

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

AS PASSED SENATE

**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, 44, 45,
4 46, and 51 of the Official Code of Georgia Annotated, relating to agriculture, crimes and
5 offenses, debtors and creditors, health, insurance, law enforcement officers and agencies,
6 local government, professions and businesses, property, public officers and employees,
7 public utilities and public transportation, and torts, respectively, so as to conform to such
8 transfer, correct cross-references, and remove obsolete provisions; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

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

15 **"Part 1A**

16 10-1-380.

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

20 10-1-381.

21 (a) The ~~administrator~~ Attorney General may file in the superior court of the county in
22 which a person under order resides, or in the county in which the violation occurred, or, if
23 the person is a corporation, in the county in which the corporation maintains its principal

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

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

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

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

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

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

62 10-1-382.

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

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

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

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

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

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

95 **SECTION 2.**

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

98 "Part 2

99 10-1-390.

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

101 10-1-391.

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

107 (b) It is the intent of the General Assembly that this part be interpreted and construed
 108 consistently with interpretations given by the Federal Trade Commission in the federal
 109 courts pursuant to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section
 110 45(a)(1)), as from time to time amended.

111 10-1-392.

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

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

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

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

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

124 (4) 'Career consulting firm' means any person providing services to an individual in
 125 conjunction with a career search and consulting program for the individual, including, but
 126 not limited to, counseling as to the individual's career potential, counseling as to
 127 interview techniques, and the identification of prospective employers. A 'career

128 consulting firm' shall not guarantee actual job placement as one of its services. A 'career
129 consulting firm' shall not include any person who provides these services without
130 charging a fee to applicants for those services or any employment agent or agency
131 regulated under Chapter 10 of Title 34.

132 (5) 'Child support enforcement' means the action, conduct, or practice of enforcing a
133 child support order issued by a court or other tribunal.

134 (6) 'Consumer' means a natural person.

135 (7) 'Consumer acts or practices' means acts or practices intended to encourage consumer
136 transactions.

137 (8) 'Consumer report' means any written or other communication of any information by
138 a consumer reporting agency bearing on a consumer's creditworthiness, credit standing,
139 or credit capacity which is used or intended to be used or collected in whole or in part for
140 the purpose of serving as a factor in establishing the consumer's eligibility for:

141 (A) Credit or insurance to be used primarily for personal, family, or household
142 purposes; or

143 (B) Employment consideration.

144 (9) 'Consumer reporting agency' or 'agency' means any person which, for monetary fees,
145 dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the
146 practice of assembling or evaluating consumer credit information or other information
147 on consumers for the purpose of furnishing consumer reports to third parties.

148 (10) 'Consumer transactions' means the sale, purchase, lease, or rental of goods, services,
149 or property, real or personal, primarily for personal, family, or household purposes.

150 (11) 'Department' means the Department of Human Services.

151 (12) 'Documentary material' means the original or a copy, whether printed, filmed, or
152 otherwise preserved or reproduced, by whatever process, including electronic data storage
153 and retrieval systems, of any book, record, report, memorandum, paper, communication,
154 tabulation, map, chart, photograph, mechanical transcription, or other tangible document
155 or record wherever situate.

156 (13) 'Examination' of documentary material means inspection, study, or copying of any
157 such material and the taking of testimony under oath or acknowledgment with respect to
158 any such documentary material.

159 (14) 'File' means, when used in connection with information on any consumer, all of the
160 information on that consumer recorded or retained by a consumer reporting agency
161 regardless of how the information is stored.

162 (14.1) 'Food' means articles used for food or drink for human consumption, chewing
163 gum, and articles used for components of any such article.

164 (15) 'Going-out-of-business sale' means any offer to sell to the public or sale to the
165 public of goods, wares, or merchandise on the implied or direct representation that such
166 sale is in anticipation of the termination of a business at its present location or that the
167 sale is being held other than in the ordinary course of business and includes, without
168 being limited to, any sale advertised either specifically or in substance to be a sale
169 because the person is going out of business, liquidating, selling his or her entire stock or
170 50 percent or more of his or her stock, selling out to the bare walls, selling because the
171 person has lost his or her lease, selling out his or her interest in the business, or selling
172 because everything in the business must be sold or that the sale is a trustee's sale,
173 bankruptcy sale, save us from bankruptcy sale, insolvency sale, assignee's sale, must
174 vacate sale, quitting business sale, receiver's sale, loss of lease sale, forced out of business
175 sale, removal sale, liquidation sale, executor's sale, administrator's sale, warehouse
176 removal sale, branch store discontinuance sale, creditor's sale, adjustment sale, or defunct
177 business sale.

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

184 (A) Any nonprofit organization;

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

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

189 (16.1) 'Kosher food disclosure statement' means a statement which:

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

194 (B) Complies with the provisions of subsections (b) through (e) of Code Section
195 10-1-393.11.

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

198 (18) 'Marine membership facility' means any boat, houseboat, yacht, ship, or other
199 floating facility upon which the use, occupation, or enjoyment of the facility is primarily
200 limited to those purchasers, along with their guests, who have purchased a right to make

201 reservations at future times to use the facility or who have purchased a right to use
202 periodically, occupy, or enjoy the facility at fixed times or intervals in the future, but shall
203 not include any such arrangement which is regulated under Article 5 of Chapter 3 of Title
204 44.

205 (19) 'Obligee' means a resident of this state who is identified in an order for child support
206 issued by a court or other tribunal as the payee to whom an obligor owes child support.

207 (20) 'Obligor' means a resident of this state who is identified in an order for child support
208 issued by a court or other tribunal as required to make child support payments.

209 (21) 'Office' means any place where business is transacted, where any service is supplied
210 by any person, or where any farm is operated.

211 (22) 'Office supplier' means any person who sells, rents, leases, or ships, or offers to sell,
212 lease, rent, or ship, goods, services, or property to any person to be used in the operation
213 of any office or of any farm.

214 (23) 'Office supply transactions' means the sale, lease, rental, or shipment of, or offer to
215 sell, lease, rent, or ship, goods, services, or property to any person to be used in the
216 operation of any office or of any farm but shall not include transactions in which the
217 goods, services, or property is purchased, leased, or rented by the office or farm for
218 purposes of reselling them to other persons.

219 (24) 'Person' means a natural person, corporation, trust, partnership, incorporated or
220 unincorporated association, or any other legal entity.

221 (24.1) 'Presealed kosher food package' means a food package which bears a kosher
222 symbol insignia and is sealed by the manufacturer, processor, or wholesaler at premises
223 other than the premises where the food is to be sold to the public.

224 (25) 'Private child support collector' means an individual or nongovernmental entity that
225 solicits and contracts directly with obligees to provide child support collection services
226 for a fee or other compensation but shall not include attorneys licensed to practice law
227 in this state unless such attorney is employed by a private child support collector.

228 (26) 'Prize' means a gift, award, or other item intended to be distributed or actually
229 distributed in a promotion.

230 (27) 'Promotion' means any scheme or procedure for the promotion of consumer
231 transactions whereby one or more prizes are distributed among persons who are required
232 to be present at the place of business or are required to participate in a seminar, sales
233 presentation, or any other presentation, by whatever name denominated, in order to
234 receive the prize or to determine which, if any, prize they will receive. Promotions shall
235 not include any procedure where the receipt of the prize is conditioned upon the purchase
236 of the item which the seller is trying to promote if such condition is clearly and
237 conspicuously disclosed in the promotional advertising and literature and the receipt of

238 the prize does not involve an element of chance. Any procedure where the receipt of the
239 prize is conditioned upon the purchase of the item which the seller is trying to promote
240 or upon the payment of money and where the receipt of that prize involves an element of
241 chance shall be deemed to be a lottery under Code Section 16-12-20; provided, however,
242 that nothing in this definition shall be construed to include a lottery operated by the State
243 of Georgia or the Georgia Lottery Corporation as authorized by law; provided, further,
244 that any deposit made in connection with an activity described by subparagraph
245 (b)(22)(B) of Code Section 10-1-393 shall not constitute the payment of money.

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

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

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

271 10-1-393.

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

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

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

277 (2) Causing actual confusion or actual misunderstanding as to the source, sponsorship,
278 approval, or certification of goods or services;

279 (3) Causing actual confusion or actual misunderstanding as to affiliation, connection, or
280 association with or certification by another;

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

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

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

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

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

297 (i) 'Local' or 'local area' means the area in which any particular telephone directory
298 is distributed or otherwise provided free of charge to some or all telecommunications
299 services subscribers.

300 (ii) 'Local telephone directory' means any telecommunications services directory,
301 directory assistance data base, or other directory listing which is distributed or
302 otherwise provided free of charge to some or all telecommunications services
303 subscribers in any area of this state and includes such directories distributed by
304 telecommunications companies as well as such directories distributed by other parties.

305 (iii) 'Local telephone number' means any telecommunications services number which
306 is not clearly identifiable as a long-distance telecommunications services number and
307 which has a three-number prefix typically used by the local telecommunications
308 company for telecommunications services devices physically located within the local
309 area.

310 (iv) 'Nonlocal business' means any business which does not have within the local area
311 a physical place of business providing the goods or services which are the subject of
312 the advertisement or listing in question.

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

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

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

319 (5) Representing that goods or services have sponsorship, approval, characteristics,
320 ingredients, uses, benefits, or quantities that they do not have or that a person has a
321 sponsorship, approval, status, affiliation, or connection that he or she does not have;

322 (6) Representing that goods are original or new if they are deteriorated, reconditioned,
323 reclaimed, used, or secondhand;

324 (7) Representing that goods or services are of a particular standard, quality, or grade or
325 that goods are of a particular style or model, if they are of another;

326 (8) Disparaging goods, services, or business of another by false or misleading
327 representation;

328 (9) Advertising goods or services with intent not to sell them as advertised;

329 (10) Advertising goods or services with intent not to supply reasonably expectable public
330 demand, unless the advertisement discloses a limitation of quantity;

331 (11) Making false or misleading statements concerning the reasons for, existence of, or
332 amounts of price reductions;

333 (12) Failing to comply with the provisions of Code Section 10-1-393.2 concerning health
334 spas;

335 (13) Failure to comply with the following provisions concerning career consulting firms:

336 (A) A written contract shall be employed which shall constitute the entire agreement
337 between the parties, a fully completed copy of which shall be furnished to the consumer
338 at the time of its execution which shows the date of the transaction and the name and
339 address of the career consulting firm;

340 (B) The contract or an attachment thereto shall contain a statement in boldface type
341 which complies substantially with the following:

342 'The provisions of this agreement have been fully explained to me and I understand
343 that the services to be provided under this agreement by the seller do not include
344 actual job placement.'

345 The statement shall be signed by both the consumer and the authorized representative
346 of the seller;

347 (C) Any advertising offering the services of a career consulting firm shall contain a
348 statement which contains the following language: 'A career consulting firm does not
349 guarantee actual job placement as one of its services.';

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

415 (D) Each notice must state the verifiable retail value of each prize which the participant
416 has a chance of receiving. Each notice must state the odds of the participant's receiving
417 each prize if there is an element of chance involved. The odds must be clearly
418 identified as 'odds.' Odds must be stated as the total number of that particular prize
419 which will be given and of the total number of notices. The total number of notices

420 shall include all notices in which that prize may be given, regardless of whether it
421 includes notices for other sponsors. If the odds of winning a particular prize would not
422 be accurately stated on the basis of the number of notices, then the odds may be stated
423 in another manner, but must be clearly stated in a manner which will not deceive or
424 mislead the participant regarding the participant's chance of receiving the prize. The
425 verifiable retail value and odds for each prize must be stated in conjunction and in
426 immediate proximity with each listing of the prize in each place where it appears on the
427 written notice and must be listed in the same size type and same boldness as the prize.
428 Odds and verifiable retail values may not be listed in any manner which requires the
429 participant to refer from one place in the written notice to another place in the written
430 notice to determine the odds and verifiable retail value of the particular prize.
431 Verifiable retail values shall be stated in Arabic numerals;

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

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

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

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

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

457 (J) In the event the participant is presented with a voucher, certificate, or other
458 evidence of obligation as the participant's prize, or in lieu of the participant's prize, it
459 shall be the responsibility of the sponsor to honor the voucher, certificate, or other
460 evidence of obligation, as represented in the notice, if the person who is named as being
461 responsible for honoring the voucher, certificate, or other evidence of obligation fails
462 to honor it as represented in the notice;

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

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

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

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

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

494 (O) Any person who participates in a promotion and does not receive an item which
 495 conforms with what that person, exercising ordinary diligence, reasonably believed that
 496 person should have received based upon the representations made to that person may
 497 bring the private action provided for in Code Section 10-1-399 and, if that person
 498 prevails, shall be awarded, in addition to any other recovery provided under this part,
 499 a sum which will allow that person to purchase an item at retail which reasonably
 500 conforms to the prize which that person, exercising ordinary diligence, reasonably
 501 believed that person would receive; and

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

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

513 'Notice to the Buyer

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

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

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

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

523 _____
 524 Seller's Name

525 _____
 526 Address to which cancellation is to be mailed

527 _____
 528 I (we) hereby cancel this transaction.

529 _____
 530 Buyer's Signature

531 _____
 532 Buyer's Signature

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Date

Printed Name(s) of Buyer(s)

Street Address

City, State, ZIP Code'

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

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

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

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

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

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

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

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

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

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

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

586 'Notice to the Seller

587 Please read this form completely and carefully. It contains valuable cancellation
588 rights.

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

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

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

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

598 _____
599 Buyer's ~~Name~~ name

600 _____
601 Address to which cancellation is to be returned.

602 _____
603 I (we) hereby cancel this transaction.

604 _____
605 Seller's ~~Signature~~ signature

606 _____
607 Seller's ~~Signature~~ signature

608 _____
609 Date

610 _____
 611 Printed ~~Name(s) of Seller(s)~~ name(s) of seller(s)
 612 _____
 613 Street ~~Address~~ address
 614 _____
 615 City, State, ZIP Code'

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

- 618 (i) A loan on the property used as a dwelling place is in default;
- 619 (ii) The debtor transfers the title to the property by quitclaim deed, limited warranty
 620 deed, or general warranty deed; and
- 621 (iii) The debtor remains in possession of the property under a lease or as a tenant at
 622 will;

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

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

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

638 (B) In connection with the types of representations referred to in subparagraph (A) of
 639 this paragraph, representing that a vacation, holiday, or an item described by other
 640 terms of similar meaning, is being offered, given, awarded, or otherwise distributed
 641 unless:

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

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

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

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

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

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

658 (i) Sales for the estate of a decedent by the personal representative or the personal
659 representative's agent, according to law or by the provisions of the will;

660 (ii) Sales of property conveyed by security deed, deed of trust, mortgage, or judgment
661 or ordered to be sold according to the deed, mortgage, judgment, or order;

662 (iii) Sales of all agricultural produce and livestock arising from the labor of the seller
663 or other labor under the seller's control on or belonging to the seller's real or personal
664 estate and not purchased or sold for speculation;

665 (iv) All sales under legal process;

666 (v) Sales by a pawnbroker or loan company which is selling or offering for sale
667 unredeemed pledges of chattels as provided by law; or

668 (vi) Sales of automobiles by an auctioneer licensed under the laws of the State of
669 Georgia;

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

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

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

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

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

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

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

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

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

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

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

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

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

711 (C) Each consumer reporting agency which compiles and maintains files on consumers
712 on a nation-wide basis shall furnish to any consumer who has provided appropriate
713 verification of his or her identity two complete consumer reports per calendar year,
714 upon request and without charge;

715 (29.1) With respect to any credit card issuer:

716 (A) A credit card issuer who mails an unsolicited offer or solicitation to apply for a
717 credit card and who receives by mail a completed application in response to the
718 solicitation which lists an address that is not substantially the same as the address on
719 the solicitation may not issue a credit card based on that application until steps have

720 been taken to verify the applicant's valid address to the same extent required by
 721 regulations prescribed pursuant to subsection (l) of 31 U.S.C. Section 5318. Any
 722 person who violates this paragraph commits an unlawful practice within the meaning
 723 of this Code section; and

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

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

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

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

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

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

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

748 For purposes of this paragraph, the term 'home health agency' shall have the same
 749 definition as contained in Code Section 31-7-150, as now or hereafter amended. The
 750 provisions of this paragraph shall be enforced by the ~~administrator in consultation with~~
 751 ~~the Department of Community Health; provided, however, that the administrator shall not~~
 752 ~~have any responsibility for matters or functions related to the licensure of home health~~
 753 ~~agencies~~ Attorney General;

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

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

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

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

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

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

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

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

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

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

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

786 (31) With respect to telemarketing sales:

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

792 (i) Prohibit the seller or telemarketer from introducing, as evidence in any court
793 proceeding to attempt collection of any payment that the seller or telemarketer claims

794 is due and owing to it pursuant to a telephone conversation or series of telephone
 795 conversations with a residential subscriber, an electronic record of the entirety of such
 796 telephone conversation or series of telephone conversations; or

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

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

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

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

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

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

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

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

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

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

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

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

838 (I) The certificate or card; or

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

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

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

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

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

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

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

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

866 (d)(1) Notwithstanding any other provision of the law to the contrary, the names,
867 addresses, telephone numbers, social security numbers, or any other information which

868 could reasonably serve to identify any person making a complaint about unfair or
 869 deceptive acts or practices shall be confidential. However, the complaining party may
 870 consent to public release of his or her identity by giving such consent expressly,
 871 affirmatively, and directly to the ~~administrator or administrator's~~ Attorney General or the
 872 Attorney General's employees.

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

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

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

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

879 10-1-393.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

916 10-1-393.2.

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

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

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

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

928 (e) The health spa member shall have the right to cancel the contract within seven business
929 days after the date of the signing of the contract by notifying the seller in writing of such
930 intent and by either mailing the notice before 12:00 Midnight of the seventh business day
931 after the date of the signing of the contract or by hand delivering the notice of cancellation
932 to the health spa before 12:00 Midnight of the seventh business day following the date of
933 the signing of the contract. The notice must be accompanied by the contract forms,
934 membership cards, and any and all other documents and evidence of membership
935 previously delivered to the buyer. If the health spa member so cancels, any payments made
936 under the contract will be refunded and any evidence of indebtedness executed by the
937 health spa member will be canceled by the seller, provided that the member shall be liable
938 for the fair market value of services actually received, which in no event shall exceed
939 \$100.00. The preparation of any documents shall not be construed to be services; provided,

940 however, that any documents prepared which are merely ancillary to services which are
 941 actually rendered shall not prevent the health spa from charging for such services actually
 942 rendered up to the limits specified in this subsection. Each health spa contract shall contain
 943 the following paragraphs separated from all other paragraphs:

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

946 _____
 947 Name of health spa

948 _____
 949 Street address Address

950 _____
 951 City, State, ZIP Code

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

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

963 The health spa shall fill in the blank spaces in the above paragraph before the consumer
 964 signs the contract. In the event a consumer fails to provide with the cancellation notice all
 965 contract forms, membership cards, and any and all other documents and evidence of
 966 membership previously delivered, the health spa shall either cancel the contract or provide
 967 written notice by certified mail or statutory overnight delivery to the consumer that such
 968 documents must be provided within 30 days in order for the cancellation to be effective.
 969 In the event that the consumer provides the documents within 30 days, the contract shall
 970 be canceled as of the date on which the cancellation notice was delivered; provided,
 971 however, that should the consumer continue to use the facilities or services during the 30
 972 day period, the cancellation shall be effective on the first business day following the last
 973 day on which the consumer uses the facilities or services.

974 (f) In the event a health spa no longer offers a substantial service which was offered at the
 975 time of the initiation of the contract, or in the event a health spa which previously limited
 976 its membership to members of one sex should become coeducational or one which was
 977 previously coeducational should become limited to members of one sex, the member shall

978 have 30 days from the time the member knew or should have known of the change to
979 cancel the remainder of the membership and receive a refund. The refund shall be
980 calculated by dividing the total cost of the membership by the total number of months
981 under the membership and refunding the monthly cost for any months or fractions of
982 months remaining under the membership. The contract shall contain a clause in at least
983 ten-point boldface type which reads as follows:

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

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

999 (g) Every contract for health spa services shall contain a clause providing that if the
1000 member becomes totally and permanently disabled during the membership term, he may
1001 cancel his or her contract and that the health spa is entitled to a reasonable predetermined
1002 fee in such event in addition to an amount equal to the value of services made available for
1003 use. This amount shall be computed by dividing the total cost of the membership by the
1004 total number of months under the membership and multiplying the result by the number of
1005 months expired under the membership term. The health spa shall have the right to require
1006 and verify reasonable evidence of total and permanent disability. For purposes of this
1007 subsection, 'total and permanent disability' means a condition which has existed or will
1008 exist for more than 45 days and which will prevent the member from using the facility to
1009 the same extent as the member used it before commencement of the condition.

1010 (h) The health spa contract shall state that if a consumer has a history of heart disease, he
1011 should consult a physician before joining a spa.

1012 (i) Every health spa contract shall comply with either paragraph (1) or paragraph (2) of this
1013 subsection:

1014 (1)(A) The written contract used shall contain the following clause: 'Under this
 1015 contract, no further payments shall be due to anyone, including any purchaser of any
 1016 note associated with or contained in this contract, in the event the health spa at which
 1017 the contract is entered into ceases operation and fails to offer an alternate location,
 1018 substantially similar, within ten miles.'

1019 (B) All payments due under the contract must be in equal monthly installments spread
 1020 over the entire term of the contract.

1021 (C) There can be no payments of any type, including, but not limited to, down
 1022 payments, enrollment fees, membership fees, or any other direct payment to the health
 1023 spa, other than the equal monthly installment payments.

1024 (D) There can be no complimentary, compensatory, or other extensions of the term
 1025 incident to the term of the contract, including but not limited to a promise of lifetime
 1026 renewal for a minimal annual fee, provided that an agreement of both parties to extend
 1027 the term of the contract to compensate for time during which the member could not
 1028 fully utilize the spa due to a temporary physical or medical condition arising after the
 1029 member joined shall not be considered to bring the spa into noncompliance under this
 1030 paragraph; or

1031 (2)(A) The written contract used shall contain the following clause: 'Under this
 1032 contract, no further payments shall be due to anyone, including any purchaser of any
 1033 note associated with or contained in this contract, in the event the health spa at which
 1034 the contract is entered into ceases operation and fails to offer an alternate location,
 1035 substantially similar, within ten miles.'

1036 (B) The written contract shall contain the following statement in boldface type which
 1037 is larger and bolder than any other type which is in the contract and in at least 14 point
 1038 boldface, which statement must be separately signed by the consumer:

1039 **NOTICE**

1040 State law requires that we inform you that should you (the buyer) choose to pay for
 1041 any part of this agreement in advance, be aware that you are paying for future services
 1042 and may be risking loss of your money in the event this health spa ceases to conduct
 1043 business. Health spas do not post a bond, and there may be no other protections
 1044 provided to you should you choose to pay in advance.'

1045 (j) An alternate location for a health spa shall not be considered substantially similar if:
 1046 (1) The original facility was limited to use by members of one sex and the alternate
 1047 facility is used by members of both sexes;
 1048 (2) The original facility was for use by members of both sexes and the alternate facility's
 1049 use is limited to members of one sex; or

1050 (3) The size, facilities, equipment, or services available to the member at the alternate
1051 location are not substantially equal to or do not exceed the size, facilities, equipment, or
1052 services available to the member at the health spa location at which the contract was
1053 entered into.

1054 (k) Every contract for health spa services shall contain a clause providing that if the
1055 member dies during the membership term or any renewal term, his or her estate may cancel
1056 the contract and that the health spa is entitled to a reasonable predetermined fee in such
1057 event in addition to an amount computed by dividing the total cost of the membership by
1058 the total number of months under the membership and multiplying the result by the number
1059 of months expired under the membership term. The contract may require the member's
1060 estate seeking relief under this subsection to provide reasonable proof of death.

1061 (1)(1) A health spa shall not enter or offer to enter into a health spa agreement with a
1062 consumer unless the health spa is fully operational and available for use.

1063 (2) For purposes of this subsection, 'fully operational and available for use' means that
1064 all of the facilities, equipment, or services which are promised at the time of entering into
1065 the membership contract are operational and available for use at that time. Nothing
1066 contained in this subsection shall be construed to prohibit a health spa from selling a
1067 membership for existing services and facilities at a location under construction which can
1068 be converted at a later date to a membership for additional services and facilities,
1069 provided that:

1070 (A) The additional services and facilities are fully operational and available for use at
1071 the time of the conversion;

1072 (B) Additional consideration, other than just a nominal consideration, is required from
1073 the consumer under the terms of the conversion; and

1074 (C) The member has until seven days following the date the additional consideration
1075 or a part of the additional consideration becomes due and owing to cancel the remainder
1076 of the contract and receive a refund computed by dividing the total cost of the
1077 membership by the total number of months under the membership and multiplying the
1078 result by the number of months remaining under the membership term.

1079 (3) The provisions of this subsection shall not apply if all of the following conditions are
1080 met:

1081 (A) The health spa has submitted forms prescribed by the ~~administrator~~ Attorney
1082 General requiring, in addition to whatever other information the ~~administrator~~ Attorney
1083 General may require, as much detail as to the size, facilities, equipment, or services to
1084 be provided as the ~~administrator~~ Attorney General may require;

1085 (B) The health spa has obtained the approval in writing of the ~~administrator~~ Attorney
1086 General to sell memberships to a health spa before it is fully operational and available
1087 for use;

1088 (C) The health spa has agreed in writing with the ~~administrator~~ Attorney General, on
1089 forms prescribed by the ~~administrator~~ Attorney General, to deposit all funds obtained
1090 by selling memberships before a health spa is fully operational and available for use in
1091 a single account in a bank or trust company domiciled in the State of Georgia. Such
1092 deposits are to be held in safekeeping for release only upon authorization of the
1093 ~~administrator~~ Attorney General. The bank or trust company must be approved by the
1094 ~~administrator~~ Attorney General. The ~~administrator~~ Attorney General may consult with
1095 the commissioner of banking and finance or with any of the employees of the
1096 commissioner of banking and finance regarding whether the bank or trust company
1097 should be approved and may disapprove the bank or trust company if he or she has
1098 reason to believe any deposits into the account might not be secure;

1099 (D) Each deposit to the single account established under this paragraph shall be
1100 identified by the name and address of the individual who purchased the membership.
1101 The bank or trust company and the health spa shall maintain a list of the deposits, their
1102 amount, and the name and address of the membership purchaser, which list shall be
1103 available to the ~~administrator~~ Attorney General or for inspection or copying by the
1104 ~~administrator's employees upon request~~ Attorney General;

1105 (E) The condition of the account established under this paragraph shall be that no funds
1106 shall be released from the account to any person unless the ~~administrator~~ Attorney
1107 General has certified in writing to the bank or trust company that either the health spa
1108 is fully operational and available for use or that the health spa has not complied and
1109 does not appear likely to comply with its obligation to make the health spa fully
1110 operational and available for use in accordance with the documents submitted to the
1111 ~~administrator~~ Attorney General or in accordance with representations made to
1112 membership purchasers. No action may be maintained in any court against the
1113 ~~administrator~~ Attorney General or any of his or her employees for any determination
1114 or as a consequence of any determination made by the ~~administrator under this~~
1115 ~~subparagraph unless the administrator's determination was a willful and wanton abuse~~
1116 ~~of discretion given the facts and circumstances actually provided to the administrator~~
1117 ~~in making this determination~~ Attorney General under this subparagraph. Nothing
1118 contained or implied in this subparagraph shall operate or be construed or applied to
1119 deprive the Attorney General or any employee of any immunity, indemnity, benefits of
1120 law, rights, or any defense otherwise available by law;

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
 1601 any time prior to midnight on the fifth business day after you have received such notice
 1602 from your insurer.

1603 I HEREBY CANCEL THIS TRANSACTION

1604 _____
 1605 Date (~~date~~)

1606 _____
 1607 Insured's (~~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 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 have the authority to prosecute the case or forward the results of such investigation
2193 to a prosecuting attorney of this state who shall commence any criminal prosecution that
2194 such prosecuting attorney deems 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."

SECTION 5.

2262
 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."

SECTION 6.

2285
 2286 Said title is further amended by revising Article 21 of Chapter 1, relating to buying services,
 2287 as follows:

"ARTICLE 21

2288
 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
2375 cancel, the club will return, within ten days of the date on which you give notice of
2376 cancellation, a total refund. It is recommended that you mail the notice of cancellation
2377 by certified mail or statutory overnight delivery, return receipt requested; check with your
2378 post office as to the time when you will be able to mail a certified letter. Be sure to keep
2379 a photocopy of 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~~ Attorney General may establish and maintain referral procedures with
 3075 the Division of Aging Services within the Department of Human Services in order to
 3076 provide any necessary intervention and assistance to elder or disabled persons who may
 3077 have been 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) The Attorney General and prosecuting attorneys shall have the authority to conduct the
 3248 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 16-9-130, relating to damages
 3362 available to consumer victims of identity fraud, no defense that others engage in comparable
 3363 practices, and service of complaint, as follows:

3364 "16-9-130.

3365 (a) Any consumer victim who suffers injury or damages as a result of a violation of this
 3366 article may bring an action individually or as a representative of a class against the person
 3367 or persons engaged in such violations under the rules of civil procedure to seek equitable
 3368 injunctive relief and to recover general and punitive damages sustained as a consequence

3369 thereof in any court having jurisdiction over the defendant; provided, however, punitive
 3370 damages shall be awarded only in cases of intentional violation. A claim under this article
 3371 may also be asserted as a defense, setoff, cross-claim, or counterclaim or third-party claim
 3372 against such person.

3373 (b) A court shall award three times actual damages for an intentional violation.

3374 (c) If the court finds in any action that there has been a violation of this article, the
 3375 consumer victim injured by such violation shall, in addition to other relief provided for in
 3376 this Code section and irrespective of the amount in controversy, be awarded reasonable
 3377 attorney's fees and expenses of litigation incurred in connection with said action.

3378 (d) It shall not be a defense in any action under this article that others were, are, or will be
 3379 engaged in like practices.

3380 (e) In any action brought under this article the ~~administrator~~ Attorney General shall be
 3381 served by certified or registered mail or statutory overnight delivery with a copy of the
 3382 initial complaint and any amended complaint within 20 days of the filing of such
 3383 complaint. The ~~administrator~~ Attorney General shall be entitled to be heard in any such
 3384 action, and the court where such action is filed may enter an order requiring any of the
 3385 parties to serve a copy of any other pleadings in an action upon the ~~administrator~~ Attorney
 3386 General."

3387 **SECTION 17.**

3388 Said title is further amended by revising Code Section 16-9-131, relating to criminal
 3389 prosecution of identity fraud, as follows:

3390 "16-9-131.

3391 Whenever an investigation has been conducted by the ~~Governor's Office of Consumer~~
 3392 ~~Affairs~~ Attorney General under this article and such investigation reveals conduct which
 3393 constitutes a criminal offense, the ~~administrator~~ Attorney General shall have the authority
 3394 to prosecute such cases or forward the results of such investigation to ~~the Attorney General~~
 3395 or any other prosecuting attorney of this state who shall commence any criminal
 3396 prosecution that he or she deems appropriate."

3397 **SECTION 18.**

3398 Title 18 of the Official Code of Georgia Annotated, relating to debtors and creditors, is
 3399 amended by revising Chapter 5, relating to debt adjustment, as follows:

3400 "CHAPTER 5

3401 18-5-1.

3402 As used in this chapter, the term:

3403 (1) 'Debt adjusting' means doing business in debt adjustments, budget counseling, debt
3404 management, or debt pooling service or holding oneself out, by words of similar import,
3405 as providing services to debtors in the management of their debts and contracting with
3406 a debtor for a fee to:

3407 (A) Effect the adjustment, compromise, or discharge of any account, note, or other
3408 indebtedness of the debtor; or

3409 (B) Receive from the debtor and disburse to his or her creditors any money or other
3410 thing of value.

3411 (2) 'Person' means an individual, corporation, partnership, trust, association, or other
3412 legal entity.

3413 (3) 'Resides' means to live in a particular place, whether on a temporary or permanent
3414 basis.

3415 18-5-2.

3416 In the course of engaging in debt adjusting, it shall be unlawful for any person to accept
3417 from a debtor who resides in this state, either directly or indirectly, any charge, fee,
3418 contribution, or combination thereof in an amount in excess of 7.5 percent of the amount
3419 paid monthly by such debtor to such person for distribution to creditors of such debtor;
3420 provided, however, no provision of this chapter shall prohibit any person, in the course of
3421 engaging in debt adjusting, from imposing upon a debtor who resides in this state a
3422 reasonable and separate charge or fee for insufficient funds transactions.

3423 18-5-3.

3424 Nothing in this chapter shall apply to those situations involving debt adjusting incurred in
3425 the practice of law in this state. Nothing in this chapter shall apply to those persons or
3426 entities who incidentally engage in debt adjustment to adjust the indebtedness owed to said
3427 person or entity. Nothing in this chapter shall apply to the following entities or their
3428 subsidiaries: the Federal National Mortgage Association; the Federal Home Loan Mortgage
3429 Corporation; a bank, bank holding company, trust company, savings and loan association,
3430 credit union, credit card bank, or savings bank that is regulated and supervised by the
3431 Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal
3432 Reserve, the Federal Deposit Insurance Corporation, the National Credit Union
3433 Administration, or the Georgia Department of Banking and Finance; or persons as defined

3434 in Code Section 7-3-3 operating under Chapter 3 of Title 7, the 'Georgia Industrial Loan
3435 Act.'

3436 18-5-3.1.

3437 (a) Any person engaged in debt adjusting for debtors residing in this state shall meet the
3438 following annual requirements:

3439 (1) Obtain from an independent third party certified public accountant an annual audit
3440 of all accounts of such person in which the funds of debtors are deposited and from which
3441 payments are made to creditors on behalf of debtors. A copy of the summary results of
3442 such annual audit shall be made available upon written request to any party so requesting
3443 a copy for a charge not to exceed the cost of the reproduction of the annual audit; and

3444 (2) Obtain and maintain at all times insurance coverage for employee dishonesty,
3445 depositor's forgery, and computer fraud in an amount not less than the greater of
3446 \$100,000.00 or 10 percent of the monthly average for the immediately preceding six
3447 months of the aggregate amount of all deposits made with such person by all debtors.
3448 The deductible on such coverage shall not exceed 10 percent of the face amount of the
3449 policy coverage. Such policy shall be issued by a company rated at least 'A-' or its
3450 equivalent by a nationally recognized rating organization and such policy shall provide
3451 for 30 days' advance written notice of termination of the policy to be provided to the
3452 ~~Governor's Office of Consumer Affairs~~ Attorney General's office.

3453 (b) A copy of the annual audits and insurance policies required by this Code section shall
3454 be filed annually with the ~~Governor's Office of Consumer Affairs~~ Attorney General's
3455 office.

3456 (c) The ~~Governor's Office of Consumer Affairs~~ Attorney General's office shall act as a
3457 repository for the audits, insurance, and termination notices furnished to such office
3458 pursuant to this Code section. No oversight responsibility shall be imposed upon such
3459 office by virtue of its receipt of such documents.

3460 18-5-4.

3461 (a) Any person who engages in debt adjusting in violation of this chapter shall be guilty
3462 of a misdemeanor.

3463 (b) Without limiting the applicability of subsection (a) of this Code section:

3464 (1) Any person who engages in debt adjusting in violation of the provisions of Code
3465 Section 18-5-3.1 or subsection (b) of Code Section 18-5-3.2 shall further be liable for a
3466 civil fine of not less than \$50,000.00; and

3467 (2) Any person who engages in debt adjusting in violation of the provisions of Code
3468 Section 18-5-2 or subsection (a) of Code Section 18-5-3.2 shall further be liable to the

3469 debtor in an amount equal to the total of all fees, charges, or contributions paid by the
 3470 debtor plus \$5,000.00. Such debtor shall have the right to bring a cause of action directly
 3471 against such person for violation of the provisions of this chapter.

3472 (c) The Attorney General and prosecuting attorneys shall have the authority to conduct the
 3473 criminal prosecution of all cases arising under this chapter and to conduct civil prosecution
 3474 of cases arising under this chapter.

3475 (d) A violation of Code Section 18-5-2, 18-5-3.1, or 18-5-3.2 shall additionally be a
 3476 violation of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act
 3477 of 1975.'

3478 18-5-5.

3479 The Attorney General shall have the authority to promulgate rules and regulations and
 3480 establish procedures necessary to carry into effect, implement, and enforce the provisions
 3481 of this chapter. The authority granted to the Attorney General pursuant to this Code section
 3482 shall be exercised at all times in conformity with Chapter 13 of Title 50, the 'Georgia
 3483 Administrative Procedure Act.'"

3484 **SECTION 19.**

3485 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
 3486 Code Section 31-38-11, relating to variances from regulations pertaining to tanning facilities,
 3487 as follows:

3488 "31-38-11.

3489 Any tanning facility which finds that it is not possible to comply with Code Section
 3490 31-38-4 may apply to the ~~administrator appointed pursuant to subsection (a) of Code~~
 3491 ~~Section 10-1-395~~ Attorney General for a variance from the requirements of Code Section
 3492 31-38-4. Any such variance granted by the ~~administrator~~ Attorney General shall be in
 3493 writing and shall be drawn as narrowly as possible."

3494 **SECTION 20.**

3495 Said title is further amended by revising Code Section 31-38-12, relating to effect of
 3496 provisions relative to tanning facilities on the administrator, as follows:

3497 "31-38-12.

3498 Nothing contained in this chapter shall be construed as imposing any duty, requirement,
 3499 or enforcement authority upon the ~~administrator appointed pursuant to Code Section~~
 3500 ~~10-1-395~~ Attorney General except as described in Code Section 31-38-11, provided that
 3501 nothing contained in this chapter shall be construed in any manner as limiting the
 3502 ~~administrator~~ Attorney General from exercising any of his or her duties, powers, or

3503 authority under any other law. The ~~administrator~~ Attorney General shall not be liable to
3504 any person for any reason as a result of granting or failing to grant any variance under Code
3505 Section 31-38-11."

3506 **SECTION 21.**

3507 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
3508 revising Code Section 33-4-6, relating to insurer liability for damages and attorney's fees, as
3509 follows:

3510 "33-4-6.

3511 (a) In the event of a loss which is covered by a policy of insurance and the refusal of the
3512 insurer to pay the same within 60 days after a demand has been made by the holder of the
3513 policy and a finding has been made that such refusal was in bad faith, the insurer shall be
3514 liable to pay such holder, in addition to the loss, not more than 50 percent of the liability
3515 of the insurer for the loss or \$5,000.00, whichever is greater, and all reasonable attorney's
3516 fees for the prosecution of the action against the insurer. The action for bad faith shall not
3517 be abated by payment after the 60 day period nor shall the testimony or opinion of an
3518 expert witness be the sole basis for a summary judgment or directed verdict on the issue
3519 of bad faith. The amount of any reasonable attorney's fees shall be determined by the trial
3520 jury and shall be included in any judgment which is rendered in the action; provided,
3521 however, the attorney's fees shall be fixed on the basis of competent expert evidence as to
3522 the reasonable value of the services based on the time spent and legal and factual issues
3523 involved in accordance with prevailing fees in the locality where the action is pending;
3524 provided, further, the trial court shall have the discretion, if it finds the jury verdict fixing
3525 attorney's fees to be greatly excessive or inadequate, to review and amend the portion of
3526 the verdict fixing attorney's fees without the necessity of disapproving the entire verdict.
3527 The limitations contained in this Code section in reference to the amount of attorney's fees
3528 are not controlling as to the fees which may be agreed upon by the plaintiff and the
3529 plaintiff's attorney for the services of the attorney in the action against the insurer.

3530 (b) In any action brought pursuant to subsection (a) of this Code section, and within 20
3531 days of bringing such action, the plaintiff shall, in addition to service of process in
3532 accordance with Code Section 9-11-4, mail to the Commissioner of Insurance ~~and the~~
3533 ~~consumers' insurance advocate~~ a copy of the demand and complaint by first-class mail.
3534 Failure to comply with this subsection may be cured by delivering same."

3535 **SECTION 22.**

3536 Said title is further amended by revising Code Section 33-4-7, relating to duty to adjust in
3537 motor vehicle incidents, as follows:

3538 "33-4-7.

3539 (a) In the event of a loss because of injury to or destruction of property covered by a motor
3540 vehicle liability insurance policy, the insurer issuing such policy has an affirmative duty
3541 to adjust that loss fairly and promptly, to make a reasonable effort to investigate and
3542 evaluate the claim, and, where liability is reasonably clear, to make a good faith effort to
3543 settle with the claimant potentially entitled to recover against the insured under such policy.
3544 Any insurer who breaches this duty may be liable to pay the claimant, in addition to the
3545 loss, not more than 50 percent of the liability of the insured for the loss or \$5,000.00,
3546 whichever is greater, and all reasonable attorney's fees for the prosecution of the action.

3547 (b) An insurer breaches the duty of subsection (a) of this Code section when, after
3548 investigation of the claim, liability has become reasonably clear and the insurer in bad faith
3549 offers less than the amount reasonably owed under all the circumstances of which the
3550 insurer is aware.

3551 (c) A claimant shall be entitled to recover under subsection (a) of this Code section if the
3552 claimant or the claimant's attorney has delivered to the insurer a demand letter, by statutory
3553 overnight delivery or certified mail, return receipt requested, offering to settle for an
3554 amount certain; the insurer has refused or declined to do so within 60 days of receipt of
3555 such demand, thereby compelling the claimant to institute or continue suit to recover; and
3556 the claimant ultimately recovers an amount equal to or in excess of the claimant's demand.

3557 (d) At the expiration of the 60 days set forth in subsection (c) of this Code section, the
3558 claimant may serve the insurer issuing such policy by service of the complaint in
3559 accordance with law. The insurer shall be an unnamed party, not disclosed to the jury, until
3560 there has been a verdict resulting in recovery equal to or in excess of the claimant's
3561 demand. If that occurs, the trial shall be recommenced in order for the trier of fact to
3562 receive evidence to make a determination as to whether bad faith existed in the handling
3563 or adjustment of the attempted settlement of the claim or action in question.

3564 (e) The action for bad faith shall not be abated by payment after the 60 day period nor shall
3565 the testimony or opinion of an expert witness be the sole basis for a summary judgment or
3566 directed verdict on the issue of bad faith.

3567 (f) The amount of recovery, including reasonable attorney's fees, if any, shall be
3568 determined by the trier of fact and included in a separate judgment against the insurer
3569 rendered in the action; provided, however, the attorney's fees shall be fixed on the basis of
3570 competent expert evidence as to the reasonable value of the services based on the time
3571 spent and legal and factual issues involved in accordance with prevailing fees in the
3572 locality where the action is pending; provided, further, the trial court shall have the
3573 discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or
3574 inadequate, to review and amend the portion of the verdict fixing attorney's fees without

3575 the necessity of disapproving the entire verdict. The limitations contained in this Code
 3576 section in reference to the amount of attorney's fees are not controlling as to the fees which
 3577 may be agreed upon by the plaintiff and his or her attorney for the services of the attorney.
 3578 (g) In any action brought pursuant to subsection (b) of this Code section, and within 20
 3579 days of bringing such action, the plaintiff shall, in addition to service of process in
 3580 accordance with Code Section 9-11-4, mail to the Commissioner of Insurance ~~and the~~
 3581 ~~consumers' insurance advocate~~ a copy of the demand and complaint by first-class mail.
 3582 Failure to comply with this subsection may be cured by delivering same."

3583 **SECTION 23.**

3584 Said title is further amended in Code Section 33-20A-9.1, relating to legislative intent,
 3585 consumer choice options, expenses, and benefits of managed health care plans, by revising
 3586 paragraph (4) of subsection (d) as follows:

3587 "(4) After 12 months of full implementation, the pricing of the consumer choice option
 3588 may be reevaluated to consider actual costs incurred and the experience of the standard
 3589 plan without the option as compared to the consumer choice option. Based on an
 3590 independent actuarial evaluation of such actual costs incurred and experience, managed
 3591 care entities may apply for a waiver of the cost provisions of paragraphs (2) and (3) of
 3592 this subsection to the Insurance Commissioner's office ~~with copies to the consumers'~~
 3593 ~~insurance advocate on or after July 1, 2001.~~"

3594 **SECTION 24.**

3595 Said title is further amended by repealing in its entirety Chapter 57, relating to the consumers'
 3596 insurance advocate, and designating said chapter as reserved.

3597 **SECTION 25.**

3598 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 3599 agencies, is amended by revising Code Section 35-1-13, relating to completion and
 3600 transmission of reports from victims of identity fraud, as follows:

3601 "35-1-13.

3602 Notwithstanding any other provision of law, any law enforcement agency that receives a
 3603 report from a resident of this state that such person has been the victim of identity fraud
 3604 shall prepare an incident report and transmit the same to the ~~Governor's Office of~~
 3605 ~~Consumer Affairs~~ Georgia Bureau of Investigation identity fraud repository, as provided
 3606 in Code Section 16-9-123, notwithstanding the fact that such person's identity may have
 3607 been used solely to commit one or more criminal offenses beyond the jurisdiction of this
 3608 state. Copies of such incident reports shall be referred from the ~~Governor's Office of~~

3609 ~~Consumer Affairs~~ office of the Attorney General to the Georgia Crime Information Center
 3610 as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been
 3611 used."

3612

SECTION 26.

3613 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 3614 by revising Code Section 36-76-7, relating to customer service requirements relative to
 3615 expedited franchising of cable and video services, as follows:

3616 "36-76-7.

3617 (a) The holder of a state franchise shall comply with the customer service standards as set
 3618 forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the
 3619 holder of a state franchise to comply with any customer service standards other than those
 3620 set forth in this Code section.

3621 (b) Except as provided in paragraph (2) of subsection (c) of this Code section, each
 3622 affected local governing authority shall receive and handle complaints from subscribers of
 3623 the holder of a state franchise that reside in the affected local governing authority's
 3624 jurisdiction.

3625 (c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall establish
 3626 a uniform set of rules, which may include fines and penalties, pursuant to which an
 3627 affected local governing authority shall resolve subscriber complaints. Said rules shall
 3628 include a requirement that the cable service provider or video service provider participate
 3629 in mandatory nonbinding mediation with the affected local governing authority and the
 3630 subscriber if the issue cannot be resolved between the cable service provider or video
 3631 service provider and the subscriber. Said rules shall apply only until 50 percent of the
 3632 potential subscribers within an affected local governing authority are offered service by
 3633 two or more cable service providers or video service providers holding a state franchise
 3634 or a local franchise.

3635 (2) After such time as 50 percent of the potential subscribers within an affected local
 3636 governing authority are being offered service by two or more cable service providers or
 3637 video service providers holding a state franchise or a local franchise, an affected local
 3638 governing authority may, in its discretion, by the adoption of a resolution or ordinance,
 3639 discontinue receiving and handling all subscriber inquiries, billing issues, and other
 3640 complaints for state franchise holders. Notwithstanding any other provision of law,
 3641 where an affected local governing authority discontinues receiving and handling
 3642 subscriber inquiries, billing issues, and other complaints relating to state franchise holders
 3643 by adoption of a resolution or ordinance pursuant to this paragraph, bills to subscribers
 3644 by cable service providers or video service providers holding a state franchise shall not

3645 include the contact information of such affected local governing authority for the purpose
3646 of directing or initiating complaints or making other such subscriber inquiries.

3647 (d) Rules, orders, actions, and regulations previously adopted pursuant to this Code section
3648 shall remain of full force and effect as rules, orders, actions, and regulations of the
3649 Attorney General until amended, repealed, or superseded by rules or regulations adopted
3650 by the Attorney General."

3651 **SECTION 27.**

3652 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
3653 is amended by revising Code Section 43-1A-4, relating to the Occupational Regulation
3654 Review Council, as follows:

3655 "43-1A-4.

3656 (a) There is created the Georgia Occupational Regulation Review Council.

3657 (b) The council shall consist of ~~ten~~ nine members:

3658 (1) The comptroller general or his or her designee;

3659 (2) The Secretary of State or his or her designee;

3660 (3) The commissioner of public health or his or her designee;

3661 (4) The director of the Office of Planning and Budget or his or her designee;

3662 (5) The commissioner of natural resources or his or her designee;

3663 (6) The state revenue commissioner or his or her designee;

3664 (7) The Commissioner of Agriculture or his or her designee;

3665 ~~(8) The administrator of the 'Fair Business Practices Act of 1975' or his or her designee;~~

3666 ~~(9)~~(8) The chairperson of the legislative committee of reference or that person's designee
3667 from that committee, but only when legislation referred by such committee is being
3668 considered by the council; and

3669 ~~(10)~~(9) The chairperson of that standing committee of the General Assembly appointed
3670 by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or
3671 that chairperson's designee from that committee, but only when legislation of which that
3672 presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being
3673 considered by the council.

3674 (c) The director of the Office of Planning and Budget or his or her designee shall serve as
3675 chairperson of the council.

3676 (d) Legislative members of the council appointed thereto pursuant to paragraphs (8) and
3677 (9) and ~~(10)~~ of subsection (b) of this Code section shall receive for their attendance of
3678 meetings of the council the same expense and mileage allowance authorized for legislative
3679 members of interim legislative committees."

3680

SECTION 28.

3681 Said title is further amended by revising subsection (b) of Code Section 43-1A-5, relating to
 3682 powers and duties of the Occupational Regulation Review Council, as follows:

3683 "(b) The chairperson of the legislative committee of reference shall provide written
 3684 notification to the council of any proposed legislation introduced in that house of the
 3685 General Assembly of which that committee is a standing committee if that legislation
 3686 provides for the licensure or certification of a business or profession not currently licensed
 3687 or certified by the state. That chairperson at the same time shall provide written
 3688 notification of that legislation to the presiding officer of the house of the General Assembly
 3689 in which that legislation was not introduced, and that presiding officer shall then appoint
 3690 the chairperson of a standing committee of that house to serve as a member of the council
 3691 for the purpose of considering that legislation, except that the chairperson so appointed
 3692 may instead designate another member of that standing committee to serve as a member
 3693 of the council for that purpose. Within a period of time not to exceed nine months from
 3694 the date of such notification to the council, but in no event later than the convening date of
 3695 the next succeeding regular session of the General Assembly, the council shall provide a
 3696 formal report evaluating the need to regulate the business or profession based on the factors
 3697 and information provided under Code Section 43-1A-7 to the chairperson of the legislative
 3698 committee of reference, the committee chairperson appointed to the council pursuant to
 3699 paragraph ~~(10)~~ (9) of subsection (b) of Code Section 43-1A-4, the presiding officers of the
 3700 House of Representatives and the Senate, and the legislative counsel. If, subsequent to a
 3701 review pursuant to paragraph (2) of subsection (a) of this Code section, the council
 3702 concludes changes are needed to the regulations of an existing regulatory entity, or that a
 3703 regulatory entity's existence is no longer necessary or in the interests of the state, a formal
 3704 report recommending such changes shall be completed and distributed in the same manner
 3705 described previously herein. If the council determines a need for regulation, the report
 3706 shall recommend an appropriate type of regulation and an appropriate state agency to
 3707 oversee the regulation."

3708

SECTION 29.

3709 Said title is further amended by revising Code Section 43-17-2, relating to definitions
 3710 regarding charitable solicitations, as follows:

3711 "43-17-2.

3712 As used in this chapter, the term:

3713 (1) 'Attorney General' ~~'Administrator'~~ means the office created in subsection (a) of Code
 3714 ~~Section 10-1-395~~ Attorney General or his or her designee.

3715 (2) 'Charitable organization' means any benevolent, philanthropic, patriotic, or
3716 eleemosynary (of, relating to, or supported by charity or alms) person, as that term is
3717 defined in this Code section, who solicits or obtains contributions solicited from the
3718 general public, any part of which contributions is used for charitable purposes; and any
3719 person who or which falsely represents himself, herself, or itself to be a charitable
3720 organization as defined by this paragraph. The term charitable organization shall not
3721 include a religious organization as defined in paragraph (12) of this Code section.

3722 (3) 'Charitable purpose' means any charitable, benevolent, philanthropic, patriotic, or
3723 eleemosynary purpose for religion, health, education, social welfare, arts and humanities,
3724 environment, civic, or public interest; and any purpose which is falsely represented to be
3725 a charitable purpose as defined by this paragraph.

3726 (4) 'Charitable sales promotion' means an advertising or sales campaign, conducted by
3727 a commercial coventurer, which represents that the purchase or use of goods or services
3728 offered by the commercial coventurer will benefit, in whole or in part, a charitable
3729 organization or purpose.

3730 (4.1) 'Collection receptacle' means an unattended container for the purpose of collecting
3731 donations of clothing, books, personal or household items, or other goods. Such term
3732 shall not include containers used for the purpose of collecting monetary donations.

3733 (5) 'Commercial coventurer' means a person who for profit is regularly and primarily
3734 engaged in trade or commerce other than in connection with soliciting for charitable
3735 organizations or purposes and who conducts a charitable sales promotion.

3736 (6) 'Contribution' means the promise or grant of any money or property of any kind or
3737 value.

3738 (7) 'Educational institution' means an entity organized and operated exclusively for
3739 educational purposes and which either:

3740 (A) Maintains a regular faculty and curriculum and has a regularly enrolled body of
3741 students in attendance at the place where its educational activities are regularly carried
3742 on; or

3743 (B) Is accredited by a nationally recognized, independent higher education
3744 accreditation body.

3745 (8) 'Executive officer' means the chief executive officer, the president, the principal
3746 financial officer, the principal operating officer, each vice president with responsibility
3747 involving policy-making functions for a significant aspect of a person's business, the
3748 secretary, the treasurer, or any other person performing similar functions with respect to
3749 any organization, whether incorporated or unincorporated.

3750 (9) 'Fundraising counsel' means any person, other than a paid solicitor required to
3751 register under this chapter, who plans, advises, consults, or prepares material for a

3752 solicitation of charitable contributions within, into, or from this state and who does not
3753 either:

3754 (A) Solicit such contributions or employ, procure, engage, direct, or supervise any
3755 compensated person to solicit such contributions; or

3756 (B) Have custody or control of contributions.

3757 A natural person who is a volunteer, employee, or salaried officer of a charitable
3758 organization is not a fundraising counsel with respect to the charitable organization of
3759 which he or she is a volunteer, individual, or officer. An attorney, accountant, investment
3760 counselor, or banker who, solely incidental to his or her profession, renders professional
3761 services to a charitable organization, paid solicitor, or fundraising counsel or advises a
3762 person to make a charitable contribution is not a fundraising counsel as a result of such
3763 advice.

3764 (10) 'General public' or 'public,' with respect to a charitable organization, means any
3765 person in the State of Georgia without a membership in or other bona fide relationship
3766 with such charitable organization.

3767 (11) 'Membership' or 'member' means a status by which, for the payment of fees, dues,
3768 assessments, and other similar payments, an organization provides services to the payor
3769 and confers on the payor a bona fide right, privilege, professional standing, honor, or
3770 other direct benefit other than the right to vote, elect officers, or hold offices. The term
3771 'membership' or 'member' shall not be construed to apply to a person on whom an
3772 organization confers a membership solely as a consideration for making a contribution.

3773 (12)(A) 'Paid solicitor' means a person:

3774 (i) Other than a commercial coventurer who, for compensation, performs for a
3775 charitable organization any service in connection with which contributions are, or will
3776 be, solicited within or from this state by such person or by any compensated person
3777 he or she employs, procures, engages, or contracts with, directly or indirectly, to so
3778 solicit;

3779 (ii) Who would be a fundraising counsel but for the fact that such person at any time
3780 has custody of contributions from a solicitation as defined by this chapter; or

3781 (iii) Who services a collection receptacle which purports, either through language
3782 appearing on the receptacle itself or otherwise, to be collecting items for the purpose
3783 of benefiting a charitable purpose or one or more entities espousing a charitable
3784 purpose.

3785 (B) A 'paid solicitor' shall not mean:

3786 (i) A bona fide officer, employee, or volunteer of a charitable organization or
3787 commercial coventurer with respect to contributions solicited for that charitable
3788 organization;

- 3789 (ii) An attorney, investment counselor, accountant, or banker who, solely incidental
3790 to his or her profession, advises a person to make a charitable contribution or who
3791 holds funds subject to an escrow or trust agreement;
- 3792 (iii) A person who removes or delivers donations placed in a collection receptacle for
3793 a fixed fee and who does not otherwise directly or indirectly receive any of the
3794 proceeds of the sale of such donations or derive any other benefit from such activity;
3795 or
- 3796 (iv) A charitable organization registered with the Secretary of State which operates
3797 collection receptacles or a religious organization which operates collection
3798 receptacles.
- 3799 (13) 'Person' means an individual, a corporation, a partnership, a limited liability
3800 company, an association, a joint-stock company, a trust, or any unincorporated
3801 organization.
- 3802 (14) 'Religious organization' means an entity which:
- 3803 (A) Conducts regular worship services; or
- 3804 (B) Is qualified as a religious organization under Section 501(c)(3) of the Internal
3805 Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS
3806 Form 990, Return of Organization Exempt From Income Tax, under any circumstances.
- 3807 (15) 'Solicitation,' 'solicitation of funds,' or 'solicit' means the request or acceptance
3808 directly or indirectly of money, credit, property, financial assistance, or any other thing
3809 of value to be used for any charitable purpose; and such act shall be a consumer act or
3810 practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title
3811 10, the 'Fair Business Practices Act of 1975.'
- 3812 (16) 'Solicitor agent' means any person, other than a paid solicitor or commercial
3813 coventurer, who or which solicits charitable contributions for compensation. The term
3814 'solicitor agent' shall not include, with respect to a particular charitable organization
3815 which is either registered or exempt from registration under this chapter, any person who
3816 is a charitable organization itself or a bona fide officer, employee, or volunteer of such
3817 charitable organization which is either registered or exempt from registration under this
3818 chapter and who is neither supervised by, nor whose activities are directed by, any paid
3819 solicitor or its agent.
- 3820 (17) 'State' means any state, territory, or possession of the United States, the District of
3821 Columbia, Puerto Rico, and the Virgin Islands."

3822 **SECTION 30.**

3823 Said title is further amended by revising subsection (e) of Code Section 43-17-11, relating
 3824 to enforcement of chapter regarding charitable solicitations, investigations, subpoenas, and
 3825 cooperation with law enforcement and regulatory agencies, as follows:

3826 "(e) The Secretary of State may cooperate with the ~~administrator of Part 2 of Article 15 of~~
 3827 ~~Chapter 1 of Title 10, known as the 'Fair Business Practices Act of 1975,'~~ Attorney General
 3828 in enforcing the provisions of this chapter. Said cooperation includes, but is not limited to,
 3829 making a joint examination or investigation; holding joint administrative hearings; filing
 3830 and prosecuting a joint civil or administrative proceeding; sharing and exchanging
 3831 information and documents; and disclosing information and documents obtained in
 3832 connection with an investigation. When the ~~administrator~~ Attorney General has initiated
 3833 a civil or administrative proceeding in connection with a joint investigation under this
 3834 subsection he or she may publish in print or electronically information concerning any
 3835 violation of this chapter or Part 2 of Article 15 of Chapter 1 of Title 10, known as the 'Fair
 3836 Business Practices Act of 1975.'"

3837 **SECTION 31.**

3838 Said title is further amended by revising Code Section 43-17-19, relating to applicability of
 3839 "Fair Business Practices Act of 1975" on provisions relative to charitable solicitations, as
 3840 follows:

3841 "43-17-19.

3842 Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a
 3843 consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1
 3844 of Title 10, the 'Fair Business Practices Act of 1975.' Nothing contained in this chapter
 3845 shall be construed to limit the authority of the ~~administrator~~ Attorney General to take any
 3846 action under the 'Fair Business Practices Act of 1975' regarding unfair and deceptive acts
 3847 or practices in a solicitation or in solicitations."

3848 **SECTION 32.**

3849 Said title is further amended by revising Code Section 43-47-3, relating to the creation of the
 3850 State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts
 3851 Dealers, composition, terms of office, vacancies, election of chairperson, and divisions, as
 3852 follows:

3853 "43-47-3.

3854 (a) There is created a State Board of Registration of Used Motor Vehicle Dealers and Used
 3855 Motor Vehicle Parts Dealers. The board shall be comprised of ~~15~~ 14 members:

3856 (1) Three members shall be independent used car dealers;

- 3857 (2) Three members shall be appointed from the public at large and shall have no
3858 connection whatsoever with the sale of used cars or parts;
- 3859 (3) The state revenue commissioner, or a designated agent, shall be a permanent ex
3860 officio member and shall be authorized to vote on all matters before the board;
- 3861 (4) ~~The administrator of Part 2 of Article 15 of Chapter 1 of Title 10, the Fair Business~~
3862 ~~Practices Act of 1975, or a designated agent, shall be a permanent ex officio member and~~
3863 ~~shall be authorized to vote on all matters before the board~~ Reserved;
- 3864 (5) One member shall be a representative of the automobile auction industry;
- 3865 (6) One member shall be an auto salvage pool operator;
- 3866 (7) Two members shall be used motor vehicle parts dealers who are not rebuilders;
- 3867 (8) One member shall be a rebuilder;
- 3868 (9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in
3869 the business of pawning automobile titles and is licensed as a used car dealer; and
- 3870 (10) One member shall be a representative of the automobile insurance industry.
- 3871 (b) The members of the board referred to in paragraphs (1), (2), (5), (6), (7), (8), (9), and
3872 (10) of subsection (a) of this Code section shall be appointed by the Governor and shall
3873 take office on July 1, 1995, or as soon thereafter as appointed. The initial terms of those 13
3874 appointed members shall expire as follows: three on June 30, 1996; three on June 30, 1997;
3875 three on June 30, 1998; and four on June 30, 1999. Thereafter, the appointed members of
3876 the board shall serve terms of four years. All members shall be residents of this state. No
3877 more than two of the appointed members shall be from the same congressional district. The
3878 terms of the two ex officio members shall be coextensive with their terms of office.
- 3879 (c) Any vacancies on the board shall be filled by the Governor for the remainder of the
3880 unexpired term. The members of the board shall annually elect one of their number to serve
3881 as chairperson for a term of two years. The board chairperson shall not also serve
3882 contemporaneously as the chairperson of either division under this chapter. The first term
3883 as chairperson of the board shall be served by a member or members elected from either
3884 division under this chapter; thereafter, the chairperson for each succeeding term shall not
3885 be elected from the same division as that of the chairperson from the immediately
3886 preceding term. In the event a chairperson of the board is unable to complete his or her
3887 term, his or her successor for the remainder of the term shall be elected from the same
3888 division as was the chairperson who is unable to complete the term. The chairperson of the
3889 board shall be an ex officio member of both divisions under this chapter, however, the
3890 chairperson of the board shall not be counted for purposes of determining whether a
3891 quorum is present in the division meeting for the division in which he or she is not a
3892 regular member.

3893 (d)(1) The board shall be composed of two divisions, a used car division and a used parts
3894 division.

3895 (2) The members of the used car division shall be the three independent used car dealers,
3896 two of the members from the public at large, the state revenue commissioner or a
3897 designated agent, ~~the administrator of Part 2 of Article 15 of Chapter 1 of Title 10, the~~
3898 ~~'Fair Business Practices Act of 1975,'~~ or a designated agent, the representative of the
3899 automobile auction industry, and the pawnbroker. All powers and duties relating to used
3900 car dealers which are not specifically reserved to the board shall be assigned to the used
3901 car division. The used car division shall elect one of its members to serve as chairperson
3902 of the division for a period of one year.

3903 (3) The members of the used parts division shall be the third member from the public at
3904 large, the state revenue commissioner or a designated agent, the auto salvage pool
3905 operator, the two used motor vehicle parts dealers who are not rebuilders, the rebuilder,
3906 and the representative of the automobile insurance industry. All powers and duties
3907 relating to used parts dealers which are not specifically reserved to the board shall be
3908 assigned to the used parts division. The used parts division shall elect one of its members
3909 to serve as chairperson of the division for a period of one year.

3910 (4) The chairperson of the board shall determine which of the two members from the
3911 public at large will serve in the used car division and which shall serve in the used parts
3912 division."

3913 **SECTION 33.**

3914 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
3915 revising subsection (d) of Code Section 44-3-7, relating to the willful violation of the
3916 "Georgia Land Sales Act," effect on statutory or common-law right to punish violations, and
3917 effect of article on administrator appointed under Title 10, Chapter 1, Article 15, Part 2, as
3918 follows:

3919 "(d) Nothing in this article shall be deemed to prohibit the ~~administrator appointed under~~
3920 ~~Part 2 of Article 15 of Chapter 1 of Title 10~~ Attorney General from exercising any powers
3921 under Part 2 of Article 15 of Chapter 1 of Title 10 against any person."

3922 **SECTION 34.**

3923 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
3924 is amended by revising paragraph (9) of subsection (a) of Code Section 45-10-25, relating
3925 to exceptions to prohibitions on transactions with state agencies, as follows:

3926 "(9) Any transaction involving the Public Service Commission's employment of any state
3927 employee who has any particular expertise or knowledge which may be of assistance to

3928 the Georgia Public Service Commission ~~or the consumers' utility counsel division of the~~
 3929 ~~office of the administrator created in Code Section 10-1-395~~ in fulfilling its duties and
 3930 responsibilities under Title 46. The terms and conditions of such employment shall be
 3931 solely determined by the Georgia Public Service Commission; but, in any event, the
 3932 employee may not provide services to the Georgia Public Service Commission during
 3933 such times as he or she is regularly scheduled to be at his or her primary place of
 3934 employment unless the employee has received permission to do so from his or her regular
 3935 employer or unless the employee is on annual leave or leave without pay;"

3936

SECTION 35.

3937 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
 3938 transportation, is amended by revising Code Section 46-2-23.1, relating to alternative form
 3939 of regulation provisions for gas companies, as follows:

3940 "46-2-23.1.

3941 (a) As used in this Code section, the term 'alternative form of regulation' means a method
 3942 of establishing just and reasonable rates and charges for a gas company by performance
 3943 based regulation without regard to methods based strictly upon cost of service, rate base,
 3944 and rate of return. Performance based regulation may include without limitation one or
 3945 more of the following features: earnings sharing, price caps, price-indexing formulas,
 3946 ranges of authorized rates of return, and the reduction or suspension of regulatory
 3947 requirements.

3948 (b) A gas company may from time to time file an application with the commission to have
 3949 its rates, charges, classifications, and services regulated under an alternative form of
 3950 regulation. Within ten days of the filing, the gas company shall publish a notice generally
 3951 describing the application in a newspaper or newspapers with general circulation in its
 3952 service territory.

3953 (c) After notice and hearing the commission may approve the plan, or approve it with
 3954 modifications, if the commission determines that the application is in the public interest
 3955 and will produce just and reasonable rates, after taking into consideration the extent to
 3956 which the application:

3957 (1) Is designed to and is likely to produce lower prices for consumers of natural gas in
 3958 Georgia;

3959 (2) Will provide incentives for the gas company to lower its costs and rates;

3960 (3) Will provide incentives to improve the efficiency and productivity of the gas
 3961 company;

3962 (4) Will foster the long-term provision of natural gas service in a manner that will
 3963 improve the quality and choices of service;

- 3964 (5) Is consistent with maintenance and enhancement of safe, adequate, and reliable
3965 service and will maintain or improve preexisting service quality and consumer protection
3966 safeguards;
- 3967 (6) Will not result in cross-subsidization among or between groups of gas company
3968 customers;
- 3969 (7) Will not result in cross-subsidization among or between the portion of the gas
3970 company's business or operations subject to the alternative form of regulation and any
3971 unregulated portion of the business or operations of the gas company or of any of its
3972 affiliates;
- 3973 (8) Will reduce regulatory delay and cost; and
- 3974 (9) Will tend to enhance economic activity in the affected service territory.
- 3975 (d) Performance based regulation adopted by the commission as an alternative form of
3976 regulation shall provide for the following:
- 3977 (1) Equal and symmetric opportunities to earn above and below the performance
3978 standard;
- 3979 (2) Performance incentives based upon conditions within the control of the management
3980 of the gas company; and
- 3981 (3) Adjustments from time to time for the net effect of changes in tax rates, other costs
3982 imposed by law, and the cost of capital.
- 3983 (e) Where an application for an alternative form of regulation has been filed by a gas
3984 company and the commission determines that the proposal does not satisfy the
3985 requirements of this Code section, it may either reject the proposal or issue an order
3986 approving an alternative with such modifications as the commission deems necessary to
3987 satisfy the requirements of this Code section. The commission shall determine and
3988 prescribe in any such order establishing rates and charges the revenue requirements of the
3989 gas company filing the application.
- 3990 (f) An order adopting an alternative form of regulation may include:
- 3991 (1) Terms and conditions for establishing new services, withdrawing services, price
3992 changes to services, and services by contract to individual customers;
- 3993 (2) Terms and conditions necessary to achieve the objectives contained in subsection (c)
3994 of this Code section;
- 3995 (3) General or specific authorization for changes in rates, charges, classifications, or
3996 services such that the provisions of subsection (a) of Code Section 46-2-25 do not require
3997 30 days' notice and commission approval before such change or changes may go into
3998 effect; and
- 3999 (4) Other rates, terms, and conditions that are consistent with the objectives and
4000 requirements of subsection (c) of this Code section.

4001 (g) Except as otherwise provided in this Code section, the provisions of this title relating
4002 to the rates, charges, and terms of service of a gas company shall apply to rates, charges,
4003 and terms of service established pursuant to this Code section.

4004 (h) Any special or negotiated contract between a gas company and a retail customer
4005 approved by the commission shall not be invalidated or modified by the provisions of this
4006 Code section.

4007 (i)(1) Neither the provisions of this Code section nor the provisions of Article 5 of
4008 Chapter 4 of this title shall prohibit a gas company from releasing interstate pipeline
4009 capacity available to it from time to time and not required to serve the requirements of
4010 its retail customers and marketers and from making sales of gas with or without interstate
4011 transportation capacity to municipal corporations, other local gas distribution companies,
4012 or marketers and end users connected to an interstate pipeline company or connected to
4013 another local distribution company; provided, however, that where net benefits to the firm
4014 retail customers who are receiving commodity sales service from the gas company
4015 accrue:

4016 (A) Twenty percent of the revenues from the release of interstate pipeline capacity for
4017 the purposes of transporting gas to end users in Georgia shall be allocated to the gas
4018 company, and the remaining 80 percent of such revenues shall be credited to the costs
4019 of gas sold by the gas company to firm retail customers;

4020 (B) Ten percent of the revenues from the release of interstate pipeline capacity for the
4021 purpose of transporting gas to end users outside of Georgia shall be allocated to the gas
4022 company, and the remaining 90 percent of such revenues shall be credited to the costs
4023 of gas sold by the gas company to firm retail customers; and

4024 (C) Fifty percent of the net margin from the sale of gas, with or without interstate
4025 capacity, to municipal corporations, other local gas distribution companies, or
4026 marketers and end users connected to an interstate pipeline company or connected to
4027 another local distribution company shall be allocated to the gas company, and the
4028 remaining 50 percent of such net margins shall be credited to the costs of gas sold by
4029 the gas company to firm retail customers; provided, however, that if as a result of such
4030 sale, the then existing natural gas requirements of retail customers in Georgia cannot
4031 be supplied physically, all of such net margin shall be credited to the costs of gas. The
4032 net margin shall be calculated by subtracting all variable costs associated with the
4033 transaction from the revenues generated by the transaction. The costs recovered by the
4034 gas company through such transactions shall be credited to the gas costs payable by
4035 retail customers of the gas company.

4036 (2) Where a universal service fund has been created by the commission pursuant to Code
4037 Section 46-4-161 for a gas company which is an electing distribution company, as

4038 defined in paragraph (10) of Code Section 46-4-152, the shares that are to be credited to
 4039 the costs of gas sold to firm retail customers under subparagraphs (A), (B), and (C) of
 4040 paragraph (1) of this subsection shall be allocated to such fund, and the costs recovered
 4041 through a transaction described in subparagraph (C) of this subsection shall be allocated
 4042 to such company.

4043 (3) Any gas company which engages in a transaction of a type described in paragraph
 4044 (1) of this subsection, which results in the allocation to the gas company of a share of the
 4045 revenues or net margin therefrom, shall make a report to the commission annually
 4046 describing each such transaction and explaining the benefits resulting to firm retail
 4047 customers from each such transaction. ~~Such report shall be served on the consumer's~~
 4048 ~~utility counsel division of the Governor's Office of Consumer Affairs."~~

4049

SECTION 36.

4050 Said title is further amended by revising Code Section 46-2-26.3, relating to the recovery of
 4051 costs of conversion from oil-burning to coal-burning generating facility, filing of request,
 4052 public hearing, determination of rate, and adjustments, as follows:

4053 "(f) Upon recovery by the utility of the cost of conversion as herein provided, the utility
 4054 shall no longer charge any rate authorized to recover the cost of conversion. Upon such
 4055 termination, the utility shall file a report with the commission ~~and the consumers' utility~~
 4056 ~~counsel~~ within 30 days, sworn to by an officer of the utility, that its fuel-savings-allocation
 4057 revenues are in compliance with all commission orders issued pursuant to this Code
 4058 section. In the event such revenue is lesser or greater than the utility's cost of conversion,
 4059 the commission shall make such determinations and issue such orders as are necessary to
 4060 result in the full recovery, but no more, of the cost of conversion."

4061

SECTION 37.

4062 Said title is further amended by revising Code Section 46-4-155, relating to regulation of
 4063 unbundled natural gas services, as follows:

4064 "46-4-155.

4065 (a) Except as otherwise provided by this article, an electing distribution company which
 4066 offers firm distribution service remains subject to the jurisdiction of the commission under
 4067 this title. Without limiting the generality of the foregoing, the commission shall have
 4068 general supervision of such company pursuant to Code Section 46-2-20, and the rates of
 4069 an electing distribution company for firm distribution service and the ancillary services
 4070 which are subject to the rate jurisdiction of the commission shall be established in
 4071 accordance with the provisions of this article and Code Section 46-2-23.1.

4072 (b) An electing distribution company shall offer liquefied natural gas peaking service to
4073 marketers at rates and on terms approved by the commission, subject however to the
4074 following:

4075 (1) If a marketer which is not affiliated with an electing distribution company obtains a
4076 peaking service in a delivery group from a person other than the electing distribution
4077 company, the rate for liquefied natural gas peaking service by the electing distribution
4078 company in such delivery group shall not be subject to approval by the commission but
4079 shall be capped at 120 percent of the rate for such service previously established by the
4080 commission; and

4081 (2) If the commission determines pursuant to a filing by the electing distribution
4082 company or otherwise, and based upon the factors listed in subsection (c) of this Code
4083 section, that reasonably available alternatives for such peaking services exist in the
4084 delivery group, the rate for such services in a delivery group shall not be subject to
4085 regulation by the commission and the plant and equipment of the electing distribution
4086 company which is used and useful for receiving gas for liquefaction, liquefying gas,
4087 storing liquefied natural gas, and re-gasifying liquefied natural gas, including the land
4088 upon which such plant and equipment is located, shall be removed from the rate base for
4089 rate-making purposes of the electing distribution company in an amount which is the
4090 lower of the fair market value or the depreciated book value of such facilities. In
4091 addition, the rates for firm distribution service of the electing distribution company shall
4092 be adjusted to eliminate any applicable recovery of the operation and maintenance
4093 expenses associated with such facilities and gas in storage in such facilities, as well as the
4094 return on investment attributable to the amount removed from the rate base. For purposes
4095 of such review and determination, the fact that such services have been obtained by a
4096 marketer which is not affiliated with the electing distribution company shall create a
4097 presumption that there are reasonably available alternatives for such peaking services in
4098 the delivery group.

4099 (c) An electing distribution company shall offer each type of customer service to marketers
4100 at rates and on terms approved by the commission in accordance with this article and Code
4101 Section 46-2-23.1 until such time as the commission determines that marketers have
4102 reasonably available alternatives to purchasing such service from the electing distribution
4103 company. The commission shall make a separate determination for each type of service.
4104 In making such determinations, the commission shall consider the following factors:

4105 (1) The number and size of alternative providers of the service;

4106 (2) The extent to which the service is available from alternative providers in the relevant
4107 market;

- 4108 (3) The ability of alternative providers to make functionally equivalent or substitute
4109 services readily available at competitive prices, terms, and conditions; and
- 4110 (4) Other indicators of market power which may include market share, growth in market
4111 share, ease of entry, and the affiliation of providers of a service.
- 4112 (d) For each delivery group for which the commission has not determined pursuant to
4113 Code Section 46-4-156 that adequate market conditions exist, and thus has not initiated
4114 customer assignment, an electing distribution company shall:
- 4115 (1) Offer interruptible distribution service and balancing services at rates and on terms
4116 approved by the commission in accordance with the provisions of this article and Code
4117 Section 46-2-23.1 to retail customers and marketers, subject to the rules, regulations, and
4118 general terms and conditions of the electing distribution company as approved by the
4119 commission;
- 4120 (2) Offer firm distribution service at rates and on terms approved by the commission in
4121 accordance with the provisions of this article and Code Section 46-2-23.1 to retail
4122 customers and marketers, subject to the rules, regulations, and general terms and
4123 conditions of the electing distribution company as approved by the commission; and
- 4124 (3) Offer in conjunction with such firm distribution service a commodity sales service;
4125 provided, however, that the rates for such commodity sales service shall be established
4126 pursuant to the provisions of Code Section 46-2-26.5, relating to the filing and adoption
4127 of a gas supply plan; and provided, further, that the rates for such commodity sales
4128 service shall not be subject to the provisions of Code Section 46-2-26.5 nor subject to the
4129 approval of the commission if at least five marketers, excluding any marketer which is
4130 an affiliate of the electing distribution company, have been granted certificates of
4131 authority to serve in the delivery group.
- 4132 (e)(1) As used in this subsection, the term 'interstate capacity assets' means interstate
4133 transportation and out-of-state gas storage capacity.
- 4134 (2) If, pursuant to the provisions of this article, the rates for commodity sales service of
4135 an electing distribution company within a delivery group or groups become no longer
4136 subject to the approval of the commission nor to the provisions of Code Section
4137 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible
4138 for acquiring and contracting for the interstate capacity assets necessary for gas to be
4139 made available on its system, whether directly or by assignment to marketers, for firm
4140 distribution service to retail customers within such delivery group or groups unless
4141 determined otherwise by the commission in accordance with this subsection.
- 4142 (3) At least every third year following the date when the rates for commodity sales
4143 service within a delivery group or groups become no longer subject to commission
4144 approval nor to the provisions of Code Section 46-2-26.5, the electing distribution

4145 company shall file, on or before August 1 of such year, a capacity supply plan which
4146 designates the array of available interstate capacity assets selected by the electing
4147 distribution company for the purpose of making gas available on its system for firm
4148 distribution service to retail customers in such delivery group or groups.

4149 (4) Not less than ten days after any such filing by an electing distribution company, the
4150 commission shall conduct a public hearing on the filing. The electing distribution
4151 company's testimony shall be under oath and shall, with any corrections thereto,
4152 constitute the electing distribution company's affirmative case. At any hearing conducted
4153 pursuant to this subsection, the burden of proof to show that the proposed capacity supply
4154 plan is appropriate shall be upon the electing distribution company.

4155 (5) Following such a hearing, the commission shall issue an order approving the capacity
4156 supply plan filed by the electing distribution company or adopting a capacity supply plan
4157 for the electing distribution company that the commission deems appropriate. Should the
4158 commission fail or refuse to issue an order by the ninetieth day after the electing
4159 distribution company's filing which either approves the capacity supply plan filed by the
4160 electing distribution company or adopts a different capacity supply plan for the electing
4161 distribution company, the capacity supply plan proposed by the electing distribution
4162 company shall thereupon be deemed approved by operation of law.

4163 (6) Any capacity supply plan approved or adopted by the commission shall:

4164 (A) Specify the range of the requirements to be supplied by interstate capacity assets;

4165 (B) Describe the array of interstate capacity assets selected by the electing distribution
4166 company to meet such requirements;

4167 (C) Describe the criteria of the electing distribution company for entering into contracts
4168 under such array of interstate capacity assets from time to time to meet such
4169 requirements; provided, however, that a capacity supply plan approved or adopted by
4170 the commission shall not prescribe the individual contracts to be executed by the
4171 electing distribution company in order to implement such plan; and

4172 (D) Specify the portion of the interstate capacity assets which must be retained and
4173 utilized by the electing distribution company in order to manage and operate its system.

4174 (7) When interstate capacity assets that are contained in a capacity supply plan approved
4175 or adopted by the commission are allocated by the electing distribution company to a
4176 marketer pursuant to the provisions of this article, all of the costs of the interstate capacity
4177 assets thus allocated shall be borne by such marketer.

4178 (8) The provisions of law relating to parties, intervention, and discovery in proceedings
4179 before the commission shall apply with respect to proceedings under this subsection.

4180 (9) All commission orders issued pursuant to this subsection shall contain the
4181 commission's findings of fact and conclusions of law upon which the commission's action

4182 is based. Any such order shall be deemed a final order subject to judicial review under
4183 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

4184 (10) Prior to the approval or adoption of a capacity supply plan pursuant to this
4185 subsection, the interstate capacity assets of the electing distribution company in the most
4186 current gas supply plan of such company approved or adopted by the commission
4187 pursuant to the provisions of Code Section 46-2-26.5 shall be treated as a capacity supply
4188 plan that is approved or adopted by the commission for purposes of this subsection.

4189 (11) After a capacity supply plan has become effective pursuant to provisions of this
4190 subsection as a result of a proceeding before the commission, the commission shall retain
4191 jurisdiction of the proceeding for the purposes set forth in this subsection. Upon
4192 application of the affected electing distribution company ~~or the consumers' utility counsel~~
4193 ~~division of the Governor's Office of Consumer Affairs~~ or upon its own initiative, the
4194 commission may, after affording due notice and opportunity for hearing to the affected
4195 electing distribution company and the intervenors in the proceeding, amend the capacity
4196 supply plan of the affected electing distribution company. Any such amendment shall not
4197 adversely affect rights under any contract entered into pursuant to such plan without the
4198 consent of the parties to such contracts. If an amendment proceeding is initiated by the
4199 affected electing distribution company and the commission fails or refuses to issue an
4200 order by the ninetieth day after the electing distribution company's filing, the amended
4201 capacity supply plan proposed by the electing distribution company shall thereupon be
4202 deemed approved by operation of law.

4203 (12) After an electing distribution company has no obligation to provide commodity
4204 sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and
4205 upon the petition of any interested person and after notice and opportunity for hearing
4206 afforded to the electing distribution company, all parties to the most current proceeding
4207 establishing a capacity supply plan for such electing distribution company, ~~the consumers'~~
4208 ~~utility counsel division of the Governor's Office of Consumer Affairs~~, all marketers who
4209 have been issued a certificate of authority pursuant to Code Section 46-4-153, and all
4210 owners or operators of interstate gas pipelines that are a part of said capacity supply plan,
4211 the commission may issue an order eliminating the responsibility of the electing
4212 distribution company for acquiring and contracting for interstate capacity assets necessary
4213 for gas to be made available on its system as well as the obligation of such electing
4214 distribution company to file any further capacity supply plans with the commission
4215 pursuant to the provisions of this subsection, if the commission determines that:

4216 (A) Marketers can and will secure adequate and reliable interstate capacity assets
4217 necessary to make gas available on the system of the electing distribution company for
4218 service to firm retail customers;

4219 (B) Adequate, reliable, and economical interstate capacity assets will not be diverted
4220 from use for service to retail customers in Georgia;

4221 (C) There is a competitive, highly flexible, and reasonably accessible market for
4222 interstate capacity assets for service to retail customers in Georgia;

4223 (D) Elimination of such responsibility on the part of the electing distribution company
4224 would not adversely affect competition for natural gas service to retail customers in
4225 Georgia; and

4226 (E) Elimination of such responsibility on the part of the electing distribution company
4227 is otherwise in the public interest.

4228 If the commission eliminates the responsibility of an electing distribution company for
4229 acquiring and contracting for interstate capacity assets and filing further capacity supply
4230 plans in accordance with this subsection, the commission shall annually review the
4231 assignment of interstate capacity assets.

4232 (13) Notwithstanding any other provisions in this Code section to the contrary, no later
4233 than July 1, 2003, the commission shall, after notice afforded to the electing distribution
4234 company, ~~the consumers' utility counsel division of the Governor's Office of Consumer~~
4235 ~~Affairs~~, all marketers who have been issued a certificate of authority in accordance with
4236 Code Section 46-4-153, and all owners or operators of interstate gas pipelines that are a
4237 part of said capacity supply plan, hold a hearing regarding a plan for assignment of
4238 interstate assets. After such hearing, the commission may adopt a plan for assignment
4239 of interstate capacity assets held by the electing distribution company, except for those
4240 interstate capacity assets reasonably required for balancing. If adopted, the plan shall
4241 provide for interstate capacity assets to be assigned to certificated marketers who desire
4242 assignment and who are qualified technically and financially to manage interstate
4243 capacity assets. Marketers who accept assignment of interstate capacity assets shall be
4244 required by the commission to use such assets primarily to serve retail customers in
4245 Georgia and shall be permitted to use such assets outside Georgia so long as the
4246 reliability of the system is not compromised. Thereafter, the commission shall annually
4247 review the assignment of interstate capacity assets.

4248 (14) Any order eliminating the responsibility of the electing distribution company for
4249 acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this
4250 subsection and any plan for assignment of interstate capacity assets pursuant to paragraph
4251 (13) of this subsection shall, at a minimum, ensure that:

4252 (A) Shifts in market share are reflected in an orderly reassignment of interstate
4253 capacity assets;

4254 (B) Marketers hold sufficient interstate capacity assets to meet the needs of retail
4255 customers;

4256 (C) Before any such assignment is authorized, the assignee demonstrates to the
 4257 commission that such assignment will result in financial benefits to firm retail
 4258 customers;

4259 (D) Before any marketer discontinues service in the Georgia market, it assigns its
 4260 contractual rights for interstate capacity assets used to serve Georgia retail customers
 4261 in a manner designated by the commission;

4262 (E) In the event that the commission imposes temporary directives in accordance with
 4263 Code Section 46-4-157, interstate capacity assets assigned to marketers are subject to
 4264 reassignment by the commission to protect the interests of retail customers; and

4265 (F) Any other requirement that the commission finds to be in the public interest is
 4266 imposed upon assignees as a condition of the assignment of interstate capacity assets.

4267 (15) After notice and an opportunity for hearing, the commission may authorize, subject
 4268 to reasonable terms and conditions, an electing distribution company or its designee to
 4269 utilize or monetize excess interstate capacity assets available to the electing distribution
 4270 company."

4271 **SECTION 38.**

4272 Said title is further amended by revising Code Section 46-4-158.2, relating to rules governing
 4273 marketer's terms of service, as follows:

4274 "46-4-158.2.

4275 The commission shall by September 1, 2002, adopt rules governing a marketer's terms of
 4276 service for natural gas consumers. Such rules shall provide, without limitation, that:

4277 (1) Each retail natural gas marketer shall establish policies and procedures for handling
 4278 billing disputes and requests for payment arrangements, which must be approved by the
 4279 commission;

4280 (2) A marketer's advertised prices shall reflect the prices or the pricing methodology in
 4281 disclosure statements and billed prices and shall be presented in the standard pricing unit
 4282 of the electing distribution company;

4283 (3) The consumer shall have a right to contact the commission ~~and the consumers' utility~~
 4284 ~~counsel division of the Governor's Office of Consumer Affairs~~ if he or she is not satisfied
 4285 with the response of the marketer;

4286 (4) Marketers shall provide all consumers with a three-day right of rescission following
 4287 the receipt of the disclosure statement, which shall be provided to consumers at times
 4288 specified in rules and regulations of the commission. Consumers may cancel an
 4289 agreement in writing or electronically by contacting the marketer;

4290 (5) Whenever a marketer offers a fixed term agreement and the expiration date of such
 4291 agreement is approaching, or whenever a marketer proposes to change its terms of service

4292 under any type of agreement, the marketer shall provide written notification to the natural
 4293 gas consumer, clearly explaining the consumer's options at that point, including, but not
 4294 limited to, the option to seek another marketer;

4295 (6) A marketer shall not charge cancellation fees to a low-income residential consumer
 4296 seeking service for the first time from the regulated provider;

4297 (7) Gas service to a consumer shall be disconnected only for failure to pay for service
 4298 from the consumer's current marketer. A marketer may not request disconnection of
 4299 service for nonpayment of a bill which was not sent to the consumer in a timely manner.

4300 Every marketer shall be required to offer at least one reasonable payment arrangement
 4301 in writing to a consumer prior to requesting that such consumer be disconnected for
 4302 failure to pay. Disconnection of service to a consumer is authorized no earlier than 15
 4303 days after a notice that service will be disconnected;

4304 (8) Marketers shall be prohibited from sending estimated bills to natural gas consumers;
 4305 provided, however, that when information from actual meter readings is not made
 4306 available by the electing distribution company or any other party authorized to perform
 4307 meter reading, marketers may send an estimated bill for not more than two consecutive
 4308 months; and

4309 (9) No marketer shall be authorized to prevent a consumer from obtaining distribution
 4310 and commodity sales service from another marketer or provider."

4311 **SECTION 39.**

4312 Said title is further amended by revising Code Section 46-4-158.3, relating to adequate and
 4313 accurate consumer information disclosure statements and bills relative to natural gas service,
 4314 as follows:

4315 "46-4-158.3.

4316 The commission shall, by September 1, 2002, adopt rules and regulations requiring
 4317 marketers which provide firm distribution service under this article to provide adequate and
 4318 accurate consumer information to enable consumers to make informed choices regarding
 4319 the purchase of natural gas services. Such rules shall provide, without limitation, that:

4320 (1) A disclosure statement shall be provided to consumers in an understandable format
 4321 that enables such consumers to compare prices and services on a uniform basis. Rules
 4322 adopted by the commission shall provide when disclosure statements shall be provided
 4323 to consumers. Such disclosure statements shall include, but shall not be limited to, the
 4324 following:

4325 (A) For fixed rate charges for natural gas service, a clear disclosure of the components
 4326 of the fixed rate, the actual prices charged by the marketer, presented in a single
 4327 standard pricing unit which includes any charges imposed by the marketer or its agent,

4328 so that the consumer can compare rates among marketers. This disclosure shall not
4329 include state and local sales taxes. The standard pricing disclosure unit must include
4330 all recurring monthly charges;

4331 (B) For variable rate charges for natural gas service, a clear and understandable
4332 explanation of the factors that will cause the price to vary and how often the price can
4333 change, the current price, and the ceiling price, if any, so that the consumer can
4334 compare rates among marketers. The current price and ceiling price, if applicable, shall
4335 be presented in a single standard pricing unit which includes any charges imposed by
4336 the marketer or its agent. This disclosure shall not include state and local sales taxes.
4337 The standard pricing disclosure unit must include all recurring monthly charges;

4338 (C) A statement that the standard unit price does not include state and local taxes or
4339 charges imposed by the electing distribution company;

4340 (D) The length of the agreement, including the starting date and expiration date, if
4341 applicable;

4342 (E) The billing interval, the method by which monthly charges imposed by the electing
4343 distribution company will be billed to the consumer in the event the consumer
4344 commences or terminates service with the marketer during the billing interval, and any
4345 late payment, cancellation, or reconnection fees;

4346 (F) The marketer's budget billing, payment, credit, deposit, cancellation, collection, and
4347 reconnection policies and procedures;

4348 (G) How to contact the marketer for information or complaints;

4349 (H) A statement of the natural gas consumer's right to contact the commission ~~and the~~
4350 ~~consumers' utility counsel division of the Governor's Office of Consumer Affairs~~ if he
4351 or she is not satisfied with the response of the marketer, including the local and toll-free
4352 telephone numbers of these agencies;

4353 (I) The division name and telephone number for information regarding heating
4354 assistance administered by the Department of Human Services;

4355 (J) The following statement:

4356 'A consumer shall have a three-day right of rescission following the receipt of this
4357 disclosure at the time of initiating service or when informed of a change in terms or
4358 conditions. You, the consumer, may cancel in writing or electronically by contacting
4359 the marketer.';

4360 (K) The following statement:

4361 'If you have a fixed term agreement with us and it is approaching the expiration date,
4362 or whenever we propose to change our terms of service in any type of agreement, you
4363 will receive written notification from us prior to the date of expiration of or change
4364 to the agreement. We will explain your options to you in this advance notification.';

- 4365 (L) A statement setting forth the requirements of paragraphs (6) through (9) of Code
 4366 Section 46-4-158.2; and
- 4367 (M) A statement that deposits shall not exceed \$150.00; and
- 4368 (2) Natural gas consumers' bills shall be accurate and understandable and shall contain
 4369 sufficient information for a consumer to compute and compare the total cost of
 4370 competitive retail natural gas services. Such bills shall include, but not be limited to, the
 4371 following:
- 4372 (A) The consumer's name, billing address, service address, and natural gas company
 4373 account number;
- 4374 (B) The dates of service covered by the bill, an itemization of each type of competitive
 4375 natural gas service covered by the bill, any related billing components, the charge for
 4376 each type of natural gas service, and any other information the consumer would need
 4377 to recalculate the bill for accuracy;
- 4378 (C) The applicable billing determinants, including beginning meter reading, ending
 4379 meter reading, multipliers, and any other consumption adjustments;
- 4380 (D) The amount billed for the current period, any unpaid amounts due from previous
 4381 periods, any payments or credits applied to the consumer's account during the current
 4382 period, any late payment charges or gross and net charges, if applicable, and the total
 4383 amount due and payable;
- 4384 (E) The due date for payment to keep the account current;
- 4385 (F) The current balance of the account, if the natural gas consumer is billed according
 4386 to a budget plan;
- 4387 (G) Options and instructions on how the natural gas consumer can make a payment;
- 4388 (H) A toll-free or local telephone number and address for consumer billing questions
 4389 or complaints for any retail natural gas company whose charges appear on the bill;
- 4390 (I) The applicable electing distribution company's 24 hour local or toll-free telephone
 4391 number for reporting service emergencies; and
- 4392 (J) An explanation of any codes and abbreviations used."

4393 **SECTION 40.**

4394 Said title is further amended by revising Code Section 46-4-160, relating to the commission's
 4395 authority over certificated marketers, access to records, investigations and hearings, price
 4396 summary, billing, violations, and slamming, as follows:

4397 "46-4-160.

4398 (a) With respect to a marketer certificated pursuant to Code Section 46-4-153, the
 4399 commission shall have authority to:

4400 (1) Adopt reasonable rules and regulations governing the certification of a marketer;

- 4401 (2) Grant, modify, impose conditions upon, or revoke a certificate;
- 4402 (3) Adopt reasonable rules governing service quality. In promulgating consumer
4403 protection rules under this article, the commission shall, to the extent practicable, provide
4404 for rules with a self-executing mechanism to resolve such complaints in a timely manner.
4405 Such consumer protection rules shall encourage marketers to resolve complaints without
4406 recourse to the commission and shall expedite the handling of those complaints that do
4407 require action by the commission by providing for a minimum payment of \$100.00 to the
4408 consumer, plus penalties and fines as determined by the commission, for violations of
4409 such rules;
- 4410 (4) Resolve complaints against a marketer regarding that marketer's service;
- 4411 (5) Adopt reasonable rules and regulations relating to billing practices of marketers and
4412 information required on customers' bills. The commission shall require at a minimum
4413 that bills specify the gas consumption amount, price per therm, distribution charges, and
4414 any service charges. The commission shall prescribe performance standards for marketer
4415 billing relating to accuracy and timeliness of customer bills;
- 4416 (6) Adopt reasonable rules and regulations relating to minimum resources which
4417 marketers are required to have in this state for customer service purposes. The rules and
4418 regulations shall require a marketer to have and maintain the ability to process cash
4419 payments from customers in this state. The rules and regulations shall provide
4420 procedures relating to the handling and disposition of customer complaints; and
- 4421 (7) Adopt reasonable rules and regulations requiring marketers to provide notification
4422 to retail customers of or include with customer bills information relating to where
4423 customers may obtain pricing information relative to gas marketers.
- 4424 (b) Prior to the determination by the commission pursuant to Code Section 46-4-156 that
4425 adequate market conditions exist within a delivery group, each marketer must separately
4426 state on its bills to retail customers within the delivery group the charges for firm
4427 distribution service and for commodity sales.
- 4428 (c) Except as otherwise provided by this article, the price at which a marketer sells gas
4429 shall not be regulated by the commission.
- 4430 (d) ~~The commission and the consumers' utility counsel division of the Governor's Office~~
4431 ~~of Consumer Affairs~~ shall have access to the books and records of marketers as may be
4432 necessary to ensure compliance with the provisions of this article and with the
4433 commission's rules and regulations promulgated under this article.
- 4434 (e) Except as otherwise provided in this article, certification of a person as a marketer by
4435 the commission pursuant to Code Section 46-4-153 does not subject the person to the
4436 jurisdiction of the commission under this title, including without limitation the provisions
4437 of Article 2 of Chapter 2 of this title.

4438 (f) The provisions of Article 3 of Chapter 2 of this title shall apply to an investigation or
4439 hearing regarding a marketer. The provisions of Articles 4 and 5 of Chapter 2 of this title
4440 shall apply to a marketer.

4441 (g) The commission, subject to receiving state funds for such purpose, is required to have
4442 published at least quarterly in newspapers throughout the state a summary of the price per
4443 therm and any other amounts charged to retail customers by each marketer operating in this
4444 state and any additional information which the commission deems appropriate to assist
4445 customers in making decisions regarding choice of a marketer. In addition, the commission
4446 shall make such information available to Georgia Public Telecommunications (GPTV)
4447 under the jurisdiction of the Georgia Public Telecommunications Commission which will
4448 provide such information to the general public at a designated time at least once a month.

4449 (h) A marketer shall render a bill to retail customers for services within 30 days of the date
4450 following the monthly meter reading. A marketer's bill shall utilize the results of the actual
4451 meter reading subject to paragraph (8) of Code Section 46-4-158.2. The price for natural
4452 gas billed to a natural gas consumer shall not exceed the marketer's published price
4453 effective at the beginning of the consumer's billing cycle. A marketer shall allow the
4454 natural gas consumer a reasonable period of time to pay the bill from the date the consumer
4455 receives the bill, prior to the application of any late fees or penalties. Marketers shall not
4456 impose unreasonable late fees or penalties and in no event shall any such fees or penalties
4457 exceed \$10.00 or 1.5 percent of the past due balance, whichever is greater.

4458 (i) Any marketer which willfully violates any provision of this Code section or any duly
4459 promulgated rules or regulations issued under this Code section, including but not limited
4460 to rules relating to false billing, or which fails, neglects, or refuses to comply with any
4461 order of the commission after notice thereof shall be liable for any penalties authorized
4462 under Code Section 46-2-91.

4463 (j) As used in this subsection, the phrase 'terms and conditions' does not include price. At
4464 least 30 days prior to the effective date of any changes in the terms and conditions for
4465 service authorized by the marketer's certificate of authority, a marketer shall file such
4466 changes with the commission. Such changes to the terms and conditions of service shall
4467 go into effect on the effective date proposed by the marketer; provided, however, that the
4468 commission shall be authorized to suspend the effective date of the proposed changes for
4469 up to 90 days if it appears to the commission that the proposed terms and conditions are
4470 unconscionable or are unfair, deceptive, misleading, or confusing to consumers. If the
4471 commission does not issue a final decision on the proposed terms and conditions of service
4472 within the 90 day suspension period, the proposed changes shall be deemed approved.

4473 (k) Any consumer determined by the commission to be the victim of slamming shall be
4474 able to switch back to his or her desired marketer without any charge. No marketer

4475 responsible for slamming a consumer shall be entitled to any remuneration for services
 4476 provided to that customer, and any refund owed to such a consumer by the marketer who
 4477 switched the consumer without his or her consent shall be paid within 30 days of the date
 4478 the commission determined the consumer was a victim of slamming. No marketer
 4479 responsible for slamming a consumer who is determined to be a victim of slamming shall
 4480 report to a credit reporting agency any moneys owed by such a consumer to such marketer;
 4481 any marketer who violates the prohibition set out in this sentence shall be required by the
 4482 commission to pay such a consumer \$1,000.00 for each such prohibited report."

4483 **SECTION 41.**

4484 Said title is further amended by revising Code Section 46-4-160.5, relating to retail customer
 4485 recovery for violations concerning natural gas, as follows:

4486 "46-4-160.5.

4487 (a) Any retail customer who is damaged by a marketer's violation of any provision of Code
 4488 Section 46-4-160, any duly promulgated rules or regulations issued under such Code
 4489 section, or any commission order shall be entitled to maintain a civil action and shall be
 4490 entitled to recover actual damages sustained by the retail customer, as well as incidental
 4491 damages, consequential damages, reasonable attorney's fees, and court costs.

4492 (b) Any violation of Code Section 46-4-160 or any duly promulgated rules or regulations
 4493 issued under such Code section is declared to be a violation of Part 2 of Article 15 of
 4494 Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' Any remedy available
 4495 under such part shall be available to any retail customer and any action by the ~~administrator~~
 4496 Attorney General that such part authorizes for a violation of such part shall be authorized
 4497 for violation of Code Section 46-4-160 or any duly promulgated rules or regulations issued
 4498 under such Code section. This subsection shall not be construed to provide that other
 4499 violations of this article or rules promulgated under this article are not violations of such
 4500 part.

4501 (c) The provisions of this Code section shall apply to violations of subsections (g) and (h)
 4502 of Code Section 46-4-156, Code Sections 46-4-158.2, 46-4-160.1, and 46-4-160.2, and
 4503 substantial violations of Code Section 46-4-158.3."

4504 **SECTION 42.**

4505 Said title is further amended by revising Code Section 46-4A-4, relating to powers and duties
 4506 of the director of the Office of Planning and Budget relative to provision of energy
 4507 conservation assistance to residential customers by electric and gas utilities, as follows:

4508 "46-4A-4.

4509 The director shall have and may exercise the following powers and duties:

- 4510 (1) To adopt, modify, repeal, and promulgate, after consultation with all affected parties
 4511 and due notice and public hearings held in accordance with and established pursuant to
 4512 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' rules and regulations
 4513 for the establishment and implementation of the Residential Conservation Service
 4514 program. The initial proposed regulations shall be based upon the state plan for the
 4515 Residential Conservation Service as approved by the United States Department of Energy
 4516 and shall include provisions for:
- 4517 (A) Identification of covered utilities;
 - 4518 (B) Utility responsibilities, such as:
 - 4519 (i) Providing program information for customers;
 - 4520 (ii) Performance of on-site energy audits;
 - 4521 (iii) Arranging financing and installation;
 - 4522 (iv) Distribution of lists of contractors, suppliers, and lenders;
 - 4523 (v) Conducting inspections of installed measures;
 - 4524 (vi) Determining qualifications of auditors and inspectors; and
 - 4525 (vii) Establishing record keeping, financial accounting, and reporting requirements;
 - 4526 (C) Development and maintenance of master records of contractors, suppliers, and
 4527 lenders;
 - 4528 (D) Consumer complaint mechanisms;
 - 4529 (E) Utility supply, installation, and financing of energy products;
 - 4530 (F) Coordination with affected agencies, especially the commission and the ~~Office of~~
 4531 ~~Consumer Affairs~~ office of the Attorney General;
 - 4532 (G) Compliance and enforcement procedures; and
 - 4533 (H) Other program elements required by federal law;
- 4534 (2) To administer and enforce this chapter and all rules and regulations and orders
 4535 promulgated hereunder;
- 4536 (3) To receive and administer any federal funding available for the purposes of this
 4537 chapter; and
- 4538 (4) To amend the regulations promulgated under this chapter to conform to any future
 4539 changes in the federal law and regulations governing the program."

4540 **SECTION 43.**

4541 Said title is further amended by revising Code Section 46-4A-12, relating to construction of
 4542 chapter concerning provision of energy conservation assistance to residential customers by
 4543 electric and gas utilities, as follows:

4544 "46-4A-12.

4545 No provision of this chapter or any rules or regulations or orders hereunder shall be
4546 construed to be a limitation:

4547 (1) On the activities of any privately or publicly owned utility which is not a covered
4548 utility;

4549 (2) On the activities of covered utilities, when such activities are not subject to this
4550 chapter;

4551 (3) On the activities of contractors, suppliers, or lenders, when such activities are not
4552 subject to this chapter;

4553 (4) On the activities of the Division of Energy Resources of the Georgia Environmental
4554 Finance Authority in the enforcement or administration of any program or provision of
4555 law; and

4556 (5) On the power of any state or local agency in the enforcement or administration of any
4557 provision of law it is specifically permitted or required to enforce or administer,
4558 including, but not limited to, the Public Service Commission, the ~~Office of Consumer~~
4559 ~~Affairs~~ office of the Attorney General, and the Construction Industry Licensing Board."

4560

SECTION 44.

4561 Said title is further amended by revising Code Section 46-5-27, relating to telephone
4562 solicitations to residential, mobile, or wireless subscribers, Public Service Commission to
4563 establish and maintain list of certain subscribers, authorization for imposition of
4564 administrative fees, confidential nature of data base, and required identification, as follows:

4565 "46-5-27.

4566 (a) The General Assembly finds that:

4567 (1) The use of the telephone to market goods and services is pervasive now due to the
4568 increased use of cost-effective telemarketing techniques;

4569 (2) Over 30,000 businesses actively telemarket goods and services to business and
4570 residential customers;

4571 (3) Every day, over 300,000 solicitors place calls to more than 18 million Americans,
4572 including citizens of this state;

4573 (4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy
4574 and peacefulness of individuals;

4575 (5) Many citizens of this state are outraged over the proliferation of nuisance calls from
4576 telemarketers;

4577 (6) Individuals' privacy rights and commercial freedom of speech can be balanced in a
4578 way that accommodates both the privacy of individuals and legitimate telemarketing
4579 practices; and

4580 (7) It is in the public interest to establish a mechanism under which the individual
4581 citizens of this state can decide whether or not to receive telemarketing calls.

4582 (b) As used in this Code section, the term:

4583 (1) 'Caller identification service' means a type of telephone service which permits
4584 telephone subscribers to see the telephone number of incoming telephone calls.

4585 (2) 'Residential, mobile, or wireless subscriber' means a person who has subscribed to
4586 telephone service from a local exchange company or mobile or wireless telephone service
4587 provider or other persons living or residing with such person.

4588 (3) 'Telephone solicitation' means any voice communication over a telephone line for the
4589 purpose of encouraging the purchase or rental of, or investment in, property, goods, or
4590 services, but does not include communications:

4591 (A) To any residential, mobile, or wireless subscriber with that subscriber's prior
4592 express invitation or permission;

4593 (B) By or on behalf of any person or entity with whom a residential, mobile, or
4594 wireless subscriber has a prior or current business or personal relationship; or

4595 (C) By or on behalf of a charitable organization which has filed a registration statement
4596 pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs
4597 (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such
4598 registration as a religious organization or agency referred to in paragraph (2) of Code
4599 Section 43-17-2.

4600 Such communication may be from a live operator, through the use of ADAD equipment
4601 as defined in Code Section 46-5-23, or by other means.

4602 (c) No person or entity shall make or cause to be made any telephone solicitation to the
4603 telephone line of any residential, mobile, or wireless subscriber in this state who has given
4604 notice to the commission, in accordance with regulations promulgated under subsection (d)
4605 of this Code section, of such subscriber's objection to receiving telephone solicitations.

4606 (d)(1) The commission shall establish and provide for the operation of a data base to
4607 compile a list of telephone numbers of residential, mobile, and wireless subscribers who
4608 object to receiving telephone solicitations. It shall be the duty of the commission to have
4609 such data base in operation no later than January 1, 1999.

4610 (2) Such data base may be operated by the commission or by another entity selected by
4611 and awarded a contract by the commission.

4612 (3) No later than January 1, 1999, the commission shall promulgate regulations which:
4613 (A) Require each local exchange company to inform its residential, mobile, or wireless
4614 subscribers of the opportunity to provide notification to the commission or its
4615 contractor that such subscriber objects to receiving telephone solicitations;

- 4616 (B) Specify the methods by which each residential, mobile, or wireless subscriber may
4617 give notice to the commission or its contractor of his or her objection to receiving such
4618 solicitations and methods for revocation of such notice;
- 4619 (C) Specify the length of time for which a notice of objection shall be effective and the
4620 effect of a change of telephone number on such notice;
- 4621 (D) Specify the methods by which such objections and revocations shall be collected
4622 and added to the data base;
- 4623 (E) Specify the methods by which any person or entity desiring to make telephone
4624 solicitations will obtain access to the data base as required to avoid calling the
4625 telephone numbers of residential, mobile, or wireless subscribers included in the data
4626 base; and
- 4627 (F) Specify such other matters relating to the data base that the commission deems
4628 desirable.
- 4629 (4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications
4630 Commission establishes a single national data base of telephone numbers of subscribers
4631 who object to receiving telephone solicitations, the commission shall include the part of
4632 such single national data base that relates to Georgia in the data base established under
4633 this Code section.
- 4634 (e) The commission may provide by rule or regulation for administrative fees to be
4635 imposed upon:
- 4636 (1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data
4637 base established under this Code section; provided, however, that the commission shall
4638 not set this fee in an amount greater than \$5.00; and
- 4639 (2) A person or entity desiring to make telephone solicitations for access to or for
4640 electronic copies of the data base established under this Code section.
- 4641 (f)(1) Information contained in the data base established under this Code section shall
4642 be used only for the purpose of compliance with this Code section or in a proceeding or
4643 action under subsection (h) or (i) of this Code section. Such information shall not be
4644 subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.
- 4645 (2) No person shall knowingly compile or disseminate or compile and disseminate
4646 information obtained from the data base for any reason other than those legitimate
4647 purposes established by law. Any person found guilty of violating this subsection shall
4648 be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed
4649 \$1,000.00. Each instance of an unauthorized disclosure of information from the data base
4650 shall constitute a separate offense.

4651 (g)(1) Any person or entity who makes a telephone solicitation to the telephone line of
4652 any residential, mobile, or wireless subscriber in this state shall, at the beginning of such
4653 call, state clearly the identity of the person or entity initiating the call.

4654 (2) No person or entity who makes a telephone solicitation to the telephone line of a
4655 residential, mobile, or wireless subscriber in this state shall knowingly utilize any method
4656 to block or otherwise circumvent such subscriber's use of a caller identification service.

4657 (h) ~~The administrator appointed pursuant to subsection (g) of Code Section 10-1-395~~
4658 Attorney General shall have authority to initiate proceedings, pursuant to Code Section
4659 10-1-397, relating to a knowing violation or threatened knowing violation of subsection (c)
4660 or (g) of this Code section. Such proceedings include without limitation proceedings to
4661 issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum
4662 of \$2,000.00 for each knowing violation, and to seek additional relief in any superior court
4663 of competent jurisdiction. Such actions shall be brought in the name of the state. The
4664 provisions of Code Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings
4665 initiated by the ~~administrator~~ Attorney General under this subsection. The ~~administrator~~
4666 Attorney General is authorized to issue investigative demands, issue subpoenas, administer
4667 oaths, and conduct hearings in the course of investigating a violation of subsection (c) or
4668 (g) of this Code section, in accordance with the provisions of Code Sections 10-1-403 and
4669 10-1-404.

4670 (i) Any person who has received more than one telephone solicitation within any 12 month
4671 period by or on behalf of the same person or entity in violation of subsection (c) or (g) of
4672 this Code section may either bring an action to enjoin such violation; bring an action to
4673 recover for actual monetary loss from such knowing violation or to receive up to \$2,000.00
4674 in damages for each such knowing violation, whichever is greater; or bring both such
4675 actions.

4676 (j) It shall be a defense in any action or proceeding brought under subsection (h) or (i) of
4677 this Code section that the defendant has established and implemented, with due care,
4678 reasonable practices and procedures to effectively prevent telephone solicitations in
4679 violation of this Code section.

4680 (k) No action or proceeding may be brought under subsection (h) or (i) of this Code
4681 section:

4682 (1) More than two years after the person bringing the action knew or should have known
4683 of the occurrence of the alleged violation; or

4684 (2) More than two years after the termination of any proceeding or action by the State
4685 of Georgia, whichever is later.

4686 (l) A court of this state may exercise personal jurisdiction over any nonresident or his or
 4687 her executor or administrator as to an action or proceeding authorized by this Code section
 4688 in accordance with the provisions of Code Section 9-10-91.

4689 (m) The remedies, duties, prohibitions, and penalties of this Code section are not exclusive
 4690 and are in addition to all other causes of action, remedies, and penalties provided by law.

4691 (n) No provider of telephone caller identification service shall be held liable for violations
 4692 of this Code section committed by other persons or entities."

4693 **SECTION 45.**

4694 Said title is further amended by repealing in its entirety Chapter 10, relating to the consumers'
 4695 utility counsel of the division of the Governor's Office of Consumer Affairs, and designating
 4696 said chapter as reserved.

4697 **SECTION 46.**

4698 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising
 4699 Article 4 of Chapter 12, relating to damages in tort actions, as follows:

4700 "ARTICLE 4

4701 51-12-70.

4702 As used in this article, the term:

4703 (1) 'Attorney General' ~~'Administrator'~~ means the ~~administrator of the 'Fair Business~~
 4704 ~~Practices Act of 1975'~~ ~~appointed pursuant to subsection (a) of Code Section 10-1-395~~
 4705 Attorney General or his or her designee.

4706 (2) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund
 4707 periodic payments under a structured settlement.

4708 (3) 'Applicable law' means:

4709 (A) The federal laws of the United States;

4710 (B) The laws of this state, including principles of equity applied in the courts of this
 4711 state; and

4712 (C) The laws of any other jurisdiction:

4713 (i) Which is the domicile of the payee or any other interested party;

4714 (ii) Under whose laws a structured settlement agreement was approved by a court or
 4715 responsible administrative authority; or

4716 (iii) In whose courts a settled claim was pending when the parties entered into a
 4717 structured settlement agreement.

- 4718 (4) 'Discounted present value' means the fair present value of future payments, as
4719 determined by discounting such payments to the present using the most recently
4720 published applicable federal rate for determining the present value of an annuity, as
4721 issued by the United States Internal Revenue Service.
- 4722 (5) 'Interested parties' means, with respect to any structured settlement agreement, the
4723 payee, any beneficiary designated under the annuity contract to receive payments
4724 following the payee's death, the annuity issuer, the structured settlement obligor, and any
4725 other party that has continuing rights or obligations under such structured settlement.
- 4726 (6) 'Payee' means an individual who is receiving tax-free damage payments under a
4727 structured settlement and proposes to make a transfer of payment rights thereunder.
- 4728 (7) 'Qualified assignment agreement' means an agreement providing for a qualified
4729 assignment within the meaning of Section 130 of the United States Internal Revenue
4730 Code, United States Code Title 26.
- 4731 (8) 'Settled claim' means the original tort claim or workers' compensation claim resolved
4732 by a structured settlement.
- 4733 (9) 'Structured settlement' means an arrangement for periodic payment of damages for
4734 personal injuries established by settlement or judgment in resolution of a tort claim or for
4735 periodic payments in settlement of a workers' compensation claim.
- 4736 (10) 'Structured settlement agreement' means the agreement, judgment, stipulation, or
4737 release embodying the terms of a structured settlement, including the rights of the payee
4738 to receive periodic payments.
- 4739 (11) 'Structured settlement obligor' means, with respect to any structured settlement, the
4740 party that has the continuing periodic payment obligation to the payee under a structured
4741 settlement agreement or a qualified assignment agreement.
- 4742 (12) 'Structured settlement payment rights' means rights to receive periodic payments
4743 (including lump sum payments) under a structured settlement, whether from the
4744 settlement obligor or the annuity issuer, where:
- 4745 (A) The payee or any other interested party is domiciled in this state;
4746 (B) The structured settlement agreement was approved by a court or responsible
4747 administrative authority in this state; or
4748 (C) The settled claim was pending before the courts of this state when the parties
4749 entered into the structured settlement agreement.
- 4750 (13) 'Terms of the structured settlement' includes, with respect to any structured
4751 settlement, the terms of the structured settlement agreement, the annuity contract, any
4752 qualified assignment agreement, and any order or approval of any court or responsible
4753 administrative authority or other government authority authorizing or approving such
4754 structured settlement.

4755 (14) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of
4756 alienation or encumbrance made by a payee for consideration, but does not include:

4757 (A) Any transaction which is expressly provided for in the structured settlement
4758 agreement and is executed within 30 days after execution of the structured settlement
4759 agreement; or

4760 (B) Any testamentary disposition by the payee.

4761 (15) 'Transfer agreement' means the agreement providing for the transfer of structured
4762 settlement payment rights from a payee to a transferee.

4763 51-12-71.

4764 (a) No direct or indirect transfer of structured settlement payment rights shall be effective
4765 and no structured settlement obligor or annuity issuer shall be required to make any
4766 payment directly or indirectly to any transferee of structured settlement payment rights
4767 unless the transfer has been approved in advance in a final court order by a court of
4768 competent jurisdiction or order of any government authority vested by law with exclusive
4769 jurisdiction over the settled claim resolved by the structured settlement based on express
4770 findings by the court or government authority that:

4771 (1) The transfer complies with the requirements of this article and does not contravene
4772 any federal or state statute or the order of any court or any responsible administrative
4773 authority;

4774 (2) The transfer is in the best interest of the payee taking into account the welfare and
4775 support of the payee's dependents;

4776 (3) Not less than ten days prior to the date on which the transfer agreement is executed
4777 in writing, the transferee has provided to the payee an informational pamphlet relating to
4778 transfers of structured settlements as provided for in subsection (b) of Code Section
4779 51-12-73, when available, and a separate disclosure statement in bold type, no smaller
4780 than 14 points, setting forth:

4781 (A) The amounts and due dates of the structured settlement payments to be transferred;

4782 (B) The aggregate amount of such payments;

4783 (C) The discounted present value of such payments, together with the discount rate
4784 used in determining such discounted present value;

4785 (D) The gross amount payable to the payee in exchange for such payments;

4786 (E) An itemized listing of all brokers' commissions, service charges, application fees,
4787 processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and
4788 other commissions, fees, costs, expenses, and charges payable by the payee or
4789 deductible from the gross amount otherwise payable to the payee;

- 4790 (F) The net amount payable to the payee after deduction of all commissions, fees,
4791 costs, expenses, and charges described in subparagraph (E) of this paragraph;
- 4792 (G) The quotient (expressed as a percentage) obtained by dividing the net payment
4793 amount by the discounted present value of the payments; and
- 4794 (H) The amount of any penalty and the aggregate amount of any liquidated damages
4795 (inclusive of penalties) payable by the payee in the event of any breach of the transfer
4796 agreement by the payee; and
- 4797 (4) The transferee has given written notice of the transferee's name, address, and
4798 taxpayer identification number to the annuity issuer and the structured settlement obligor
4799 and has filed a copy of the notice with the court.
- 4800 (b) At least 20 days before the hearing which is scheduled on an application for
4801 authorizing a transfer of structured settlement payment rights under this Code section, the
4802 transferee shall file with the court and deliver to all interested parties a notice of the
4803 proposed transfer and the application for its authorization. The notice shall include the
4804 following:
- 4805 (1) A copy of the transferee's application to the court;
- 4806 (2) A copy of the transfer agreement;
- 4807 (3) A copy of the disclosure statement required under paragraph (3) of subsection (a) of
4808 this Code section;
- 4809 (4) Notification that an interested party may support, oppose, or otherwise respond to the
4810 transferee's application, either in person or through counsel, by participating in the
4811 hearing or by submitting written comments to the court; and
- 4812 (5) A rule nisi containing notification of the time and place of the hearing and
4813 notification of the manner in and the time by which any written response to the
4814 application must be filed in order to be considered by the court. A written response shall
4815 be filed within 15 days after service of the transferee's notice.
- 4816 (c) Delivery of notice as required by subsection (b) of this Code section may be made as
4817 provided in Code Section 9-11-4 or by registered or certified mail, return receipt requested.
4818 Notice by registered or certified mail is effective upon the date of delivery as shown on the
4819 return receipt. If notice by registered or certified mail is refused or returned undelivered,
4820 notice shall be delivered as provided in Code Section 9-11-4.
- 4821 (d) The venue for any application brought under this Code section shall be in the county
4822 in which any transferee or transferor resides or in any county in which any of the
4823 transferees or transferors have consented to venue.

4824 51-12-72.

4825 (a) Any transfer agreement of structured settlement payment rights must, in addition to the
4826 other requirements of this article, be executed in writing and filed as provided in Code
4827 Section 51-12-71. The transfer agreement shall not be so executed until after the expiration
4828 of the ten-day period provided for in paragraph (3) of subsection (a) of Code Section
4829 51-12-71.

4830 (b) No payee shall incur any obligation of any type with respect to a proposed transfer of
4831 structured settlement payment rights prior to the execution in writing of the transfer
4832 agreement.

4833 (c) Any payee who executes in writing a transfer agreement shall have the right to rescind
4834 the transfer at any time within the next 21 days following the written execution of the
4835 transfer agreement or at the hearing provided for in subsection (b) of Code Section
4836 51-12-71, whichever event occurs last. The transferee shall furnish to the payee at the time
4837 of execution of the transfer agreement a notice to the payee allowing the payee 21 days to
4838 cancel the transfer. This right to cancel shall not limit or otherwise affect the payee's right
4839 to cancel pursuant to any other provision of applicable law. The notice shall serve as the
4840 cover sheet to the transfer documents. It shall be on a separate sheet of paper with no other
4841 written or pictorial material, in at least ten-point bold type, double spaced, and shall read
4842 substantially as follows:

4843 **NOTICE OF CANCELLATION RIGHTS:**

4844 Please read this form completely and carefully. It contains valuable cancellation rights.
4845 You may cancel this transaction at any time prior to 5:00 P.M. of the twenty-first day
4846 following receipt of this notice or at the hearing on the application for authorization of
4847 a transfer of structured settlement payment rights, whichever event occurs last.

4848 This cancellation right cannot be waived in any manner.

4849 To cancel, sign this form, and mail or deliver it to the address below by 5:00 P.M. of (the
4850 twenty-first day following the transaction). It is best to mail it by certified mail or
4851 statutory overnight delivery, return receipt requested, and to keep a photocopy of the
4852 signed form and your post office receipt.

4853 _____
4854 Address to which cancellation is to be returned:_____

4855 _____
4856 I (we) hereby cancel this transaction.

4857 _____
4858 Payee's Signature

4859 _____
4860 Date: _____.

4861 51-12-73.

4862 (a) The ~~administrator~~ Attorney General is authorized to promulgate, adopt, and issue rules,
4863 regulations, and orders necessary or convenient to carry out the provisions and purposes
4864 of this article. Any such rules of a substantive nature shall be promulgated only when it is
4865 determined by the ~~administrator~~ Attorney General, in the reasonable exercise of his or her
4866 discretion and on the basis of his or her expertise and the facts, submissions, evidence, and
4867 all information before him or her, that such rules are needed to prohibit or control acts or
4868 practices which create the probability of actual injury to payees.

4869 (b) The ~~administrator~~ Attorney General shall prepare a pamphlet containing information
4870 designed to help payees evaluate proposed transfers of structured settlements and shall
4871 distribute such pamphlets free of charge, except that persons engaged in the business of
4872 purchasing structured settlement payment rights may be charged a reasonable fee for such
4873 pamphlets.

4874 51-12-74.

4875 (a) Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall apply to all
4876 actions and proceedings of an administrative nature taken by the ~~administrator~~ Attorney
4877 General pursuant to this article, except where the ~~administrator~~ Attorney General is acting
4878 under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of
4879 1975.' A violation of this article shall also be considered a violation of Part 2 of Article 15
4880 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'

4881 (b) In addition to any other proceedings authorized by this article, the ~~administrator~~
4882 Attorney General may bring a civil action in the superior courts to enjoin any violation or
4883 threatened violation of any provision of this article or any rule, regulation, or order issued
4884 by the ~~administrator~~ Attorney General pursuant to this article.

4885 51-12-75.

4886 (a) In order to enforce this article or any orders, rules, and regulations promulgated
4887 pursuant thereto, the ~~administrator~~ Attorney General may issue an administrative order
4888 imposing a penalty not to exceed \$1,000.00 for each violation, whenever he or she
4889 determines, after a hearing, that any person has violated any provisions of this article or any
4890 rules, regulations, or orders promulgated under this article.

4891 (b) The hearing and any administrative review thereof shall be conducted in accordance
4892 with the procedure for contested cases under Chapter 13 of Title 50, the 'Georgia
4893 Administrative Procedure Act.' Any person who has exhausted all administrative remedies
4894 available and who is aggrieved or adversely affected by a final order or action of the
4895 ~~administrator~~ Attorney General shall have the right of judicial review thereof in accordance

4896 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' All penalties
4897 recovered as provided in this Code section shall be paid into the state treasury.

4898 (c) The ~~administrator~~ Attorney General may file, in the superior court of the county in
4899 which the person under an order resides, or if the person is a corporation, in the superior
4900 court of the county in which the corporation under an order maintains its principal place
4901 of business, or in the superior court of the county in which the violation occurred, a
4902 certified copy of the final order of the ~~administrator~~ Attorney General unappealed from or
4903 of a final order of the ~~administrator~~ Attorney General affirmed upon appeal. Thereupon,
4904 the court shall render judgment in accordance therewith and shall notify the parties. Such
4905 judgment shall have the same effect and proceedings in relation thereto shall thereafter be
4906 the same as though the judgment had been rendered in an action duly heard and determined
4907 by such court.

4908 (d) The penalty prescribed in this Code section shall be concurrent, alternative, and
4909 cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures,
4910 or penalties provided, allowed, or available to the ~~administrator~~ Attorney General with
4911 respect to any violation of this article and any order, rules, or regulations promulgated
4912 pursuant thereto.

4913 51-12-76.

4914 (a) The provisions of this article may not be waived.

4915 (b) No payee who proposes to make a transfer of structured settlement payment rights shall
4916 incur any penalty, forfeit any application fee or other payment, or otherwise incur any
4917 liability to the proposed transferee based on:

4918 (1) Any failure of such transfer to satisfy the conditions of this article; or

4919 (2) Any failure by the payee to execute the transfer agreement or any cancellation by the
4920 payee within the time prescribed in Code Section 51-12-72.

4921 51-12-77.

4922 Nothing contained in this article shall be construed to authorize any transfer of structured
4923 settlement payment rights in contravention of applicable law or to give effect to any
4924 transfer of structured settlement payment rights that is invalid under applicable law."

4925 **SECTION 47.**

4926 All laws and parts of laws in conflict with this Act are repealed.