts a payment card for the transaction of business shall not print
3178 more than five digits of the payment card's account number or print the payment card's
3179 expiration date on a receipt provided to the cardholder. This subsection applies only to
3180 receipts described in subsection (b) of this Code section and does not apply to a transaction

3181 in which the sole means of recording the payment card's account number or expiration date
3182 is by handwriting or by an imprint or copy of the payment card.

3183 (b)(1) Effective July 1, 2004, subsection (a) of this Code section applies to receipts that
3184 are electronically transferred by a payment card processor and printed using a cash
3185 register or other machine or device that is first used on or after July 1, 2004.

3186 (2) Effective July 1, 2006, subsection (a) of this Code section applies to all receipts that
3187 are electronically transferred by a payment card processor and printed, including those
3188 printed using a cash register or other machine or device that is first used before July 1,
3189 2004.

3190 10-15-4.

3191 (a) No person shall use a scanning device to access, read, obtain, memorize, or store,
3192 temporarily or permanently, information encoded on the magnetic strip or stripe of a
3193 payment card with the intent to defraud the authorized user, the issuer of the authorized
3194 user's payment card, or a merchant.

3195 (b) No person shall use a reencoder to place information encoded on the magnetic strip or
3196 stripe of a payment card onto the magnetic strip or stripe of a different card with the intent
3197 to defraud the authorized user, the issuer of the authorized user's payment card, or a
3198 merchant.

3199 10-15-5.

3200 (a) The ~~administrator~~ Attorney General shall be authorized to enforce the provisions of this
3201 chapter.

3202 (b) The ~~administrator~~ Attorney General shall have the authority to investigate alleged
3203 violations of this chapter, including all investigative powers available under the 'Fair
3204 Business Practices Act of 1975,' Code Section 10-1-390, et seq., including, but not limited
3205 to, the power to issue investigative demands and subpoenas as provided in Code Sections
3206 10-1-403 and 10-1-404.

3207 (c) Nothing contained in this Code section precludes law enforcement or prosecutorial
3208 agencies from investigating violations of Code Section 10-15-4.

3209 10-15-6.

3210 (a) If the ~~administrator~~ Attorney General determines, after notice and hearing, that a
3211 business has violated Code Section 10-15-2, the ~~administrator~~ Attorney General may issue
3212 an administrative order imposing a penalty of not more than \$500.00 for each customer's
3213 record that contains personal information that is wrongfully disposed of or discarded;
3214 provided, however, in no event shall the total fine levied by the ~~administrator~~ Attorney

3215 General exceed \$10,000.00. It shall be an affirmative defense to the wrongful disposing
3216 of or discarding of a customer's record that contains personal information if the business
3217 can show that it used due diligence in its attempt to properly dispose of or discard such
3218 records.

3219 (b) If the ~~administrator~~ Attorney General determines, after notice and hearing, that a
3220 business has violated Code Section 10-15-3, the ~~administrator~~ Attorney General may issue
3221 an administrative order imposing a penalty of not more than \$250.00 for the first violation
3222 of Code Section 10-15-3, and a penalty of \$1,000.00 for a second or subsequent violation
3223 of Code Section 10-15-3.

3224 (c) The hearing and any administrative review in connection with alleged violations of
3225 Code Section 10-15-2 or 10-15-3 shall be conducted in accordance with the procedure for
3226 contested cases pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure
3227 Act.' Any person who has exhausted all administrative remedies available and who is
3228 aggrieved or adversely affected by a final order or action of the ~~administrator~~ Attorney
3229 General shall have the right of judicial review in accordance with Chapter 13 of Title 50,
3230 the 'Georgia Administrative Procedure Act.'

3231 (d) The ~~administrator~~ Attorney General may file in the superior court of the county in
3232 which the person under an order resides, or if the person is a corporation, in the superior
3233 court of the county in which the corporation under an order maintains its principal place
3234 of business, a certified copy of or the final order of the ~~administrator~~ Attorney General,
3235 whether or not the order was appealed. Thereafter the court shall render a judgment in
3236 accordance with the order and notify the parties. The judgment shall have the same effect
3237 as a judgment rendered by the court.

3238 10-15-7.

3239 (a) A violation of Code Section 10-15-4 shall be punishable by imprisonment for not less
3240 than one nor more than three years or a fine not to exceed \$10,000.00, or both. Any person
3241 who commits a violation for the second or any subsequent offense shall be punished by
3242 imprisonment for not less than three nor more than ten years or a fine not to exceed
3243 \$50,000.00, or both.

3244 (b) Any person found guilty of a violation of this chapter may be ordered by the court to
3245 make restitution to any consumer victim or any business victim of the fraud.

3246 (c) Each violation of this chapter shall constitute a separate offense.

3247 (d) ~~Prosecuting The Attorney General and prosecuting~~ attorneys shall have the authority
3248 to conduct the prosecution for a violation of Code Section 10-15-4.

3249 (e) Upon a violation of this chapter, the court may issue any order necessary to correct a
 3250 public record that contains false information resulting from the actions which resulted in
 3251 the violation."

3252

SECTION 12.

3253 Chapter 22 of Title 2 of the Official Code of Georgia Annotated, relating to poultry contract
 3254 growers or producers, is amended by revising subsection (b) of Code Section 2-22-5, relating
 3255 to the application of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices
 3256 Act of 1975," as follows:

3257 "(b) The provisions of Code Section 2-22-3 or 2-22-4 may be enforced by the
 3258 Commissioner in the same manner as provided by Part 2 of Article 15 of Chapter 1 of Title
 3259 10, the 'Fair Business Practices Act of 1975,' for enforcement of the provisions of said part
 3260 by the ~~administrator of consumer affairs~~ Attorney General against a person reasonably
 3261 appearing to have engaged in an unfair or deceptive act or practice in violation of
 3262 subsection (a) of Code Section 10-1-393, and the superior courts may grant injunctive relief
 3263 and impose the same civil penalties for violations of injunctions as provided in said part."

3264

SECTION 13.

3265 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 3266 amended by revising Code Section 16-9-120, relating to definitions relative to identity fraud,
 3267 as follows:

3268 "16-9-120.

3269 As used in this article, the term:

3270 (1) 'Attorney General' means the Attorney General or his or her designee.
 3271 ~~'Administrator' means the administrator appointed under Part 2 of Article 15 of Chapter~~
 3272 ~~1 of Title 10, the 'Fair Business Practices Act of 1975.'~~

3273 (2) 'Business victim' means any individual or entity that provided money, credit, goods,
 3274 services, or anything of value to someone other than the intended recipient where the
 3275 intended recipient has not given permission for the actual recipient to receive it and the
 3276 individual or entity that provided money, credit, goods, services, or anything of value has
 3277 suffered financial loss as a direct result of the commission or attempted commission of
 3278 a violation of this article.

3279 (3) 'Consumer victim' means any individual whose personal identifying information has
 3280 been obtained, compromised, used, or recorded in any manner without the permission of
 3281 that individual.

3282 (4) 'Health care records' means records however maintained and in whatever form
 3283 regarding an individual's health, including, but not limited to, doctors' and nurses'

3284 examinations and other notes, examination notes of other medical professionals, hospital
 3285 records, rehabilitation facility records, nursing home records, assisted living facility
 3286 records, results of medical tests, X-rays, CT scans, MRI scans, vision examinations,
 3287 pharmacy records, prescriptions, hospital charts, surgical records, mental health
 3288 treatments and counseling, dental records, and physical therapy notes and evaluations.

3289 (5) 'Identifying information' shall include, but not be limited to:

3290 (A) Current or former names;

3291 (B) Social security numbers;

3292 (C) Driver's license numbers;

3293 (D) Checking account numbers;

3294 (E) Savings account numbers;

3295 (F) Credit and other financial transaction card numbers;

3296 (G) Debit card numbers;

3297 (H) Personal identification numbers;

3298 (I) Electronic identification numbers;

3299 (J) Digital or electronic signatures;

3300 (K) Medical identification numbers;

3301 (L) Birth dates;

3302 (M) Mother's maiden name;

3303 (N) Selected personal identification numbers;

3304 (O) Tax identification numbers;

3305 (P) State identification card numbers issued by state departments;

3306 (Q) Veteran and military medical identification numbers; and

3307 (R) Any other numbers or information which can be used to access a person's or
 3308 entity's resources or health care records.

3309 (6) 'Resources' includes, but is not limited to:

3310 (A) A person's or entity's credit, credit history, credit profile, and credit rating;

3311 (B) United States currency, securities, real property, and personal property of any kind;

3312 (C) Credit, charge, and debit accounts;

3313 (D) Loans and lines of credit;

3314 (E) Documents of title and other forms of commercial paper recognized under Title 11;

3315 (F) Any account, including a safety deposit box, with a financial institution as defined
 3316 by Code Section 7-1-4, including a national bank, federal savings and loan association,
 3317 or federal credit union or a securities dealer licensed by the Secretary of State or the
 3318 federal Securities and Exchange Commission;

3319 (G) A person's personal history, including, but not limited to, records of such person's
 3320 driving records; criminal, medical, or insurance history; education; or employment; and

3321 (H) A person's health insurance, health savings accounts, health spending accounts,
 3322 flexible spending accounts, medicare accounts, Medicaid accounts, dental insurance,
 3323 vision insurance, and other forms of health insurance and health benefit plans."

3324 **SECTION 14.**

3325 Said title is further amended by revising Code Section 16-9-123, relating to investigations
 3326 relative to identity fraud, as follows:

3327 "16-9-123.

3328 The ~~administrator appointed under Code Section 10-1-395~~ Attorney General shall have the
 3329 authority to investigate any complaints of consumer victims regarding identity fraud. In
 3330 conducting such investigations the ~~administrator~~ Attorney General shall have all
 3331 investigative powers which are available to the ~~administrator~~ Attorney General under Part
 3332 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' If, after
 3333 such investigation, the ~~administrator~~ Attorney General determines that a person has been
 3334 a consumer victim of identity fraud in this state, the ~~administrator~~ Attorney General shall,
 3335 at the request of the consumer victim, provide the consumer victim with certification of the
 3336 findings of such investigation. Copies of any and all complaints received by any law
 3337 enforcement agency of this state regarding potential violations of this article shall be
 3338 transmitted to the Georgia Bureau of Investigation. The Georgia Bureau of Investigation
 3339 shall maintain a repository for all complaints in the State of Georgia regarding identity
 3340 fraud. Information contained in such repository shall not be subject to public disclosure.
 3341 The information in the repository may be transmitted to any other appropriate investigatory
 3342 agency or entity. Consumer victims of identity fraud may file complaints directly with the
 3343 ~~Governor's Office of Consumer Affairs~~ office of the Attorney General, the Georgia Bureau
 3344 of Investigation, or with local law enforcement. ~~Employees of the Governor's Office of~~
 3345 ~~Consumer Affairs may communicate with consumer victims.~~ Any and all transmissions
 3346 authorized under this Code section may be transmitted electronically, provided that such
 3347 transmissions are made through a secure channel for the transmission of such electronic
 3348 communications or information, the sufficiency of which is acceptable to the ~~Governor's~~
 3349 ~~Office of Consumer Affairs~~ Attorney General. Nothing in this Code section shall be
 3350 construed to preclude any otherwise authorized law enforcement or prosecutorial agencies
 3351 from conducting investigations and prosecuting offenses of identity fraud."

3352 **SECTION 15.**

3353 Said title is further amended by revising Code Section 16-9-127, relating to authority of
 3354 administrator with regard to identity fraud, as follows:

3355 "16-9-127.
 3356 The ~~administrator~~ Attorney General shall have authority to initiate any proceedings and to
 3357 exercise any power or authority in the same manner as if he or she were acting under Part
 3358 2 of Article 15 of Chapter 1 of Title 10, as regards violations or potential violations of this
 3359 article."

3360 **SECTION 16.**

3361 Said title is further amended by revising Code Section 16-9-131, relating to criminal
 3362 prosecution of identity fraud, as follows:

3363 "16-9-131.

3364 Whenever an investigation has been conducted by the ~~Governor's Office of Consumer~~
 3365 ~~Affairs~~ Attorney General under this article and such investigation reveals conduct which
 3366 constitutes a criminal offense, the ~~administrator~~ Attorney General shall have the authority
 3367 to prosecute such cases or forward the results of such investigation to ~~the Attorney General~~
 3368 ~~or~~ any other prosecuting attorney of this state who shall commence any criminal
 3369 prosecution that he or she deems appropriate."

3370 **SECTION 17.**

3371 Title 18 of the Official Code of Georgia Annotated, relating to debtors and creditors, is
 3372 amended by revising Chapter 5, relating to debt adjustment, as follows:

3373 "CHAPTER 5

3374 18-5-1.

3375 As used in this chapter, the term:

3376 (1) 'Debt adjusting' means doing business in debt adjustments, budget counseling, debt
 3377 management, or debt pooling service or holding oneself out, by words of similar import,
 3378 as providing services to debtors in the management of their debts and contracting with
 3379 a debtor for a fee to:

3380 (A) Effect the adjustment, compromise, or discharge of any account, note, or other
 3381 indebtedness of the debtor; or

3382 (B) Receive from the debtor and disburse to his or her creditors any money or other
 3383 thing of value.

3384 (2) 'Person' means an individual, corporation, partnership, trust, association, or other
 3385 legal entity.

3386 (3) 'Resides' means to live in a particular place, whether on a temporary or permanent
 3387 basis.

3388 18-5-2.

3389 In the course of engaging in debt adjusting, it shall be unlawful for any person to accept
3390 from a debtor who resides in this state, either directly or indirectly, any charge, fee,
3391 contribution, or combination thereof in an amount in excess of 7.5 percent of the amount
3392 paid monthly by such debtor to such person for distribution to creditors of such debtor;
3393 provided, however, no provision of this chapter shall prohibit any person, in the course of
3394 engaging in debt adjusting, from imposing upon a debtor who resides in this state a
3395 reasonable and separate charge or fee for insufficient funds transactions.

3396 18-5-3.

3397 Nothing in this chapter shall apply to those situations involving debt adjusting incurred in
3398 the practice of law in this state. Nothing in this chapter shall apply to those persons or
3399 entities who incidentally engage in debt adjustment to adjust the indebtedness owed to said
3400 person or entity. Nothing in this chapter shall apply to the following entities or their
3401 subsidiaries: the Federal National Mortgage Association; the Federal Home Loan Mortgage
3402 Corporation; a bank, bank holding company, trust company, savings and loan association,
3403 credit union, credit card bank, or savings bank that is regulated and supervised by the
3404 Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal
3405 Reserve, the Federal Deposit Insurance Corporation, the National Credit Union
3406 Administration, or the Georgia Department of Banking and Finance; or persons as defined
3407 in Code Section 7-3-3 operating under Chapter 3 of Title 7, the 'Georgia Industrial Loan
3408 Act.'

3409 18-5-3.1.

3410 (a) Any person engaged in debt adjusting for debtors residing in this state shall meet the
3411 following annual requirements:

3412 (1) Obtain from an independent third party certified public accountant an annual audit
3413 of all accounts of such person in which the funds of debtors are deposited and from which
3414 payments are made to creditors on behalf of debtors. A copy of the summary results of
3415 such annual audit shall be made available upon written request to any party so requesting
3416 a copy for a charge not to exceed the cost of the reproduction of the annual audit; and

3417 (2) Obtain and maintain at all times insurance coverage for employee dishonesty,
3418 depositor's forgery, and computer fraud in an amount not less than the greater of
3419 \$100,000.00 or 10 percent of the monthly average for the immediately preceding six
3420 months of the aggregate amount of all deposits made with such person by all debtors.
3421 The deductible on such coverage shall not exceed 10 percent of the face amount of the
3422 policy coverage. Such policy shall be issued by a company rated at least 'A-' or its

3423 equivalent by a nationally recognized rating organization and such policy shall provide
 3424 for 30 days' advance written notice of termination of the policy to be provided to the
 3425 ~~Governor's Office of Consumer Affairs~~ Attorney General's office.

3426 (b) A copy of the annual audits and insurance policies required by this Code section shall
 3427 be filed annually with the ~~Governor's Office of Consumer Affairs~~ Attorney General's
 3428 office.

3429 (c) The ~~Governor's Office of Consumer Affairs~~ Attorney General's office shall act as a
 3430 repository for the audits, insurance, and termination notices furnished to such office
 3431 pursuant to this Code section. No oversight responsibility shall be imposed upon such
 3432 office by virtue of its receipt of such documents.

3433 18-5-4.

3434 (a) Any person who engages in debt adjusting in violation of this chapter shall be guilty
 3435 of a misdemeanor.

3436 (b) Without limiting the applicability of subsection (a) of this Code section:

3437 (1) Any person who engages in debt adjusting in violation of the provisions of Code
 3438 Section 18-5-3.1 or subsection (b) of Code Section 18-5-3.2 shall further be liable for a
 3439 civil fine of not less than \$50,000.00; and

3440 (2) Any person who engages in debt adjusting in violation of the provisions of Code
 3441 Section 18-5-2 or subsection (a) of Code Section 18-5-3.2 shall further be liable to the
 3442 debtor in an amount equal to the total of all fees, charges, or contributions paid by the
 3443 debtor plus \$5,000.00. Such debtor shall have the right to bring a cause of action directly
 3444 against such person for violation of the provisions of this chapter.

3445 (c) Prosecuting ~~The Attorney General~~ and prosecuting attorneys shall have the authority
 3446 to conduct the criminal prosecution of all cases arising under this chapter and to conduct
 3447 civil prosecution of cases arising under this chapter.

3448 (d) A violation of Code Section 18-5-2, 18-5-3.1, or 18-5-3.2 shall additionally be a
 3449 violation of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act
 3450 of 1975.'

3451 18-5-5.

3452 The Attorney General shall have the authority to promulgate rules and regulations and
 3453 establish procedures necessary to carry into effect, implement, and enforce the provisions
 3454 of this chapter. The authority granted to the Attorney General pursuant to this Code section
 3455 shall be exercised at all times in conformity with Chapter 13 of Title 50, the 'Georgia
 3456 Administrative Procedure Act.'

3457 **SECTION 18.**

3458 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
3459 Code Section 31-38-11, relating to variances from regulations pertaining to tanning facilities,
3460 as follows:

3461 "31-38-11.

3462 Any tanning facility which finds that it is not possible to comply with Code Section
3463 31-38-4 may apply to the ~~administrator appointed pursuant to subsection (a) of Code~~
3464 ~~Section 10-1-395~~ Attorney General for a variance from the requirements of Code Section
3465 31-38-4. Any such variance granted by the ~~administrator~~ Attorney General shall be in
3466 writing and shall be drawn as narrowly as possible."

3467 **SECTION 19.**

3468 Said title is further amended by revising Code Section 31-38-12, relating to effect of
3469 provisions relative to tanning facilities on the administrator, as follows:

3470 "31-38-12.

3471 Nothing contained in this chapter shall be construed as imposing any duty, requirement,
3472 or enforcement authority upon the ~~administrator~~ Attorney General appointed pursuant to
3473 Code Section 10-1-395 except as described in Code Section 31-38-11, provided that
3474 nothing contained in this chapter shall be construed in any manner as limiting the
3475 ~~administrator~~ Attorney General from exercising any of his or her duties, powers, or
3476 authority under any other law. The ~~administrator~~ Attorney General shall not be liable to
3477 any person for any reason as a result of granting or failing to grant any variance under Code
3478 Section 31-38-11."

3479 **SECTION 20.**

3480 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
3481 revising Code Section 33-4-6, relating to insurer liability for damages and attorney's fees, as
3482 follows:

3483 "33-4-6.

3484 (a) In the event of a loss which is covered by a policy of insurance and the refusal of the
3485 insurer to pay the same within 60 days after a demand has been made by the holder of the
3486 policy and a finding has been made that such refusal was in bad faith, the insurer shall be
3487 liable to pay such holder, in addition to the loss, not more than 50 percent of the liability
3488 of the insurer for the loss or \$5,000.00, whichever is greater, and all reasonable attorney's
3489 fees for the prosecution of the action against the insurer. The action for bad faith shall not
3490 be abated by payment after the 60 day period nor shall the testimony or opinion of an
3491 expert witness be the sole basis for a summary judgment or directed verdict on the issue

3492 of bad faith. The amount of any reasonable attorney's fees shall be determined by the trial
 3493 jury and shall be included in any judgment which is rendered in the action; provided,
 3494 however, the attorney's fees shall be fixed on the basis of competent expert evidence as to
 3495 the reasonable value of the services based on the time spent and legal and factual issues
 3496 involved in accordance with prevailing fees in the locality where the action is pending;
 3497 provided, further, the trial court shall have the discretion, if it finds the jury verdict fixing
 3498 attorney's fees to be greatly excessive or inadequate, to review and amend the portion of
 3499 the verdict fixing attorney's fees without the necessity of disapproving the entire verdict.
 3500 The limitations contained in this Code section in reference to the amount of attorney's fees
 3501 are not controlling as to the fees which may be agreed upon by the plaintiff and the
 3502 plaintiff's attorney for the services of the attorney in the action against the insurer.
 3503 (b) In any action brought pursuant to subsection (a) of this Code section, and within 20
 3504 days of bringing such action, the plaintiff shall, in addition to service of process in
 3505 accordance with Code Section 9-11-4, mail to the Commissioner of Insurance ~~and the~~
 3506 ~~consumers' insurance advocate~~ a copy of the demand and complaint by first-class mail.
 3507 Failure to comply with this subsection may be cured by delivering same."

3508

SECTION 21.

3509 Said title is further amended by revising Code Section 33-4-7, relating to duty to adjust in
 3510 motor vehicle incidents, as follows:

3511 "33-4-7.

3512 (a) In the event of a loss because of injury to or destruction of property covered by a motor
 3513 vehicle liability insurance policy, the insurer issuing such policy has an affirmative duty
 3514 to adjust that loss fairly and promptly, to make a reasonable effort to investigate and
 3515 evaluate the claim, and, where liability is reasonably clear, to make a good faith effort to
 3516 settle with the claimant potentially entitled to recover against the insured under such policy.

3517 Any insurer who breaches this duty may be liable to pay the claimant, in addition to the
 3518 loss, not more than 50 percent of the liability of the insured for the loss or \$5,000.00,
 3519 whichever is greater, and all reasonable attorney's fees for the prosecution of the action.

3520 (b) An insurer breaches the duty of subsection (a) of this Code section when, after
 3521 investigation of the claim, liability has become reasonably clear and the insurer in bad faith
 3522 offers less than the amount reasonably owed under all the circumstances of which the
 3523 insurer is aware.

3524 (c) A claimant shall be entitled to recover under subsection (a) of this Code section if the
 3525 claimant or the claimant's attorney has delivered to the insurer a demand letter, by statutory
 3526 overnight delivery or certified mail, return receipt requested, offering to settle for an
 3527 amount certain; the insurer has refused or declined to do so within 60 days of receipt of

3528 such demand, thereby compelling the claimant to institute or continue suit to recover; and
 3529 the claimant ultimately recovers an amount equal to or in excess of the claimant's demand.
 3530 (d) At the expiration of the 60 days set forth in subsection (c) of this Code section, the
 3531 claimant may serve the insurer issuing such policy by service of the complaint in
 3532 accordance with law. The insurer shall be an unnamed party, not disclosed to the jury, until
 3533 there has been a verdict resulting in recovery equal to or in excess of the claimant's
 3534 demand. If that occurs, the trial shall be recommenced in order for the trier of fact to
 3535 receive evidence to make a determination as to whether bad faith existed in the handling
 3536 or adjustment of the attempted settlement of the claim or action in question.
 3537 (e) The action for bad faith shall not be abated by payment after the 60 day period nor shall
 3538 the testimony or opinion of an expert witness be the sole basis for a summary judgment or
 3539 directed verdict on the issue of bad faith.
 3540 (f) The amount of recovery, including reasonable attorney's fees, if any, shall be
 3541 determined by the trier of fact and included in a separate judgment against the insurer
 3542 rendered in the action; provided, however, the attorney's fees shall be fixed on the basis of
 3543 competent expert evidence as to the reasonable value of the services based on the time
 3544 spent and legal and factual issues involved in accordance with prevailing fees in the
 3545 locality where the action is pending; provided, further, the trial court shall have the
 3546 discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or
 3547 inadequate, to review and amend the portion of the verdict fixing attorney's fees without
 3548 the necessity of disapproving the entire verdict. The limitations contained in this Code
 3549 section in reference to the amount of attorney's fees are not controlling as to the fees which
 3550 may be agreed upon by the plaintiff and his or her attorney for the services of the attorney.
 3551 (g) In any action brought pursuant to subsection (b) of this Code section, and within 20
 3552 days of bringing such action, the plaintiff shall, in addition to service of process in
 3553 accordance with Code Section 9-11-4, mail to the Commissioner of Insurance ~~and the~~
 3554 ~~consumers' insurance advocate~~ a copy of the demand and complaint by first-class mail.
 3555 Failure to comply with this subsection may be cured by delivering same."

3556 **SECTION 22.**

3557 Said title is further amended by repealing in its entirety Chapter 57, relating to the consumers'
 3558 insurance advocate, and designating said chapter as reserved.

3559 **SECTION 23.**

3560 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 3561 agencies, is amended by revising Code Section 35-1-13, relating to completion and
 3562 transmission of reports from victims of identity fraud, as follows:

3563 "35-1-13.
 3564 Notwithstanding any other provision of law, any law enforcement agency that receives a
 3565 report from a resident of this state that such person has been the victim of identity fraud
 3566 shall prepare an incident report and transmit the same to the ~~Governor's Office of~~
 3567 ~~Consumer Affairs~~ Georgia Bureau of Investigation identity fraud repository, as provided
 3568 in Code Section 16-9-123, notwithstanding the fact that such person's identity may have
 3569 been used solely to commit one or more criminal offenses beyond the jurisdiction of this
 3570 state. Copies of such incident reports shall be referred from the ~~Governor's Office of~~
 3571 ~~Consumer Affairs~~ office of the Attorney General to the Georgia Crime Information Center
 3572 as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been
 3573 used."

3574

SECTION 24.

3575 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 3576 by revising Code Section 36-76-7, relating to customer service requirements relative to
 3577 expedited franchising of cable and video services, as follows:

3578 "36-76-7.

3579 (a) The holder of a state franchise shall comply with the customer service standards as set
 3580 forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the
 3581 holder of a state franchise to comply with any customer service standards other than those
 3582 set forth in this Code section.

3583 (b) Except as provided in paragraph (2) of subsection (c) of this Code section, each
 3584 affected local governing authority shall receive and handle complaints from subscribers of
 3585 the holder of a state franchise that reside in the affected local governing authority's
 3586 jurisdiction.

3587 (c)(1) ~~The Attorney General~~ By December 31, 2007, the Governor's Office of Consumer
 3588 ~~Affairs~~ shall establish a uniform set of rules, which may include fines and penalties,
 3589 pursuant to which an affected local governing authority shall resolve subscriber
 3590 complaints. Said rules shall include a requirement that the cable service provider or
 3591 video service provider participate in mandatory nonbinding mediation with the affected
 3592 local governing authority and the subscriber if the issue cannot be resolved between the
 3593 cable service provider or video service provider and the subscriber. Said rules shall apply
 3594 only until 50 percent of the potential subscribers within an affected local governing
 3595 authority are offered service by two or more cable service providers or video service
 3596 providers holding a state franchise or a local franchise.

3597 (2) After such time as 50 percent of the potential subscribers within an affected local
 3598 governing authority are being offered service by two or more cable service providers or

3599 video service providers holding a state franchise or a local franchise, an affected local
 3600 governing authority may, in its discretion, by the adoption of a resolution or ordinance,
 3601 discontinue receiving and handling all subscriber inquiries, billing issues, and other
 3602 complaints for state franchise holders. Notwithstanding any other provision of law,
 3603 where an affected local governing authority discontinues receiving and handling
 3604 subscriber inquiries, billing issues, and other complaints relating to state franchise holders
 3605 by adoption of a resolution or ordinance pursuant to this paragraph, bills to subscribers
 3606 by cable service providers or video service providers holding a state franchise shall not
 3607 include the contact information of such affected local governing authority for the purpose
 3608 of directing or initiating complaints or making other such subscriber inquiries."

3609

SECTION 25.

3610 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
 3611 is amended by revising Code Section 43-1A-4, relating to the Occupational Regulation
 3612 Review Council, as follows:

3613 "43-1A-4.

3614 (a) There is created the Georgia Occupational Regulation Review Council.

3615 (b) The council shall consist of ten members:

3616 (1) The comptroller general or his or her designee;

3617 (2) The Secretary of State or his or her designee;

3618 (3) The commissioner of public health or his or her designee;

3619 (4) The director of the Office of Planning and Budget or his or her designee;

3620 (5) The commissioner of natural resources or his or her designee;

3621 (6) The state revenue commissioner or his or her designee;

3622 (7) The Commissioner of Agriculture or his or her designee;

3623 ~~(8) The administrator of the 'Fair Business Practices Act of 1975' or his or her designee;~~

3624 ~~(9)~~(8) The chairperson of the legislative committee of reference or that person's designee
 3625 from that committee, but only when legislation referred by such committee is being
 3626 considered by the council; and

3627 ~~(10)~~(9) The chairperson of that standing committee of the General Assembly appointed
 3628 by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or
 3629 that chairperson's designee from that committee, but only when legislation of which that
 3630 presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being
 3631 considered by the council.

3632 (c) The director of the Office of Planning and Budget or his or her designee shall serve as
 3633 chairperson of the council.

3634 (d) Legislative members of the council appointed thereto pursuant to paragraphs (8) and
 3635 (9) and (10) of subsection (b) of this Code section shall receive for their attendance of
 3636 meetings of the council the same expense and mileage allowance authorized for legislative
 3637 members of interim legislative committees."

3638 **SECTION 26.**

3639 Said title is further amended by revising Code Section 43-17-19, relating to applicability of
 3640 "Fair Business Practices Act of 1975" on provisions relative to charitable solicitations, as
 3641 follows:

3642 "43-17-19.

3643 Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a
 3644 consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1
 3645 of Title 10, the 'Fair Business Practices Act of 1975.' Nothing contained in this chapter
 3646 shall be construed to limit the authority of the ~~administrator~~ Attorney General to take any
 3647 action under the 'Fair Business Practices Act of 1975' regarding unfair and deceptive acts
 3648 or practices in a solicitation or in solicitations."

3649 **SECTION 27.**

3650 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
 3651 transportation, is amended by revising Code Section 46-2-23.1, relating to alternative form
 3652 of regulation provisions for gas companies, as follows:

3653 "46-2-23.1.

3654 (a) As used in this Code section, the term 'alternative form of regulation' means a method
 3655 of establishing just and reasonable rates and charges for a gas company by performance
 3656 based regulation without regard to methods based strictly upon cost of service, rate base,
 3657 and rate of return. Performance based regulation may include without limitation one or
 3658 more of the following features: earnings sharing, price caps, price-indexing formulas,
 3659 ranges of authorized rates of return, and the reduction or suspension of regulatory
 3660 requirements.

3661 (b) A gas company may from time to time file an application with the commission to have
 3662 its rates, charges, classifications, and services regulated under an alternative form of
 3663 regulation. Within ten days of the filing, the gas company shall publish a notice generally
 3664 describing the application in a newspaper or newspapers with general circulation in its
 3665 service territory.

3666 (c) After notice and hearing the commission may approve the plan, or approve it with
 3667 modifications, if the commission determines that the application is in the public interest

3668 and will produce just and reasonable rates, after taking into consideration the extent to
3669 which the application:

3670 (1) Is designed to and is likely to produce lower prices for consumers of natural gas in
3671 Georgia;

3672 (2) Will provide incentives for the gas company to lower its costs and rates;

3673 (3) Will provide incentives to improve the efficiency and productivity of the gas
3674 company;

3675 (4) Will foster the long-term provision of natural gas service in a manner that will
3676 improve the quality and choices of service;

3677 (5) Is consistent with maintenance and enhancement of safe, adequate, and reliable
3678 service and will maintain or improve preexisting service quality and consumer protection
3679 safeguards;

3680 (6) Will not result in cross-subsidization among or between groups of gas company
3681 customers;

3682 (7) Will not result in cross-subsidization among or between the portion of the gas
3683 company's business or operations subject to the alternative form of regulation and any
3684 unregulated portion of the business or operations of the gas company or of any of its
3685 affiliates;

3686 (8) Will reduce regulatory delay and cost; and

3687 (9) Will tend to enhance economic activity in the affected service territory.

3688 (d) Performance based regulation adopted by the commission as an alternative form of
3689 regulation shall provide for the following:

3690 (1) Equal and symmetric opportunities to earn above and below the performance
3691 standard;

3692 (2) Performance incentives based upon conditions within the control of the management
3693 of the gas company; and

3694 (3) Adjustments from time to time for the net effect of changes in tax rates, other costs
3695 imposed by law, and the cost of capital.

3696 (e) Where an application for an alternative form of regulation has been filed by a gas
3697 company and the commission determines that the proposal does not satisfy the
3698 requirements of this Code section, it may either reject the proposal or issue an order
3699 approving an alternative with such modifications as the commission deems necessary to
3700 satisfy the requirements of this Code section. The commission shall determine and
3701 prescribe in any such order establishing rates and charges the revenue requirements of the
3702 gas company filing the application.

3703 (f) An order adopting an alternative form of regulation may include:

- 3704 (1) Terms and conditions for establishing new services, withdrawing services, price
3705 changes to services, and services by contract to individual customers;
- 3706 (2) Terms and conditions necessary to achieve the objectives contained in subsection (c)
3707 of this Code section;
- 3708 (3) General or specific authorization for changes in rates, charges, classifications, or
3709 services such that the provisions of subsection (a) of Code Section 46-2-25 do not require
3710 30 days' notice and commission approval before such change or changes may go into
3711 effect; and
- 3712 (4) Other rates, terms, and conditions that are consistent with the objectives and
3713 requirements of subsection (c) of this Code section.
- 3714 (g) Except as otherwise provided in this Code section, the provisions of this title relating
3715 to the rates, charges, and terms of service of a gas company shall apply to rates, charges,
3716 and terms of service established pursuant to this Code section.
- 3717 (h) Any special or negotiated contract between a gas company and a retail customer
3718 approved by the commission shall not be invalidated or modified by the provisions of this
3719 Code section.
- 3720 (i)(1) Neither the provisions of this Code section nor the provisions of Article 5 of
3721 Chapter 4 of this title shall prohibit a gas company from releasing interstate pipeline
3722 capacity available to it from time to time and not required to serve the requirements of
3723 its retail customers and marketers and from making sales of gas with or without interstate
3724 transportation capacity to municipal corporations, other local gas distribution companies,
3725 or marketers and end users connected to an interstate pipeline company or connected to
3726 another local distribution company; provided, however, that where net benefits to the firm
3727 retail customers who are receiving commodity sales service from the gas company
3728 accrue:
- 3729 (A) Twenty percent of the revenues from the release of interstate pipeline capacity for
3730 the purposes of transporting gas to end users in Georgia shall be allocated to the gas
3731 company, and the remaining 80 percent of such revenues shall be credited to the costs
3732 of gas sold by the gas company to firm retail customers;
- 3733 (B) Ten percent of the revenues from the release of interstate pipeline capacity for the
3734 purpose of transporting gas to end users outside of Georgia shall be allocated to the gas
3735 company, and the remaining 90 percent of such revenues shall be credited to the costs
3736 of gas sold by the gas company to firm retail customers; and
- 3737 (C) Fifty percent of the net margin from the sale of gas, with or without interstate
3738 capacity, to municipal corporations, other local gas distribution companies, or
3739 marketers and end users connected to an interstate pipeline company or connected to
3740 another local distribution company shall be allocated to the gas company, and the

3741 remaining 50 percent of such net margins shall be credited to the costs of gas sold by
 3742 the gas company to firm retail customers; provided, however, that if as a result of such
 3743 sale, the then existing natural gas requirements of retail customers in Georgia cannot
 3744 be supplied physically, all of such net margin shall be credited to the costs of gas. The
 3745 net margin shall be calculated by subtracting all variable costs associated with the
 3746 transaction from the revenues generated by the transaction. The costs recovered by the
 3747 gas company through such transactions shall be credited to the gas costs payable by
 3748 retail customers of the gas company.

3749 (2) Where a universal service fund has been created by the commission pursuant to Code
 3750 Section 46-4-161 for a gas company which is an electing distribution company, as
 3751 defined in paragraph (10) of Code Section 46-4-152, the shares that are to be credited to
 3752 the costs of gas sold to firm retail customers under subparagraphs (A), (B), and (C) of
 3753 paragraph (1) of this subsection shall be allocated to such fund, and the costs recovered
 3754 through a transaction described in subparagraph (C) of this subsection shall be allocated
 3755 to such company.

3756 (3) Any gas company which engages in a transaction of a type described in paragraph
 3757 (1) of this subsection, which results in the allocation to the gas company of a share of the
 3758 revenues or net margin therefrom, shall make a report to the commission annually
 3759 describing each such transaction and explaining the benefits resulting to firm retail
 3760 customers from each such transaction. ~~Such report shall be served on the consumer's~~
 3761 ~~utility counsel division of the Governor's Office of Consumer Affairs."~~

3762 **SECTION 28.**

3763 Said title is further amended by revising Code Section 46-4-155, relating to regulation of
 3764 unbundled natural gas services, as follows:

3765 "46-4-155.

3766 (a) Except as otherwise provided by this article, an electing distribution company which
 3767 offers firm distribution service remains subject to the jurisdiction of the commission under
 3768 this title. Without limiting the generality of the foregoing, the commission shall have
 3769 general supervision of such company pursuant to Code Section 46-2-20, and the rates of
 3770 an electing distribution company for firm distribution service and the ancillary services
 3771 which are subject to the rate jurisdiction of the commission shall be established in
 3772 accordance with the provisions of this article and Code Section 46-2-23.1.

3773 (b) An electing distribution company shall offer liquefied natural gas peaking service to
 3774 marketers at rates and on terms approved by the commission, subject however to the
 3775 following:

3776 (1) If a marketer which is not affiliated with an electing distribution company obtains a
3777 peaking service in a delivery group from a person other than the electing distribution
3778 company, the rate for liquefied natural gas peaking service by the electing distribution
3779 company in such delivery group shall not be subject to approval by the commission but
3780 shall be capped at 120 percent of the rate for such service previously established by the
3781 commission; and

3782 (2) If the commission determines pursuant to a filing by the electing distribution
3783 company or otherwise, and based upon the factors listed in subsection (c) of this Code
3784 section, that reasonably available alternatives for such peaking services exist in the
3785 delivery group, the rate for such services in a delivery group shall not be subject to
3786 regulation by the commission and the plant and equipment of the electing distribution
3787 company which is used and useful for receiving gas for liquefaction, liquefying gas,
3788 storing liquefied natural gas, and re-gasifying liquefied natural gas, including the land
3789 upon which such plant and equipment is located, shall be removed from the rate base for
3790 rate-making purposes of the electing distribution company in an amount which is the
3791 lower of the fair market value or the depreciated book value of such facilities. In
3792 addition, the rates for firm distribution service of the electing distribution company shall
3793 be adjusted to eliminate any applicable recovery of the operation and maintenance
3794 expenses associated with such facilities and gas in storage in such facilities, as well as the
3795 return on investment attributable to the amount removed from the rate base. For purposes
3796 of such review and determination, the fact that such services have been obtained by a
3797 marketer which is not affiliated with the electing distribution company shall create a
3798 presumption that there are reasonably available alternatives for such peaking services in
3799 the delivery group.

3800 (c) An electing distribution company shall offer each type of customer service to marketers
3801 at rates and on terms approved by the commission in accordance with this article and Code
3802 Section 46-2-23.1 until such time as the commission determines that marketers have
3803 reasonably available alternatives to purchasing such service from the electing distribution
3804 company. The commission shall make a separate determination for each type of service.
3805 In making such determinations, the commission shall consider the following factors:

- 3806 (1) The number and size of alternative providers of the service;
- 3807 (2) The extent to which the service is available from alternative providers in the relevant
3808 market;
- 3809 (3) The ability of alternative providers to make functionally equivalent or substitute
3810 services readily available at competitive prices, terms, and conditions; and
- 3811 (4) Other indicators of market power which may include market share, growth in market
3812 share, ease of entry, and the affiliation of providers of a service.

3813 (d) For each delivery group for which the commission has not determined pursuant to
3814 Code Section 46-4-156 that adequate market conditions exist, and thus has not initiated
3815 customer assignment, an electing distribution company shall:

3816 (1) Offer interruptible distribution service and balancing services at rates and on terms
3817 approved by the commission in accordance with the provisions of this article and Code
3818 Section 46-2-23.1 to retail customers and marketers, subject to the rules, regulations, and
3819 general terms and conditions of the electing distribution company as approved by the
3820 commission;

3821 (2) Offer firm distribution service at rates and on terms approved by the commission in
3822 accordance with the provisions of this article and Code Section 46-2-23.1 to retail
3823 customers and marketers, subject to the rules, regulations, and general terms and
3824 conditions of the electing distribution company as approved by the commission; and

3825 (3) Offer in conjunction with such firm distribution service a commodity sales service;
3826 provided, however, that the rates for such commodity sales service shall be established
3827 pursuant to the provisions of Code Section 46-2-26.5, relating to the filing and adoption
3828 of a gas supply plan; and provided, further, that the rates for such commodity sales
3829 service shall not be subject to the provisions of Code Section 46-2-26.5 nor subject to the
3830 approval of the commission if at least five marketers, excluding any marketer which is
3831 an affiliate of the electing distribution company, have been granted certificates of
3832 authority to serve in the delivery group.

3833 (e)(1) As used in this subsection, the term 'interstate capacity assets' means interstate
3834 transportation and out-of-state gas storage capacity.

3835 (2) If, pursuant to the provisions of this article, the rates for commodity sales service of
3836 an electing distribution company within a delivery group or groups become no longer
3837 subject to the approval of the commission nor to the provisions of Code Section
3838 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible
3839 for acquiring and contracting for the interstate capacity assets necessary for gas to be
3840 made available on its system, whether directly or by assignment to marketers, for firm
3841 distribution service to retail customers within such delivery group or groups unless
3842 determined otherwise by the commission in accordance with this subsection.

3843 (3) At least every third year following the date when the rates for commodity sales
3844 service within a delivery group or groups become no longer subject to commission
3845 approval nor to the provisions of Code Section 46-2-26.5, the electing distribution
3846 company shall file, on or before August 1 of such year, a capacity supply plan which
3847 designates the array of available interstate capacity assets selected by the electing
3848 distribution company for the purpose of making gas available on its system for firm
3849 distribution service to retail customers in such delivery group or groups.

3850 (4) Not less than ten days after any such filing by an electing distribution company, the
3851 commission shall conduct a public hearing on the filing. The electing distribution
3852 company's testimony shall be under oath and shall, with any corrections thereto,
3853 constitute the electing distribution company's affirmative case. At any hearing conducted
3854 pursuant to this subsection, the burden of proof to show that the proposed capacity supply
3855 plan is appropriate shall be upon the electing distribution company.

3856 (5) Following such a hearing, the commission shall issue an order approving the capacity
3857 supply plan filed by the electing distribution company or adopting a capacity supply plan
3858 for the electing distribution company that the commission deems appropriate. Should the
3859 commission fail or refuse to issue an order by the ninetieth day after the electing
3860 distribution company's filing which either approves the capacity supply plan filed by the
3861 electing distribution company or adopts a different capacity supply plan for the electing
3862 distribution company, the capacity supply plan proposed by the electing distribution
3863 company shall thereupon be deemed approved by operation of law.

3864 (6) Any capacity supply plan approved or adopted by the commission shall:

3865 (A) Specify the range of the requirements to be supplied by interstate capacity assets;

3866 (B) Describe the array of interstate capacity assets selected by the electing distribution
3867 company to meet such requirements;

3868 (C) Describe the criteria of the electing distribution company for entering into contracts
3869 under such array of interstate capacity assets from time to time to meet such
3870 requirements; provided, however, that a capacity supply plan approved or adopted by
3871 the commission shall not prescribe the individual contracts to be executed by the
3872 electing distribution company in order to implement such plan; and

3873 (D) Specify the portion of the interstate capacity assets which must be retained and
3874 utilized by the electing distribution company in order to manage and operate its system.

3875 (7) When interstate capacity assets that are contained in a capacity supply plan approved
3876 or adopted by the commission are allocated by the electing distribution company to a
3877 marketer pursuant to the provisions of this article, all of the costs of the interstate capacity
3878 assets thus allocated shall be borne by such marketer.

3879 (8) The provisions of law relating to parties, intervention, and discovery in proceedings
3880 before the commission shall apply with respect to proceedings under this subsection.

3881 (9) All commission orders issued pursuant to this subsection shall contain the
3882 commission's findings of fact and conclusions of law upon which the commission's action
3883 is based. Any such order shall be deemed a final order subject to judicial review under
3884 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

3885 (10) Prior to the approval or adoption of a capacity supply plan pursuant to this
3886 subsection, the interstate capacity assets of the electing distribution company in the most

3887 current gas supply plan of such company approved or adopted by the commission
 3888 pursuant to the provisions of Code Section 46-2-26.5 shall be treated as a capacity supply
 3889 plan that is approved or adopted by the commission for purposes of this subsection.

3890 (11) After a capacity supply plan has become effective pursuant to provisions of this
 3891 subsection as a result of a proceeding before the commission, the commission shall retain
 3892 jurisdiction of the proceeding for the purposes set forth in this subsection. Upon
 3893 application of the affected electing distribution company ~~or the consumers' utility counsel~~
 3894 ~~division of the Governor's Office of Consumer Affairs or upon its own initiative~~, the
 3895 commission may, after affording due notice and opportunity for hearing to ~~the affected~~
 3896 ~~electing distribution company~~ and the intervenors in the proceeding, amend the capacity
 3897 supply plan of the affected electing distribution company. Any such amendment shall not
 3898 adversely affect rights under any contract entered into pursuant to such plan without the
 3899 consent of the parties to such contracts. ~~If an amendment proceeding is initiated by the~~
 3900 ~~affected electing distribution company~~ and the commission fails or refuses to issue an
 3901 order by the ninetieth day after the electing distribution company's filing, the amended
 3902 capacity supply plan proposed by the electing distribution company shall thereupon be
 3903 deemed approved by operation of law.

3904 (12) After an electing distribution company has no obligation to provide commodity
 3905 sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and
 3906 upon the petition of any interested person and after notice and opportunity for hearing
 3907 afforded to the electing distribution company, all parties to the most current proceeding
 3908 establishing a capacity supply plan for such electing distribution company, ~~the consumers'~~
 3909 ~~utility counsel division of the Governor's Office of Consumer Affairs~~, all marketers who
 3910 have been issued a certificate of authority pursuant to Code Section 46-4-153, and all
 3911 owners or operators of interstate gas pipelines that are a part of said capacity supply plan,
 3912 the commission may issue an order eliminating the responsibility of the electing
 3913 distribution company for acquiring and contracting for interstate capacity assets necessary
 3914 for gas to be made available on its system as well as the obligation of such electing
 3915 distribution company to file any further capacity supply plans with the commission
 3916 pursuant to the provisions of this subsection, if the commission determines that:

3917 (A) Marketers can and will secure adequate and reliable interstate capacity assets
 3918 necessary to make gas available on the system of the electing distribution company for
 3919 service to firm retail customers;

3920 (B) Adequate, reliable, and economical interstate capacity assets will not be diverted
 3921 from use for service to retail customers in Georgia;

3922 (C) There is a competitive, highly flexible, and reasonably accessible market for
 3923 interstate capacity assets for service to retail customers in Georgia;

3924 (D) Elimination of such responsibility on the part of the electing distribution company
3925 would not adversely affect competition for natural gas service to retail customers in
3926 Georgia; and

3927 (E) Elimination of such responsibility on the part of the electing distribution company
3928 is otherwise in the public interest.

3929 If the commission eliminates the responsibility of an electing distribution company for
3930 acquiring and contracting for interstate capacity assets and filing further capacity supply
3931 plans in accordance with this subsection, the commission shall annually review the
3932 assignment of interstate capacity assets.

3933 (13) Notwithstanding any other provisions in this Code section to the contrary, no later
3934 than July 1, 2003, the commission shall, after notice afforded to the electing distribution
3935 company, ~~the consumers' utility counsel division of the Governor's Office of Consumer~~
3936 ~~Affairs~~, all marketers who have been issued a certificate of authority in accordance with
3937 Code Section 46-4-153, and all owners or operators of interstate gas pipelines that are a
3938 part of said capacity supply plan, hold a hearing regarding a plan for assignment of
3939 interstate assets. After such hearing, the commission may adopt a plan for assignment
3940 of interstate capacity assets held by the electing distribution company, except for those
3941 interstate capacity assets reasonably required for balancing. If adopted, the plan shall
3942 provide for interstate capacity assets to be assigned to certificated marketers who desire
3943 assignment and who are qualified technically and financially to manage interstate
3944 capacity assets. Marketers who accept assignment of interstate capacity assets shall be
3945 required by the commission to use such assets primarily to serve retail customers in
3946 Georgia and shall be permitted to use such assets outside Georgia so long as the
3947 reliability of the system is not compromised. Thereafter, the commission shall annually
3948 review the assignment of interstate capacity assets.

3949 (14) Any order eliminating the responsibility of the electing distribution company for
3950 acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this
3951 subsection and any plan for assignment of interstate capacity assets pursuant to paragraph
3952 (13) of this subsection shall, at a minimum, ensure that:

3953 (A) Shifts in market share are reflected in an orderly reassignment of interstate
3954 capacity assets;

3955 (B) Marketers hold sufficient interstate capacity assets to meet the needs of retail
3956 customers;

3957 (C) Before any such assignment is authorized, the assignee demonstrates to the
3958 commission that such assignment will result in financial benefits to firm retail
3959 customers;

3960 (D) Before any marketer discontinues service in the Georgia market, it assigns its
 3961 contractual rights for interstate capacity assets used to serve Georgia retail customers
 3962 in a manner designated by the commission;

3963 (E) In the event that the commission imposes temporary directives in accordance with
 3964 Code Section 46-4-157, interstate capacity assets assigned to marketers are subject to
 3965 reassignment by the commission to protect the interests of retail customers; and

3966 (F) Any other requirement that the commission finds to be in the public interest is
 3967 imposed upon assignees as a condition of the assignment of interstate capacity assets.

3968 (15) After notice and an opportunity for hearing, the commission may authorize, subject
 3969 to reasonable terms and conditions, an electing distribution company or its designee to
 3970 utilize or monetize excess interstate capacity assets available to the electing distribution
 3971 company."

3972

SECTION 29.

3973 Said title is further amended by revising Code Section 46-4-158.2, relating to rules governing
 3974 marketer's terms of service, as follows:

3975 "46-4-158.2.

3976 The commission shall by September 1, 2002, adopt rules governing a marketer's terms of
 3977 service for natural gas consumers. Such rules shall provide, without limitation, that:

3978 (1) Each retail natural gas marketer shall establish policies and procedures for handling
 3979 billing disputes and requests for payment arrangements, which must be approved by the
 3980 commission;

3981 (2) A marketer's advertised prices shall reflect the prices or the pricing methodology in
 3982 disclosure statements and billed prices and shall be presented in the standard pricing unit
 3983 of the electing distribution company;

3984 (3) The consumer shall have a right to contact the commission ~~and the consumers' utility~~
 3985 ~~counsel division of the Governor's Office of Consumer Affairs~~ if he or she is not satisfied
 3986 with the response of the marketer;

3987 (4) Marketers shall provide all consumers with a three-day right of rescission following
 3988 the receipt of the disclosure statement, which shall be provided to consumers at times
 3989 specified in rules and regulations of the commission. Consumers may cancel an
 3990 agreement in writing or electronically by contacting the marketer;

3991 (5) Whenever a marketer offers a fixed term agreement and the expiration date of such
 3992 agreement is approaching, or whenever a marketer proposes to change its terms of service
 3993 under any type of agreement, the marketer shall provide written notification to the natural
 3994 gas consumer, clearly explaining the consumer's options at that point, including, but not
 3995 limited to, the option to seek another marketer;

- 3996 (6) A marketer shall not charge cancellation fees to a low-income residential consumer
 3997 seeking service for the first time from the regulated provider;
- 3998 (7) Gas service to a consumer shall be disconnected only for failure to pay for service
 3999 from the consumer's current marketer. A marketer may not request disconnection of
 4000 service for nonpayment of a bill which was not sent to the consumer in a timely manner.
 4001 Every marketer shall be required to offer at least one reasonable payment arrangement
 4002 in writing to a consumer prior to requesting that such consumer be disconnected for
 4003 failure to pay. Disconnection of service to a consumer is authorized no earlier than 15
 4004 days after a notice that service will be disconnected;
- 4005 (8) Marketers shall be prohibited from sending estimated bills to natural gas consumers;
 4006 provided, however, that when information from actual meter readings is not made
 4007 available by the electing distribution company or any other party authorized to perform
 4008 meter reading, marketers may send an estimated bill for not more than two consecutive
 4009 months; and
- 4010 (9) No marketer shall be authorized to prevent a consumer from obtaining distribution
 4011 and commodity sales service from another marketer or provider."

4012 **SECTION 30.**

4013 Said title is further amended by revising Code Section 46-4-158.3, relating to adequate and
 4014 accurate consumer information disclosure statements and bills relative to natural gas service,
 4015 as follows:

4016 "46-4-158.3.

4017 The commission shall, by September 1, 2002, adopt rules and regulations requiring
 4018 marketers which provide firm distribution service under this article to provide adequate and
 4019 accurate consumer information to enable consumers to make informed choices regarding
 4020 the purchase of natural gas services. Such rules shall provide, without limitation, that:

4021 (1) A disclosure statement shall be provided to consumers in an understandable format
 4022 that enables such consumers to compare prices and services on a uniform basis. Rules
 4023 adopted by the commission shall provide when disclosure statements shall be provided
 4024 to consumers. Such disclosure statements shall include, but shall not be limited to, the
 4025 following:

4026 (A) For fixed rate charges for natural gas service, a clear disclosure of the components
 4027 of the fixed rate, the actual prices charged by the marketer, presented in a single
 4028 standard pricing unit which includes any charges imposed by the marketer or its agent,
 4029 so that the consumer can compare rates among marketers. This disclosure shall not
 4030 include state and local sales taxes. The standard pricing disclosure unit must include
 4031 all recurring monthly charges;

- 4032 (B) For variable rate charges for natural gas service, a clear and understandable
4033 explanation of the factors that will cause the price to vary and how often the price can
4034 change, the current price, and the ceiling price, if any, so that the consumer can
4035 compare rates among marketers. The current price and ceiling price, if applicable, shall
4036 be presented in a single standard pricing unit which includes any charges imposed by
4037 the marketer or its agent. This disclosure shall not include state and local sales taxes.
4038 The standard pricing disclosure unit must include all recurring monthly charges;
- 4039 (C) A statement that the standard unit price does not include state and local taxes or
4040 charges imposed by the electing distribution company;
- 4041 (D) The length of the agreement, including the starting date and expiration date, if
4042 applicable;
- 4043 (E) The billing interval, the method by which monthly charges imposed by the electing
4044 distribution company will be billed to the consumer in the event the consumer
4045 commences or terminates service with the marketer during the billing interval, and any
4046 late payment, cancellation, or reconnection fees;
- 4047 (F) The marketer's budget billing, payment, credit, deposit, cancellation, collection, and
4048 reconnection policies and procedures;
- 4049 (G) How to contact the marketer for information or complaints;
- 4050 (H) A statement of the natural gas consumer's right to contact the commission ~~and the~~
4051 ~~consumers' utility counsel division of the Governor's Office of Consumer Affairs~~ if he
4052 or she is not satisfied with the response of the marketer, including the local and toll-free
4053 telephone numbers of these agencies;
- 4054 (I) The division name and telephone number for information regarding heating
4055 assistance administered by the Department of Human Services;
- 4056 (J) The following statement:
4057 'A consumer shall have a three-day right of rescission following the receipt of this
4058 disclosure at the time of initiating service or when informed of a change in terms or
4059 conditions. You, the consumer, may cancel in writing or electronically by contacting
4060 the marketer.';
- 4061 (K) The following statement:
4062 'If you have a fixed term agreement with us and it is approaching the expiration date,
4063 or whenever we propose to change our terms of service in any type of agreement, you
4064 will receive written notification from us prior to the date of expiration of or change
4065 to the agreement. We will explain your options to you in this advance notification.';
- 4066 (L) A statement setting forth the requirements of paragraphs (6) through (9) of Code
4067 Section 46-4-158.2; and
- 4068 (M) A statement that deposits shall not exceed \$150.00; and

4069 (2) Natural gas consumers' bills shall be accurate and understandable and shall contain
 4070 sufficient information for a consumer to compute and compare the total cost of
 4071 competitive retail natural gas services. Such bills shall include, but not be limited to, the
 4072 following:

4073 (A) The consumer's name, billing address, service address, and natural gas company
 4074 account number;

4075 (B) The dates of service covered by the bill, an itemization of each type of competitive
 4076 natural gas service covered by the bill, any related billing components, the charge for
 4077 each type of natural gas service, and any other information the consumer would need
 4078 to recalculate the bill for accuracy;

4079 (C) The applicable billing determinants, including beginning meter reading, ending
 4080 meter reading, multipliers, and any other consumption adjustments;

4081 (D) The amount billed for the current period, any unpaid amounts due from previous
 4082 periods, any payments or credits applied to the consumer's account during the current
 4083 period, any late payment charges or gross and net charges, if applicable, and the total
 4084 amount due and payable;

4085 (E) The due date for payment to keep the account current;

4086 (F) The current balance of the account, if the natural gas consumer is billed according
 4087 to a budget plan;

4088 (G) Options and instructions on how the natural gas consumer can make a payment;

4089 (H) A toll-free or local telephone number and address for consumer billing questions
 4090 or complaints for any retail natural gas company whose charges appear on the bill;

4091 (I) The applicable electing distribution company's 24 hour local or toll-free telephone
 4092 number for reporting service emergencies; and

4093 (J) An explanation of any codes and abbreviations used."

4094 **SECTION 31.**

4095 Said title is further amended by revising Code Section 46-4-160, relating to the commission's
 4096 authority over certificated marketers, access to records, investigations and hearings, price
 4097 summary, billing, violations, and slamming, as follows:

4098 "46-4-160.

4099 (a) With respect to a marketer certificated pursuant to Code Section 46-4-153, the
 4100 commission shall have authority to:

4101 (1) Adopt reasonable rules and regulations governing the certification of a marketer;

4102 (2) Grant, modify, impose conditions upon, or revoke a certificate;

4103 (3) Adopt reasonable rules governing service quality. In promulgating consumer
 4104 protection rules under this article, the commission shall, to the extent practicable, provide

4105 for rules with a self-executing mechanism to resolve such complaints in a timely manner.
 4106 Such consumer protection rules shall encourage marketers to resolve complaints without
 4107 recourse to the commission and shall expedite the handling of those complaints that do
 4108 require action by the commission by providing for a minimum payment of \$100.00 to the
 4109 consumer, plus penalties and fines as determined by the commission, for violations of
 4110 such rules;

4111 (4) Resolve complaints against a marketer regarding that marketer's service;

4112 (5) Adopt reasonable rules and regulations relating to billing practices of marketers and
 4113 information required on customers' bills. The commission shall require at a minimum
 4114 that bills specify the gas consumption amount, price per therm, distribution charges, and
 4115 any service charges. The commission shall prescribe performance standards for marketer
 4116 billing relating to accuracy and timeliness of customer bills;

4117 (6) Adopt reasonable rules and regulations relating to minimum resources which
 4118 marketers are required to have in this state for customer service purposes. The rules and
 4119 regulations shall require a marketer to have and maintain the ability to process cash
 4120 payments from customers in this state. The rules and regulations shall provide
 4121 procedures relating to the handling and disposition of customer complaints; and

4122 (7) Adopt reasonable rules and regulations requiring marketers to provide notification
 4123 to retail customers of or include with customer bills information relating to where
 4124 customers may obtain pricing information relative to gas marketers.

4125 (b) Prior to the determination by the commission pursuant to Code Section 46-4-156 that
 4126 adequate market conditions exist within a delivery group, each marketer must separately
 4127 state on its bills to retail customers within the delivery group the charges for firm
 4128 distribution service and for commodity sales.

4129 (c) Except as otherwise provided by this article, the price at which a marketer sells gas
 4130 shall not be regulated by the commission.

4131 (d) ~~The commission and the consumers' utility counsel division of the Governor's Office~~
 4132 ~~of Consumer Affairs~~ shall have access to the books and records of marketers as may be
 4133 necessary to ensure compliance with the provisions of this article and with the
 4134 commission's rules and regulations promulgated under this article.

4135 (e) Except as otherwise provided in this article, certification of a person as a marketer by
 4136 the commission pursuant to Code Section 46-4-153 does not subject the person to the
 4137 jurisdiction of the commission under this title, including without limitation the provisions
 4138 of Article 2 of Chapter 2 of this title.

4139 (f) The provisions of Article 3 of Chapter 2 of this title shall apply to an investigation or
 4140 hearing regarding a marketer. The provisions of Articles 4 and 5 of Chapter 2 of this title
 4141 shall apply to a marketer.

4142 (g) The commission, subject to receiving state funds for such purpose, is required to have
4143 published at least quarterly in newspapers throughout the state a summary of the price per
4144 therm and any other amounts charged to retail customers by each marketer operating in this
4145 state and any additional information which the commission deems appropriate to assist
4146 customers in making decisions regarding choice of a marketer. In addition, the commission
4147 shall make such information available to Georgia Public Telecommunications (GPTV)
4148 under the jurisdiction of the Georgia Public Telecommunications Commission which will
4149 provide such information to the general public at a designated time at least once a month.

4150 (h) A marketer shall render a bill to retail customers for services within 30 days of the date
4151 following the monthly meter reading. A marketer's bill shall utilize the results of the actual
4152 meter reading subject to paragraph (8) of Code Section 46-4-158.2. The price for natural
4153 gas billed to a natural gas consumer shall not exceed the marketer's published price
4154 effective at the beginning of the consumer's billing cycle. A marketer shall allow the
4155 natural gas consumer a reasonable period of time to pay the bill from the date the consumer
4156 receives the bill, prior to the application of any late fees or penalties. Marketers shall not
4157 impose unreasonable late fees or penalties and in no event shall any such fees or penalties
4158 exceed \$10.00 or 1.5 percent of the past due balance, whichever is greater.

4159 (i) Any marketer which willfully violates any provision of this Code section or any duly
4160 promulgated rules or regulations issued under this Code section, including but not limited
4161 to rules relating to false billing, or which fails, neglects, or refuses to comply with any
4162 order of the commission after notice thereof shall be liable for any penalties authorized
4163 under Code Section 46-2-91.

4164 (j) As used in this subsection, the phrase 'terms and conditions' does not include price. At
4165 least 30 days prior to the effective date of any changes in the terms and conditions for
4166 service authorized by the marketer's certificate of authority, a marketer shall file such
4167 changes with the commission. Such changes to the terms and conditions of service shall
4168 go into effect on the effective date proposed by the marketer; provided, however, that the
4169 commission shall be authorized to suspend the effective date of the proposed changes for
4170 up to 90 days if it appears to the commission that the proposed terms and conditions are
4171 unconscionable or are unfair, deceptive, misleading, or confusing to consumers. If the
4172 commission does not issue a final decision on the proposed terms and conditions of service
4173 within the 90 day suspension period, the proposed changes shall be deemed approved.

4174 (k) Any consumer determined by the commission to be the victim of slamming shall be
4175 able to switch back to his or her desired marketer without any charge. No marketer
4176 responsible for slamming a consumer shall be entitled to any remuneration for services
4177 provided to that customer, and any refund owed to such a consumer by the marketer who
4178 switched the consumer without his or her consent shall be paid within 30 days of the date

4179 the commission determined the consumer was a victim of slamming. No marketer
 4180 responsible for slamming a consumer who is determined to be a victim of slamming shall
 4181 report to a credit reporting agency any moneys owed by such a consumer to such marketer;
 4182 any marketer who violates the prohibition set out in this sentence shall be required by the
 4183 commission to pay such a consumer \$1,000.00 for each such prohibited report."

4184 **SECTION 32.**

4185 Said title is further amended by revising Code Section 46-4A-4, relating to powers and duties
 4186 of the director of the Office of Planning and Budget relative to provision of energy
 4187 conservation assistance to residential customers by electric and gas utilities, as follows:

4188 "46-4A-4.

4189 The director shall have and may exercise the following powers and duties:

4190 (1) To adopt, modify, repeal, and promulgate, after consultation with all affected parties
 4191 and due notice and public hearings held in accordance with and established pursuant to
 4192 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' rules and regulations
 4193 for the establishment and implementation of the Residential Conservation Service
 4194 program. The initial proposed regulations shall be based upon the state plan for the
 4195 Residential Conservation Service as approved by the United States Department of Energy
 4196 and shall include provisions for:

4197 (A) Identification of covered utilities;

4198 (B) Utility responsibilities, such as:

4199 (i) Providing program information for customers;

4200 (ii) Performance of on-site energy audits;

4201 (iii) Arranging financing and installation;

4202 (iv) Distribution of lists of contractors, suppliers, and lenders;

4203 (v) Conducting inspections of installed measures;

4204 (vi) Determining qualifications of auditors and inspectors; and

4205 (vii) Establishing record keeping, financial accounting, and reporting requirements;

4206 (C) Development and maintenance of master records of contractors, suppliers, and
 4207 lenders;

4208 (D) Consumer complaint mechanisms;

4209 (E) Utility supply, installation, and financing of energy products;

4210 (F) Coordination with affected agencies, especially the commission and the Office of
 4211 ~~Consumer Affairs;~~

4212 (G) Compliance and enforcement procedures; and

4213 (H) Other program elements required by federal law;

- 4214 (2) To administer and enforce this chapter and all rules and regulations and orders
 4215 promulgated hereunder;
- 4216 (3) To receive and administer any federal funding available for the purposes of this
 4217 chapter; and
- 4218 (4) To amend the regulations promulgated under this chapter to conform to any future
 4219 changes in the federal law and regulations governing the program."

4220 SECTION 33.

4221 Said title is further amended by revising Code Section 46-4A-12, relating to construction of
 4222 chapter concerning provision of energy conservation assistance to residential customers by
 4223 electric and gas utilities, as follows:

4224 "46-4A-12.

4225 No provision of this chapter or any rules or regulations or orders hereunder shall be
 4226 construed to be a limitation:

- 4227 (1) On the activities of any privately or publicly owned utility which is not a covered
 4228 utility;
- 4229 (2) On the activities of covered utilities, when such activities are not subject to this
 4230 chapter;
- 4231 (3) On the activities of contractors, suppliers, or lenders, when such activities are not
 4232 subject to this chapter;
- 4233 (4) On the activities of the Division of Energy Resources of the Georgia Environmental
 4234 Finance Authority in the enforcement or administration of any program or provision of
 4235 law; and
- 4236 (5) On the power of any state or local agency in the enforcement or administration of any
 4237 provision of law it is specifically permitted or required to enforce or administer,
 4238 including, but not limited to, the Public Service Commission, ~~the Office of Consumer~~
 4239 ~~Affairs~~, and the Construction Industry Licensing Board."

4240 SECTION 34.

4241 Said title is further amended by revising Code Section 46-5-27, relating to telephone
 4242 solicitations to residential, mobile, or wireless subscribers, Public Service Commission to
 4243 establish and maintain list of certain subscribers, authorization for imposition of
 4244 administrative fees, confidential nature of data base, and required identification, as follows:

4245 "46-5-27.

4246 (a) The General Assembly finds that:

- 4247 (1) The use of the telephone to market goods and services is pervasive now due to the
 4248 increased use of cost-effective telemarketing techniques;

- 4249 (2) Over 30,000 businesses actively telemarket goods and services to business and
 4250 residential customers;
- 4251 (3) Every day, over 300,000 solicitors place calls to more than 18 million Americans,
 4252 including citizens of this state;
- 4253 (4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy
 4254 and peacefulness of individuals;
- 4255 (5) Many citizens of this state are outraged over the proliferation of nuisance calls from
 4256 telemarketers;
- 4257 (6) Individuals' privacy rights and commercial freedom of speech can be balanced in a
 4258 way that accommodates both the privacy of individuals and legitimate telemarketing
 4259 practices; and
- 4260 (7) It is in the public interest to establish a mechanism under which the individual
 4261 citizens of this state can decide whether or not to receive telemarketing calls.
- 4262 (b) As used in this Code section, the term:
- 4263 (1) 'Caller identification service' means a type of telephone service which permits
 4264 telephone subscribers to see the telephone number of incoming telephone calls.
- 4265 (2) 'Residential, mobile, or wireless subscriber' means a person who has subscribed to
 4266 telephone service from a local exchange company or mobile or wireless telephone service
 4267 provider or other persons living or residing with such person.
- 4268 (3) 'Telephone solicitation' means any voice communication over a telephone line for the
 4269 purpose of encouraging the purchase or rental of, or investment in, property, goods, or
 4270 services, but does not include communications:
- 4271 (A) To any residential, mobile, or wireless subscriber with that subscriber's prior
 4272 express invitation or permission;
- 4273 (B) By or on behalf of any person or entity with whom a residential, mobile, or
 4274 wireless subscriber has a prior or current business or personal relationship; or
- 4275 (C) By or on behalf of a charitable organization which has filed a registration statement
 4276 pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs
 4277 (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such
 4278 registration as a religious organization or agency referred to in paragraph (2) of Code
 4279 Section 43-17-2.
- 4280 Such communication may be from a live operator, through the use of ADAD equipment
 4281 as defined in Code Section 46-5-23, or by other means.
- 4282 (c) No person or entity shall make or cause to be made any telephone solicitation to the
 4283 telephone line of any residential, mobile, or wireless subscriber in this state who has given
 4284 notice to the commission, in accordance with regulations promulgated under subsection (d)
 4285 of this Code section, of such subscriber's objection to receiving telephone solicitations.

4286 (d)(1) The commission shall establish and provide for the operation of a data base to
4287 compile a list of telephone numbers of residential, mobile, and wireless subscribers who
4288 object to receiving telephone solicitations. It shall be the duty of the commission to have
4289 such data base in operation no later than January 1, 1999.

4290 (2) Such data base may be operated by the commission or by another entity selected by
4291 and awarded a contract by the commission.

4292 (3) No later than January 1, 1999, the commission shall promulgate regulations which:

4293 (A) Require each local exchange company to inform its residential, mobile, or wireless
4294 subscribers of the opportunity to provide notification to the commission or its
4295 contractor that such subscriber objects to receiving telephone solicitations;

4296 (B) Specify the methods by which each residential, mobile, or wireless subscriber may
4297 give notice to the commission or its contractor of his or her objection to receiving such
4298 solicitations and methods for revocation of such notice;

4299 (C) Specify the length of time for which a notice of objection shall be effective and the
4300 effect of a change of telephone number on such notice;

4301 (D) Specify the methods by which such objections and revocations shall be collected
4302 and added to the data base;

4303 (E) Specify the methods by which any person or entity desiring to make telephone
4304 solicitations will obtain access to the data base as required to avoid calling the
4305 telephone numbers of residential, mobile, or wireless subscribers included in the data
4306 base; and

4307 (F) Specify such other matters relating to the data base that the commission deems
4308 desirable.

4309 (4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications
4310 Commission establishes a single national data base of telephone numbers of subscribers
4311 who object to receiving telephone solicitations, the commission shall include the part of
4312 such single national data base that relates to Georgia in the data base established under
4313 this Code section.

4314 (e) The commission may provide by rule or regulation for administrative fees to be
4315 imposed upon:

4316 (1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data
4317 base established under this Code section; provided, however, that the commission shall
4318 not set this fee in an amount greater than \$5.00; and

4319 (2) A person or entity desiring to make telephone solicitations for access to or for
4320 electronic copies of the data base established under this Code section.

4321 (f)(1) Information contained in the data base established under this Code section shall
4322 be used only for the purpose of compliance with this Code section or in a proceeding or

4323 action under subsection (h) or (i) of this Code section. Such information shall not be
4324 subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.

4325 (2) No person shall knowingly compile or disseminate or compile and disseminate
4326 information obtained from the data base for any reason other than those legitimate
4327 purposes established by law. Any person found guilty of violating this subsection shall
4328 be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed
4329 \$1,000.00. Each instance of an unauthorized disclosure of information from the data base
4330 shall constitute a separate offense.

4331 (g)(1) Any person or entity who makes a telephone solicitation to the telephone line of
4332 any residential, mobile, or wireless subscriber in this state shall, at the beginning of such
4333 call, state clearly the identity of the person or entity initiating the call.

4334 (2) No person or entity who makes a telephone solicitation to the telephone line of a
4335 residential, mobile, or wireless subscriber in this state shall knowingly utilize any method
4336 to block or otherwise circumvent such subscriber's use of a caller identification service.

4337 (h) ~~The administrator appointed pursuant to subsection (g) of Code Section 10-1-395~~
4338 Attorney General shall have authority to initiate proceedings, pursuant to Code Section
4339 10-1-397, relating to a knowing violation or threatened knowing violation of subsection (c)
4340 or (g) of this Code section. Such proceedings include without limitation proceedings to
4341 issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum
4342 of \$2,000.00 for each knowing violation, and to seek additional relief in any superior court
4343 of competent jurisdiction. Such actions shall be brought in the name of the state. The
4344 provisions of Code Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings
4345 initiated by the ~~administrator~~ Attorney General under this subsection. The ~~administrator~~
4346 Attorney General is authorized to issue investigative demands, issue subpoenas, administer
4347 oaths, and conduct hearings in the course of investigating a violation of subsection (c) or
4348 (g) of this Code section, in accordance with the provisions of Code Sections 10-1-403 and
4349 10-1-404.

4350 (i) Any person who has received more than one telephone solicitation within any 12 month
4351 period by or on behalf of the same person or entity in violation of subsection (c) or (g) of
4352 this Code section may either bring an action to enjoin such violation; bring an action to
4353 recover for actual monetary loss from such knowing violation or to receive up to \$2,000.00
4354 in damages for each such knowing violation, whichever is greater; or bring both such
4355 actions.

4356 (j) It shall be a defense in any action or proceeding brought under subsection (h) or (i) of
4357 this Code section that the defendant has established and implemented, with due care,
4358 reasonable practices and procedures to effectively prevent telephone solicitations in
4359 violation of this Code section.

4360 (k) No action or proceeding may be brought under subsection (h) or (i) of this Code
4361 section:

4362 (1) More than two years after the person bringing the action knew or should have known
4363 of the occurrence of the alleged violation; or

4364 (2) More than two years after the termination of any proceeding or action by the State
4365 of Georgia, whichever is later.

4366 (l) A court of this state may exercise personal jurisdiction over any nonresident or his or
4367 her executor or administrator as to an action or proceeding authorized by this Code section
4368 in accordance with the provisions of Code Section 9-10-91.

4369 (m) The remedies, duties, prohibitions, and penalties of this Code section are not exclusive
4370 and are in addition to all other causes of action, remedies, and penalties provided by law.

4371 (n) No provider of telephone caller identification service shall be held liable for violations
4372 of this Code section committed by other persons or entities."

4373 **SECTION 35.**

4374 Said title is further amended by repealing in its entirety Chapter 10, relating to the
4375 consumers' utility counsel of the division of the Governor's Office of Consumer Affairs, and
4376 designating said chapter as reserved.

4377 **SECTION 36.**

4378 All laws and parts of laws in conflict with this Act are repealed.