

Senate Bill 412

By: Senators Kennedy of the 18th, Cowser of the 46th, Summers of the 13th, Harbison of the 15th and Rhett of the 33rd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to change certain provisions relating to administrative and civil sanctions
3 against charitable organizations, paid solicitors, and solicitor agents for certain violations;
4 to provide for suspension and revocation of registrations; to provide for related matters; to
5 provide for an effective date; to repeal conflicting laws; and for other purposes.

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

7 **SECTION 1.**

8 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
9 is amended in Code Section 43-17-13, relating to penalties, cease and desist orders,
10 injunctions, restitution, appointment and powers of receiver, and subpoenas, by revising
11 subsection (a) as follows:

12 "(a) Whenever it may appear to the Secretary of State, either upon complaint or otherwise,
13 that any person has engaged in or is engaging in or is about to engage in any act, practice,
14 or transaction which is prohibited by this chapter or by any rule, regulation, or order of the
15 Secretary of State promulgated or issued pursuant to any Code section of this chapter or

which is declared to be unlawful under this chapter, the Secretary of State may, at his or
her discretion, act under any or all of the following paragraphs and may:

(1) Impose administrative sanctions as provided in this paragraph:

(A) Subject to notice and opportunity for hearing in accordance with Code Section 43-17-16, unless the right to notice is waived by the person against whom the sanction is imposed, the Secretary of State may take any or all of the following actions:

(i) Issue a cease and desist order against any person;

(ii) Censure or bar the person if the person is registered as a charitable organization, paid solicitor, or solicitor agent;

(iii) Suspend or revoke the person's registration if the person is registered as a charitable organization, paid solicitor, or solicitor agent;

~~(iii)~~(iv) Bar or suspend the person from association with a charitable organization or paid solicitor ~~or charitable organization~~;

~~(iv)~~(v) Issue an order against a charitable organization, paid solicitor, or solicitor agent that who willfully violates this chapter or any rule or regulation promulgated under this chapter or any order of the Secretary of State, imposing a civil penalty up to a maximum of ~~\$2,500.00~~ \$10,000.00 for a single violation or up to ~~\$5,000.00~~ \$100,000.00 for multiple violations in a single proceeding or a series of related proceedings; or

~~(v)~~(vi) Regarding any willful act, practice, or transaction, issue an order imposing a civil penalty up to a maximum of ~~\$250.00~~ \$10,000.00 against any person for a single violation or ~~\$500.00~~ \$100,000.00 for multiple violations in a single proceeding or a series of related proceedings;

(B)(i) Imposition of the sanctions under this paragraph is limited as follows:

~~(i)~~(I) If the Secretary of State revokes the registration of a charitable organization, ~~or paid solicitor, or solicitor agent~~ or bars a person from association with a charitable organization or paid solicitor under subparagraph (A) of this paragraph,

the imposition of that sanction precludes imposition of the sanctions specified in divisions ~~(iv) and (v)~~ (v) and (vi) of subparagraph (A) of this paragraph; and

~~(ii)(II)~~ The imposition by the Secretary of State of one or more sanctions under this paragraph with respect to a specific violation precludes the Secretary of State from later imposing any other sanctions under this paragraph with respect to the violation, ~~or~~

~~(C)(ii)~~ For the purpose of determining the amount or extent of a sanction, if any, to be imposed under subparagraph (A) of this paragraph, the Secretary of State shall consider, among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of this chapter or a rule or regulation promulgated under this chapter or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation;

(2) Seek civil sanctions by applying to any superior court of competent jurisdiction in this state, which court:

(A) Upon a showing by the Secretary of State that a person has violated this chapter, a rule or regulation promulgated under this chapter, or an order of the Secretary of State, may enter or grant any or all of the following:

(i) A temporary restraining order, permanent or temporary injunction, or a writ of prohibition or mandamus;

(ii) A civil penalty up to a maximum of ~~\$2,500.00 for a single~~ \$10,000.00 for a single violation or up to ~~\$25,000.00~~ \$100,000.00 for multiple violations in a single proceeding or a series of related proceedings;

(iii) A declaratory judgment;

(iv) Restitution to contributors;

(v) An order of disgorgement;

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

(vii) Other relief as the court deems just and equitable;

(B) May, upon a showing by the Secretary of State that the defendant is about to violate this chapter, a rule or regulation promulgated under this chapter, or an order of the Secretary of State, issue:

(i) A temporary restraining order;

(ii) A temporary or permanent injunction;

(iii) A writ of prohibition or mandamus; or

(iv) Such other relief as the court deems just and equitable; or

(C) In determining the appropriate relief to grant, shall consider enforcement action taken and sanctions imposed by the Secretary of State under paragraph (1) of this subsection in connection with the transaction or transactions constituting a violation of this chapter, a rule or regulation promulgated under this chapter, or an order of the Secretary of State; or

(3) Transmit such evidence as may be available concerning such act, practice, or transaction to any district attorney or to the Attorney General, who may, at his or her individual discretion, institute the necessary criminal proceedings."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

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