

COMMITTEE OF CONFERENCE SUBSTITUTE TO SB 73

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 3, 10, and 46 of the Official Code of Georgia Annotated, relating to
2 alcoholic beverages, commerce and trade, and public utilities and public transportation,
3 respectively, so as to revise provisions concerning advertisements and solicitations of certain
4 professions and businesses; to authorize certain advertisements by packaged goods retailers
5 in connection with deliveries of certain alcoholic beverages; to revise provisions concerning
6 the area in which such retailers may deliver such alcoholic beverages; to prohibit certain
7 deliveries; to provide for increased penalty for delivery to individuals under 21; to provide
8 for requirements for advertisements for legal services; to revise provisions concerning
9 telephone solicitations; to provide remedies for violations of provisions relating to telephone
10 solicitations; to provide for legislative findings; to provide for actions and damages against
11 persons and entities on whose behalf such provisions were violated; to provide for and
12 prohibit certain defenses in such actions; to provide for related matters; to repeal conflicting
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15

SECTION 1.

16 Title 3 of the Official Code of Georgia Annotated, relating to alcoholic beverages, is
17 amended in Code Section 3-3-10, relating to delivery of malt beverages, wine, and distilled
18 spirits for personal use, marketing, receiving, and processing orders, regulation, and penalty,
19 by revising paragraphs (4), (10), and (13) of subsection (b), subsection (c), the introductory
20 paragraph of subsection (d), and paragraph (1) of subsection (h) as follows:

21 "(4) All malt beverages and wine that leave the licensed premises of the packaged goods
22 retailer for delivery shall:

23 (A) Remain in the possession of the individual, either the packaged goods retailer, the
24 employee, or the third party, that removed it from the licensed premises for delivery
25 and shall not be transferred to any other person until the time of delivery in compliance
26 with the requirements of this subsection or until the time of the return to the packaged
27 goods retailer if delivery is not made;

28 (B) Only be transported in a vehicle or other transportation device containing products
29 or goods traveling in intrastate commerce for delivery ~~in the local licensing jurisdiction~~
30 within 25 miles of the licensed premises of such packaged goods retailer; and

31 (C) Not be carried, commingled, or stored with, or transported in any vehicle or other
32 transportation device containing, products or goods traveling in interstate commerce for
33 delivery;"

34 "(10) The delivery address shall be located within ~~the local licensing jurisdiction~~
35 25 miles of the licensed premises of the packaged goods retailer;"

36 "(13) No delivery shall knowingly be made to any address or to any property that is ~~part~~
37 ~~of~~:

38 (A) Located within a county or municipality in which sales in unbroken packages of
39 the alcoholic beverages to be delivered are unlawful; or

40 ~~(A)~~(B) Part of:

41 (i) Any public or private elementary or secondary educational school, including
42 without limitation any dormitory, housing, or common space located on the campus
43 of any elementary or secondary educational school;

44 ~~(B)~~(ii) Any prison, reformatory, and other correctional facilities;

45 ~~(C)~~(iii) Any addiction or substance abuse facilities;

46 ~~(D)~~(iv) Any locker, mailbox, package shipping location, or similar service or storage
47 facility business; or

48 ~~(E)~~(v) Any retailer."

49 "(c) A packaged goods retailer may use electronic means to market or advertise, receive,
50 and process orders for malt beverages and wine it is licensed to sell placed by individuals
51 who are at least 21 years of age, provided that any such orders shall be delivered in
52 accordance with subsection (b) of this Code section.

53 (d) A packaged goods retailer may market or advertise, receive, and process orders for
54 malt beverages and wine it is licensed to sell placed by individuals who are at least 21 years
55 of age using electronic means owned, operated, or maintained by a third party, provided
56 that any such orders shall be delivered in accordance with subsection (b) of this Code
57 section and:"

58 "(1) In addition to the commissioner's power to suspend, revoke, or cancel licenses,
59 permits, or registrations issued pursuant to this title, upon a violation of any provision of
60 this Code section or any rule or regulation promulgated thereunder, the commissioner
61 shall have the power to impose a fine not to exceed \$500.00 for each violation, except
62 that for delivery to an individual who is under 21 years of age such fine shall not exceed
63 \$1,000.00 for each violation, and may suspend for up to 30 days for each violation the
64 authorization provided by this Code section for the packaged goods retailer to deliver
65 malt beverages and wine or to use an employee or third party to deliver malt beverages
66 and wine. Any violation committed by an employee or a third party shall be attributed

67 to and deemed to be an act taken by a packaged goods retailer for purposes of this Code
68 section. A packaged goods retailer, employee, and third party may each be fined for the
69 same violation. Nothing in this paragraph shall be construed to allow the commissioner
70 to suspend or terminate the authorization of a packaged goods retailer to sell malt
71 beverages and wine on the licensed premises as a result of a violation of this Code section
72 by a third party."

73 **SECTION 2.**

74 Title 10 of the Official Code of Georgia, relating to commerce and trade, is amended in Code
75 Section 10-1-424.1, relating to false solicitation in media of legal services, by new
76 subsections to read as follows:

77 "(c) The State Bar of Georgia shall promulgate rules and regulations relative to soliciting
78 in any media regarding the provision of legal services. Such rules and regulations shall
79 include, but shall not be limited to, the following:

80 (1) Prohibitions against and penalties for false representations, misrepresentations, and
81 misleading claims covered by this Code section;

82 (2) A requirement that each solicitation include the disclosure of the location of the
83 principal place of business of the soliciting person, firm, association, or corporation;

84 (3) A prohibition against depicting an individual who is not employed by the soliciting
85 person, firm, association, or corporation as being so employed or in such a manner that
86 a reasonable person could believe such individual is so employed; provided, however,
87 that such prohibition shall not apply to depictions of individuals who are immediate
88 family members of the soliciting person or immediate family members of individuals
89 employed by the soliciting firm, association, or corporation;

90 (4) A prohibition against depicting an individual who is not a client of the soliciting
91 person, firm, association, or corporation as being such a client or in such a manner that
92 a reasonable person could believe such individual is such a client; provided, however,

93 that such prohibition shall not preclude sponsorships with local organizations or the
94 depictions of such sponsorships by the soliciting person, firm, association, or corporation;
95 and

96 (5) A requirement that disclosures provided for in such rules and regulations shall
97 comprise no less than 10 percent of the total composition of the solicitation.

98 (d)(1) The State Bar of Georgia, any member of the State Bar of Georgia in good
99 standing, such member's firm, association, or corporation, or any individual who sees or
100 hears a solicitation that violates this Code section or any rule or regulation of the State
101 Bar of Georgia promulgated pursuant to this Code section, shall have a cause of action
102 against the soliciting person, firm, association, or corporation for violating this Code
103 section or any rule or regulation of the State Bar of Georgia promulgated pursuant to this
104 Code section.

105 (2) A soliciting person, firm, association, or corporation found by a court of competent
106 jurisdiction to have violated this Code section or any rule or regulation of the State Bar
107 of Georgia promulgated pursuant to this Code section shall be liable for a civil penalty
108 in the amount of \$10,000.00 per violation.

109 (3) A successful petitioner shall be entitled to reasonable attorney's fees, expert witness
110 costs, and other costs necessary to bring a cause of action under this subsection.

111 (e) For purposes of this Code section, the term 'soliciting person, firm, association, or
112 corporation' shall mean only the individual or entity seeking to market legal services and
113 not the owner of any media that displays or otherwise publishes such solicitation."

114

SECTION 3.

115 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
116 transportation, is amended by revising Code Section 46-5-27, relating to telephone
117 solicitations to residential, mobile, or wireless subscribers, Public Service Commission to

118 establish and maintain list of certain subscribers, authorization for imposition of
119 administrative fees, confidential nature of data base, and required identification, as follows:
120 "46-5-27.

121 (a) The General Assembly finds that:

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

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

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

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

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

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

135 (7) It is in the public interest to establish a mechanism under which the ~~individual~~
136 citizens of this state can decide whether or not to receive telemarketing calls and can seek
137 injunctive relief and damages against those in violation of this Code section and against
138 those on whose behalf such violations were committed.

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

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

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

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

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

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

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

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

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

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

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

170 (3) No later than January 1, 1999, the commission shall promulgate regulations which:

- 171 (A) Require each local exchange company to inform its residential, mobile, or wireless
172 subscribers of the opportunity to provide notification to the commission or its
173 contractor that such subscriber objects to receiving telephone solicitations;
- 174 (B) Specify the methods by which each residential, mobile, or wireless subscriber may
175 give notice to the commission or its contractor of his or her objection to receiving such
176 solicitations and methods for revocation of such notice;
- 177 (C) Specify the length of time for which a notice of objection shall be effective and the
178 effect of a change of telephone number on such notice;
- 179 (D) Specify the methods by which such objections and revocations shall be collected
180 and added to the data base;
- 181 (E) Specify the methods by which any person or entity desiring to make telephone
182 solicitations will obtain access to the data base as required to avoid calling the
183 telephone numbers of residential, mobile, or wireless subscribers included in the data
184 base; and
- 185 (F) Specify such other matters relating to the data base that the commission deems
186 desirable.
- 187 (4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications
188 Commission establishes a single national data base of telephone numbers of subscribers
189 who object to receiving telephone solicitations, the commission shall include the part of
190 such single national data base that relates to Georgia in the data base established under
191 this Code section.
- 192 (e) The commission may provide by rule or regulation for administrative fees to be
193 imposed upon:
- 194 (1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data
195 base established under this Code section; provided, however, that the commission shall
196 not set this fee in an amount greater than \$5.00; and

197 (2) A person or entity desiring to make telephone solicitations for access to or for
198 electronic copies of the data base established under this Code section.

199 (f)(1) Information contained in the data base established under this Code section shall
200 be used only for the purpose of compliance with this Code section or in a proceeding or
201 action under subsection (h) or (i) of this Code section. Such information shall not be
202 subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.

203 (2) No person or entity shall ~~knowingly~~ compile or disseminate or compile and
204 disseminate information obtained from the data base for any reason other than those
205 legitimate purposes established by law. Any person or entity found guilty of violating
206 this subsection shall be guilty of a misdemeanor and upon conviction shall be punished
207 by a fine not to exceed \$1,000.00. Each instance of an unauthorized disclosure of
208 information from the data base shall constitute a separate offense.

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

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

216 (h) The Attorney General shall have authority to initiate proceedings, pursuant to Code
217 Section 10-1-397, relating to a ~~knowing~~ violation or threatened ~~knowing~~ violation of
218 subsection (c) or (g) of this Code section. Such proceedings include without limitation
219 proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up
220 to a maximum of \$2,000.00 for each ~~knowing~~ violation, and to seek additional relief in any
221 superior court of competent jurisdiction. Such actions shall be brought in the name of the
222 state. The provisions of Code Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to
223 proceedings initiated by the Attorney General under this subsection. The Attorney General

224 is authorized to issue investigative demands, issue subpoenas, administer oaths, and
225 conduct hearings in the course of investigating a violation of subsection (c) or (g) of this
226 Code section, in accordance with the provisions of Code Sections 10-1-403 and 10-1-404.

227 (i) Any person ~~who~~ that has received more than one telephone solicitation within any 12
228 month period by or on behalf of the same person or entity in violation of subsection (c)
229 or (g) of this Code section may ~~either~~ bring an action against the person or entity that made
230 the telephone solicitation or the person or entity that the telephone solicitation was made
231 on behalf of, or both. Such an action may seek to:

232 (1) ~~Enjoin~~ to enjoin such violation;

233 (2) ~~Bring~~ bring an action to recover for reasonable attorney's fees and costs plus
234 damages:

235 (A) ~~In the amount of~~ actual monetary loss from such ~~knowing~~ violation or ~~to receive~~
236 up to ~~\$2,000.00~~ \$1,000.00 in damages for each such ~~knowing~~ violation, whichever is
237 greater; or ~~bring both such actions~~

238 (B) As part of a class action pursuant to Code Section 9-11-23, for which the damages
239 limitation in subparagraph (A) of this paragraph shall not apply; or

240 (3) ~~Enjoin~~ such violation and ~~bring~~ an action for attorney's fees, costs, and damages.

241 (j) It shall not be a defense in any action or proceeding brought under subsection (h) or (i)
242 of this Code section that the defendant ~~has established and implemented, with due care,~~
243 ~~reasonable practices and procedures to effectively prevent telephone solicitations in~~
244 ~~violation of this Code section~~ did not make the telephone solicitation or was not aware that
245 such telephone solicitation was in violation of this Code section, if such telephone
246 solicitation was made on behalf of the defendant as a result of a written or verbal
247 agreement, contract, request, or employment relationship; provided, however, that it shall
248 be a defense if the defendant has, with respect to the person or entity that made the
249 telephone solicitation, established policies and procedures to effectively prevent telephone

250 solicitations in violation of this Code section and mandated and enforced compliance with
251 such policies and procedures.

252 (j.1) It shall be a defense in any action or proceeding brought under subsection (h) or (i)
253 of this Code section that the telephone solicitation was made to a residential, mobile, or
254 wireless subscriber whose telephone number was provided in error by another subscriber
255 so long as the defendant to such action did not know, or have reason to know, that the
256 telephone number was provided in error.

257 (k) No action or proceeding may be brought under subsection (h) or (i) of this Code
258 section the later of:

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

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

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

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

268 (n) No provider of telephone caller identification service, local exchange telephone
269 service, wireless service, or voice over internet protocol service shall be held liable for
270 providing such service for violations of this Code section committed by other persons or
271 entities while using such provider's service."

272 **SECTION 4.**

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