

AN ACT

To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, so as to transfer the powers and responsibilities of the Governor's Office of Consumer Affairs to the Attorney General's office; to amend Titles 2, 16, 18, 31, 33, 35, 36, 43, 44, 45, 46, and 51 of the Official Code of Georgia Annotated, relating to agriculture, crimes and offenses, debtors and creditors, health, insurance, law enforcement officers and agencies, local government, professions and businesses, property, public officers and employees, public utilities and public transportation, and torts, respectively, so as to conform to such transfer, correct cross-references, and remove obsolete provisions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"Part 1A

10-1-380.

As used in this article, the term 'Attorney General' means the Attorney General or his or her designee.

10-1-381.

(a) The Attorney General may file in the superior court of the county in which a person under order resides, or in the county in which the violation occurred, or, if the person is a corporation, in the county in which the corporation maintains its principal place of business, a certified copy of a final order issued pursuant to this article by the Attorney General which is unappealed from or a final order of an administrative law judge issued pursuant to this article which is unappealed from or a final order of an administrative law judge issued pursuant to this article which is affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as

though the judgment had been rendered in an action duly heard and determined by the court.

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

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

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

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

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

10-1-382.

(a) In addition to any amount owed under a judgment rendered under Code Section 10-1-381 or 10-1-397, a delinquent party shall be responsible by operation of law for a collection fee equal to 40 percent of the amount of the judgment as if such collection fee had been included as part of the judgment. The Attorney General may contract with

collection attorneys to collect all or any remaining part of such amounts due under a judgment rendered under Code Section 10-1-381 or 10-1-397.

All funds collected by any such collection attorneys shall be remitted to the Attorney General for disbursement."

## **SECTION 2.**

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

### **"Part 2**

10-1-390.

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

10-1-391.

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

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

10-1-392.

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

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

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

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

- (4) 'Career consulting firm' means any person providing services to an individual in conjunction with a career search and consulting program for the individual, including, but not limited to, counseling as to the individual's career potential, counseling as to interview techniques, and the identification of prospective employers. A 'career consulting firm' shall not guarantee actual job placement as one of its services. A 'career consulting firm' shall not include any person who provides these services without charging a fee to applicants for those services or any employment agent or agency regulated under Chapter 10 of Title 34.
- (5) 'Child support enforcement' means the action, conduct, or practice of enforcing a child support order issued by a court or other tribunal.
- (6) 'Consumer' means a natural person.
- (7) 'Consumer acts or practices' means acts or practices intended to encourage consumer transactions.
- (8) 'Consumer report' means any written or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity which is used or intended to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:
- (A) Credit or insurance to be used primarily for personal, family, or household purposes; or
  - (B) Employment consideration.
- (9) 'Consumer reporting agency' or 'agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
- (10) 'Consumer transactions' means the sale, purchase, lease, or rental of goods, services, or property, real or personal, primarily for personal, family, or household purposes.
- (11) 'Department' means the Department of Human Services.
- (12) 'Documentary material' means the original or a copy, whether printed, filmed, or otherwise preserved or reproduced, by whatever process, including electronic data storage and retrieval systems, of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or record wherever situate.
- (13) 'Examination' of documentary material means inspection, study, or copying of any such material and the taking of testimony under oath or acknowledgment with respect to any such documentary material.

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

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

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

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

(A) Any nonprofit organization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) 'Promotion' means any scheme or procedure for the promotion of consumer transactions whereby one or more prizes are distributed among persons who are required to be present at the place of business or are required to participate in a seminar, sales

presentation, or any other presentation, by whatever name denominated, in order to receive the prize or to determine which, if any, prize they will receive. Promotions shall not include any procedure where the receipt of the prize is conditioned upon the purchase of the item which the seller is trying to promote if such condition is clearly and conspicuously disclosed in the promotional advertising and literature and the receipt of the prize does not involve an element of chance. Any procedure where the receipt of the prize is conditioned upon the purchase of the item which the seller is trying to promote or upon the payment of money and where the receipt of that prize involves an element of chance shall be deemed to be a lottery under Code Section 16-12-20; provided, however, that nothing in this definition shall be construed to include a lottery operated by the State of Georgia or the Georgia Lottery Corporation as authorized by law; provided, further, that any deposit made in connection with an activity described by subparagraph (b)(22)(B) of Code Section 10-1-393 shall not constitute the payment of money.

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

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

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

received written notice. The burden of showing no reasonable opportunity to give written notice shall be upon the Attorney General.

10-1-393.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Each notice must state the verifiable retail value of each prize which the participant has a chance of receiving. Each notice must state the odds of the participant's receiving each prize if there is an element of chance involved. The odds must be clearly identified as 'odds.' Odds must be stated as the total number of that particular prize which will be given and of the total number of notices. The total number of notices shall include all notices in which that prize may be given, regardless of whether it includes notices for other sponsors. If the odds of winning a particular prize would not be accurately stated on the basis of the number of notices, then the odds may be stated in another manner, but must be clearly stated in a manner which will not deceive or mislead the participant regarding the participant's chance of receiving the prize. The verifiable retail value and odds for each prize must be stated in conjunction and in immediate proximity with each listing of the prize in each place where it appears on the written notice and must be listed in the same size type and same boldness as the prize. Odds and verifiable retail values may not be listed in any manner which requires the participant to refer from one place in the written notice to another place in the written notice to determine the odds and verifiable retail value of the particular prize. Verifiable retail values shall be stated in Arabic numerals;

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

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

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

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

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

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

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

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

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

(N) Any promotion involving an element of chance which does not conform with the provisions of this paragraph shall be considered an unlawful lottery as defined in Code Section 16-12-20. Except as provided in Code Section 16-12-35 and Article 3 of Chapter 27 of Title 50, any promotion involving an element of chance which involves the playing of a game on a computer, mechanical device, or electronic device at a place of business in this state shall be considered an unlawful lottery as defined in Code Section 16-12-20 and shall not be permitted under this chapter. Any promotion involving the playing of a no-skill game on a computer, mechanical device, or electronic device at a place of business in this state shall be considered an unlawful lottery as defined in Code Section 16-12-20. The Attorney General may prosecute

persons who promote and sponsor promotions which constitute an unlawful lottery or may seek and shall receive the assistance of the prosecuting attorneys of this state in the commencement and prosecution of such persons;

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

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

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

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

'Notice to the Buyer

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

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

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

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

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Seller's Name

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Address to which cancellation is to be mailed

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I (we) hereby cancel this transaction.

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Buyer's Signature

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Buyer's Signature

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Date

---

Printed Name(s) of Buyer(s)

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Street Address

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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:

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

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

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

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

'Notice to the Seller

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

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

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

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

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



---

Buyer's name

---

Address to which cancellation is to be returned.

---

I (we) hereby cancel this transaction.

---

Seller's signature

---

Seller's signature

---

Date

---

Printed name(s) of seller(s)

---

Street address

---

City, State, ZIP Code'

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(29) With respect to any consumer reporting agency:

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

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

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

(29.1) With respect to any credit card issuer:

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

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

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

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

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

- (i) The advertisement is not placed in the category with the intent to mislead or deceive;
- (ii) The use of the advertisement in the category is not part of an unfair or deceptive practice; and
- (iii) The advertisement is not otherwise unfair, deceptive, or misleading.

For purposes of this paragraph, the term 'home health agency' shall have the same definition as contained in Code Section 31-7-150, as now or hereafter amended. The provisions of this paragraph shall be enforced by the Attorney General;

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

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

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

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

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

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

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

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

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

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

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

(31) With respect to telemarketing sales:

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

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

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

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

(i) 'Covered communication' shall have the same meaning as the term 'telemarketing' in subsection (a) of Code Section 10-1-393.5.

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

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

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

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

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

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

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

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

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

(I) The certificate or card; or

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

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

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

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

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

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

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

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

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

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

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

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

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

10-1-393.1.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

10-1-393.2.

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

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

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

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

(e) The health spa member shall have the right to cancel the contract within seven business days after the date of the signing of the contract by notifying the seller in writing of such intent and by either mailing the notice before 12:00 Midnight of the seventh business day after the date of the signing of the contract or by hand delivering the notice of cancellation to the health spa before 12:00 Midnight of the seventh business day following the date of the signing of the contract. The notice must be accompanied by the contract forms,

membership cards, and any and all other documents and evidence of membership previously delivered to the buyer. If the health spa member so cancels, any payments made under the contract will be refunded and any evidence of indebtedness executed by the health spa member will be canceled by the seller, provided that the member shall be liable for the fair market value of services actually received, which in no event shall exceed \$100.00. The preparation of any documents shall not be construed to be services; provided, however, that any documents prepared which are merely ancillary to services which are actually rendered shall not prevent the health spa from charging for such services actually rendered up to the limits specified in this subsection. Each health spa contract shall contain the following paragraphs separated from all other paragraphs:

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

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Name of health spa

---

Street address

---

City, State, ZIP Code

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

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

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

day period, the cancellation shall be effective on the first business day following the last day on which the consumer uses the facilities or services.

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

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

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

(g) Every contract for health spa services shall contain a clause providing that if the member becomes totally and permanently disabled during the membership term, he may cancel his or her contract and that the health spa is entitled to a reasonable predetermined fee in such event in addition to an amount equal to the value of services made available for use. This amount shall be computed by dividing the total cost of the membership by the total number of months under the membership and multiplying the result by the number of months expired under the membership term. The health spa shall have the right to require and verify reasonable evidence of total and permanent disability. For purposes of this subsection, 'total and permanent disability' means a condition which has existed or will

exist for more than 45 days and which will prevent the member from using the facility to the same extent as the member used it before commencement of the condition.

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

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

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

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

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

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

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

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

**'NOTICE**

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

- (j) An alternate location for a health spa shall not be considered substantially similar if:
- (1) The original facility was limited to use by members of one sex and the alternate facility is used by members of both sexes;
  - (2) The original facility was for use by members of both sexes and the alternate facility's use is limited to members of one sex; or
  - (3) The size, facilities, equipment, or services available to the member at the alternate location are not substantially equal to or do not exceed the size, facilities, equipment, or services available to the member at the health spa location at which the contract was entered into.
- (k) Every contract for health spa services shall contain a clause providing that if the member dies during the membership term or any renewal term, his or her estate may cancel the contract and that the health spa is entitled to a reasonable predetermined fee in such event in addition to an amount computed by dividing the total cost of the membership by the total number of months under the membership and multiplying the result by the number of months expired under the membership term. The contract may require the member's estate seeking relief under this subsection to provide reasonable proof of death.
- (1)(1) A health spa shall not enter or offer to enter into a health spa agreement with a consumer unless the health spa is fully operational and available for use.
  - (2) For purposes of this subsection, 'fully operational and available for use' means that all of the facilities, equipment, or services which are promised at the time of entering into the membership contract are operational and available for use at that time. Nothing contained in this subsection shall be construed to prohibit a health spa from selling a membership for existing services and facilities at a location under construction which can be converted at a later date to a membership for additional services and facilities, provided that:
    - (A) The additional services and facilities are fully operational and available for use at the time of the conversion;
    - (B) Additional consideration, other than just a nominal consideration, is required from the consumer under the terms of the conversion; and
    - (C) The member has until seven days following the date the additional consideration or a part of the additional consideration becomes due and owing to cancel the remainder of the contract and receive a refund computed by dividing the total cost of the membership by the total number of months under the membership and multiplying the result by the number of months remaining under the membership term.
  - (3) The provisions of this subsection shall not apply if all of the following conditions are met:

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

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

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

(D) Each deposit to the single account established under this paragraph shall be identified by the name and address of the individual who purchased the membership. The bank or trust company and the health spa shall maintain a list of the deposits, their amount, and the name and address of the membership purchaser, which list shall be available to the Attorney General or for inspection or copying by the Attorney General;

(E) The condition of the account established under this paragraph shall be that no funds shall be released from the account to any person unless the Attorney General has certified in writing to the bank or trust company that either the health spa is fully operational and available for use or that the health spa has not complied and does not appear likely to comply with its obligation to make the health spa fully operational and available for use in accordance with the documents submitted to the Attorney General or in accordance with representations made to membership purchasers. No action may be maintained in any court against the Attorney General or any of his or her employees for any determination or as a consequence of any determination made by the Attorney General under this subparagraph. Nothing contained or implied in this subparagraph shall operate or be construed or applied to deprive the Attorney General or any employee of any immunity, indemnity, benefits of law, rights, or any defense otherwise available by law;

(F) If the Attorney General certifies to the bank or trust company that the health spa is fully operational and available for use, then the funds in the account shall be released

to the health spa, along with any accrued interest. If the Attorney General certifies to the bank or trust company that the health spa has not complied and does not appear likely to comply with its obligation to make the health spa fully operational and available for use, then the funds in the account shall be released to the Attorney General on behalf of the individuals who purchased memberships prior to the health spa's being fully operational and available for use. Any accrued interest on the account shall be paid on a pro rata basis to the membership purchasers;

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

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

(m) All moneys due the consumer under contracts canceled for the reasons contained in this Code section shall be refunded within 30 days of receipt of such notice of cancellation. The notice must be accompanied by the contract forms, membership cards, and any and all other documents and evidence of membership previously delivered to the buyer, except in the case of a deceased member. In the event a consumer fails to provide with the cancellation notice all contract forms, membership cards, and any and all other documents and evidence of membership previously delivered, the health spa shall either cancel the contract or provide written notice by certified mail or statutory overnight delivery to the consumer that such documents must be provided within 30 days in order for the cancellation to be effective. In the event that the consumer provides the documents within 30 days, the contract shall be canceled as of the date on which the cancellation notice was delivered; provided, however, that should the consumer continue to use the facilities or services during the 30 day period, the cancellation shall be effective on the first business day following the last day on which the consumer uses the facility or services.

(n) Any contract which does not comply with this Code section shall be void and unenforceable; no purchaser of any note associated with or contained in any health spa contract shall make any attempt to collect on the note or to report the buyer as delinquent to any consumer reporting or consumer credit reporting agency if there has been any violation by the health spa of subsections (b) through (m) or of subsection (o) of this Code

section. Any attempt by any purchaser or by any agent of any purchaser to collect on the note or to report the buyer as delinquent as described in this subsection shall be considered an unfair and deceptive act or practice as provided in Code Section 10-1-393.

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

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

10-1-393.3.

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

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

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



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

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

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

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

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

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

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

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

10-1-393.4.

(a) It shall be an unlawful, unfair, and deceptive trade practice for any person, firm, or corporation doing business in any area in which a state of emergency, as such term is defined in Code Section 38-3-3, has been declared, for so long as such state of emergency exists, to sell or offer for sale at retail any goods or services identified by the Governor in the declaration of the state of emergency necessary to preserve, protect, or sustain the life, health, or safety of persons or their property at a price higher than the price at which such goods were sold or offered for sale immediately prior to the declaration of a state of emergency; provided, however, that such price may be increased only in an amount which accurately reflects an increase in cost of the goods or services to the person selling the goods or services or an increase in the cost of transporting the goods or services into the area.

(b) Notwithstanding the provisions of subsection (a) of this Code section, a retailer may increase the price of goods or services during a state of emergency if the price charged for those goods or services is no greater than the cost to the retailer of those goods or services,

plus the retailer's average markup percentage applied during the ten days immediately prior to the declaration of a state of emergency.

10-1-393.5.

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

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

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

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

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

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

- (i) Access to his or her case or charges was restricted pursuant to Code Section 35-3-37;
- (ii) Prior to indictment, accusation, or other charging instrument, his or her case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and the offense against such individual was closed by the arresting law enforcement agency;
- (iii) Prior to indictment, accusation, or other charging instrument, the statute of limitations expired;
- (iv) Prior to indictment, accusation, or other charging instrument, his or her case was referred to the prosecuting attorney but was later dismissed;
- (v) Prior to indictment, accusation, or other charging instrument, the grand jury returned two no bills;
- (vi) After indictment or accusation, all charges were dismissed or nolle prossed;
- (vii) After indictment or accusation, the individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code

Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation; or

(viii) The individual was acquitted of all of the charges by a judge or jury.

(2) Any person who is engaged in any activity involving or using a computer or computer network who publishes on such person's publicly available website a subject individual's arrest booking photograph for purposes of commerce shall be deemed to be transacting business in this state. Within 30 days of the sending of a written request by a subject individual, including his or her name, date of birth, date of arrest, and the name of the arresting law enforcement agency, such person shall, without fee or compensation, remove from such person's website the subject individual's arrest booking photograph. Such written request shall be transmitted via certified mail, return receipt requested, or statutory overnight delivery, to the registered agent, principal place of business, or primary residence of the person who published the website. Without otherwise limiting the definition of unfair and deceptive acts or practices under this part, a failure to comply with this paragraph shall be unlawful.

(c) In addition to any civil penalties under this part, any person who intentionally violates subsection (b) of this Code section shall be subject to a criminal penalty under paragraph (5) of subsection (a) of Code Section 16-8-12. In addition thereto, if the violator is a corporation, each of its officers and directors may be subjected to a like penalty; if the violator is a sole proprietorship, the owner thereof may be subjected to a like penalty; and, if the violator is a partnership, each of the partners may be subjected to a like penalty, provided that no person shall be subjected to a like penalty if the person did not have prior actual knowledge of the acts violating subsection (b) of this Code section.

(d) Any person who intentionally targets an elder or disabled person, as defined in Article 31 of this chapter, in a violation of subsection (b) of this Code section shall be subject to an additional civil penalty, as provided in Code Section 10-1-851.

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

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

10-1-393.6.

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

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

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

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

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

(c) In addition to any civil penalties under this part, any person who intentionally violates subsection (b) of this Code section shall be subject to a criminal penalty under paragraph (5) of subsection (a) of Code Section 16-8-12. In addition thereto, if the violator is a corporation, each of its officers and directors may be subjected to a like penalty; if the violator is a sole proprietorship, the owner thereof may be subjected to a like penalty; and, if the violator is a partnership, each of the partners may be subjected to a like penalty, provided that no person shall be subjected to a like penalty if the person did not have prior actual knowledge of the acts violating subsection (b) of this Code section.

10-1-393.7.

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

(b) In addition to any other penalty imposed for the violation of this Code section, the administrative agency which issues a finding of violation shall order the violator to pay

restitution in the amount of the refund to the person, corporation, partnership, or other legal entity which refunded moneys paid for an existing preneed contract for burial services or merchandise or funeral services or merchandise.

10-1-393.8.

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

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

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

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

(b) This Code section shall not apply to:

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

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

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

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

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

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

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

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

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

10-1-393.9.

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

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

- (1) Issued by a surety authorized to do business in this state;
- (2) In the amount of \$50,000.00;
- (3) In favor of the state for the benefit of a person damaged by a violation of this Code section; and
- (4) Conditioned on the private child support collector's compliance with this Code section and Code Section 10-1-393.10 and the faithful performance of the obligations under the private child support collector's agreements with its clients.

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

10-1-393.10.

(a) Any contract for the collection of child support between a private child support collector and an obligee shall be filed by the private child support collector with the office of the Attorney General.

(b) Any contract for the collection of child support between a private child support collector and an obligee shall be in writing, in at least ten-point type, and signed by such private child support collector and obligee. The contract shall include:

- (1) An explanation of the nature of the services to be provided;
- (2) An explanation of the amount to be collected from the obligor by the private child support collector and a statement of a sum certain of the total amount that is to be collected by the private child support collector that has been engaged by the obligee;
- (3) An explanation in dollar figures of the maximum amount of fees which could be collected under the contract and an example of how fees are calculated and deducted;
- (4) A statement that fees shall only be charged for collecting past due child support, although the contract may include provisions to collect current and past due child support;

- (5) A statement that a private child support collector shall not retain fees from collections that are primarily attributable to the actions of the department and that a private child support collector shall be required by law to refund any fees improperly retained;
  - (6) An explanation of the opportunities available to the obligee or private child support collector to cancel the contract or other conditions under which the contract terminates;
  - (7) The mailing address, telephone numbers, facsimile numbers, and e-mail address of the private child support collector;
  - (8) A statement that the private child support collector shall only collect money owed to the obligee and not child support assigned to the State of Georgia;
  - (9) A statement that the private child support collector is not a governmental entity and that the department provides child support enforcement services at little or no cost to the obligee; and
  - (10) A statement that the obligee may continue to use or pursue services through the department to collect child support.
- (c) A private child support collector shall not:
- (1) Improperly retain fees from collections that are primarily attributable to the actions of the department. If the department or an obligee notifies a private child support collector of such improper fee retention, such private child support collector shall refund such fees to the obligee within seven business days of the notification of the improper retention of fees and shall not be liable for such improper fee retention. A private child support collector may require documentation that the collection was primarily attributable to the actions of the department prior to issuing any refund;
  - (2) Charge fees in excess of one-third of the total amount of child support payments collected;
  - (3) Solicit obligees using marketing materials, advertisements, or representations reasonably calculated to create a false impression or mislead an obligee into believing the private child support collector is affiliated with the department or any other governmental entity;
  - (4) Use or threaten to use violence or other criminal means to cause harm to an obligor or the property of the obligor;
  - (5) Falsely accuse or threaten to falsely accuse an obligor of a violation of state or federal laws;
  - (6) Take or threaten to take an enforcement action against an obligor that is not authorized by law;
  - (7) Represent to an obligor that the private child support collector is affiliated with the department or any other governmental entity authorized to enforce child support obligations or fail to include in any written correspondence to an obligor the statement

that 'This communication is from a private child support collector. The purpose of this communication is to collect a child support debt. Any information obtained will be used for that purpose.';

(8) Communicate to an obligor's employer, or his or her agent, any information relating to an obligor's indebtedness other than through proper legal action, process, or proceeding;

(9) Communicate with an obligor whenever it appears the obligor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondences, return telephone calls, or discuss the obligation in question, or unless the attorney and the obligor consent to direct communication;

(10) Contract with an obligee who is owed less than three months of child support arrearages; or

(11) Contract with an obligee for a sum certain to be collected which is greater than the total sum of arrearages and the statutory interest owed as of the date of execution of the contract.

(d) In addition to any other cancellation or termination provisions provided in the contract between a private child support collector and an obligee, the contract shall be cancelled or terminate if:

(1) The obligee requests cancellation in writing within 30 days of signing the contract;

(2) The obligee requests cancellation in writing after any 12 consecutive months in which the private child support collector fails to make a collection;

(3) The private child support collector breaches any term of the contract or violates any provision contained within this Code section; or

(4) The amount to be collected pursuant to the contract has been collected.

(e) When it reasonably appears to the Attorney General that a private child support collector has contracted with obligees on or after July 1, 2009, using a contract that is not in compliance with this Code section, the Attorney General may demand pursuant to Code Section 10-1-403 that such private child support collector produce a true and accurate copy of each such contract. If such private child support collector fails to comply or the contracts are determined by the Attorney General to not be compliant with the provisions of this Code section, the Attorney General may utilize any of the powers vested in this part to ensure compliance.

(f) Upon the request of an obligee, the Child Support Enforcement Agency of the department shall forward child support payments made payable to the obligee to any private child support collector that is in compliance with the provisions of this Code section and Code Section 10-1-393.9.



(g) The remedies provided in this part shall be cumulative and shall be in addition to any other procedures, rights, or remedies available under any other law.

(h) Any waiver of the rights, requirements, and remedies provided by this Code section that are contained in a contract between a private child support collector and an obligee violates public policy and shall be void.

10-1-393.11.

(a) A person who makes a representation regarding kosher food shall prominently and conspicuously display on the premises on which the food is sold, in a location readily visible to the consumer, a completed kosher food disclosure statement which shall be updated within 14 days of any changes in the information required by subsections (b) through (e) of this Code section.

(b) A kosher food disclosure statement shall set forth the name and address of the establishment to which it applies and the date on which it was completed.

(c) A kosher food disclosure statement shall state in the affirmative or negative whether the person:

- (1) Operates under rabbinical or other kosher supervision;
- (2) Sells or serves only food represented as kosher;
- (3) Sells or serves food represented as kosher, as well as food not represented as kosher;
- (4) Sells or serves meat, dairy, and pareve food;
- (5) Sells or serves only meat and pareve food;
- (6) Sells or serves only dairy and pareve food;
- (7) Sells or serves meat and poultry represented as kosher only if it is slaughtered under rabbinical or other kosher supervision and identified at the slaughterhouse to be sold as kosher;
- (8) Represents kosher meat sold as 'Glatt kosher' or 'Glatt';
- (9) Sells or serves seafood only if it has or had fins and removable scales;
- (10) Keeps separate meat represented as kosher, dairy represented as kosher, pareve food represented as kosher, and food not represented as kosher;
- (11) Uses separate utensils for meat represented as kosher, dairy represented as kosher, pareve food represented as kosher, and food not represented as kosher;
- (12) Uses separate work areas for meat and poultry represented as kosher, dairy represented as kosher, pareve food represented as kosher, and food not represented as kosher;
- (13) Sells or serves wine represented as kosher only if it has rabbinical supervision;
- (14) Sells or serves cheese represented as kosher only if it has rabbinical supervision;
- (15) Sells or serves food represented as kosher for Passover;

- (16) Uses separate utensils for food represented as kosher for Passover and food not represented as kosher for Passover;
  - (17) Uses separate work areas for food represented as kosher for Passover and food not represented as kosher for Passover;
  - (18) Keeps food represented as kosher for Passover free from and not in contact with food not represented as kosher for Passover; and
  - (19) Prepares food represented as kosher for Passover under rabbinical or other kosher supervision.
- (d) If a kosher food disclosure statement has an affirmative response to the question contained in paragraph (15) of subsection (c) of this Code section, responses to the questions contained in paragraphs (16) through (19) shall be required; otherwise, such responses shall not be required.
- (e) A person who represents to the public that any unpackaged food for sale or a place of business is under rabbinical or other kosher supervision shall also provide in the kosher food disclosure statement the following information about the rabbinical or other kosher supervision:
- (1) The name of the supervising rabbi, agency, or other person;
  - (2) The address of the supervising rabbi, agency, or other person;
  - (3) The telephone number of the supervising rabbi, agency, or other person;
  - (4) The frequency with which the supervising rabbi, agency, or other person visits the establishment; and
  - (5) Any relevant affiliations of the supervising rabbi, agency, or other person that the person making the disclosure wishes to disclose.
- (f) The Attorney General shall promulgate a form for the kosher food disclosure statement and any additional information that the Attorney General deems reasonable and necessary for full and complete disclosure. The completion and prominent and conspicuous display of such form shall constitute compliance with subsections (b) through (e) of this Code section.
- (g) No person shall display a kosher food disclosure statement or other written document stating that a rabbi, agency, or other person certifies food or a place of business as kosher or kosher for Passover if no such certification is being provided. The person making the display shall remove the statement or document if the rabbi, agency, or other person sends a notice via certified mail or statutory overnight delivery directed to the person making the display that no such certification is being provided.
- (h) It shall be unlawful for any person to:
- (1) Fail to complete and prominently and conspicuously display a kosher food disclosure statement as required by this Code section;

- (2) Otherwise fail to comply with this Code section; or
- (3) Knowingly or intentionally, with intent to defraud, make a false affirmation or disclosure in a kosher food disclosure statement.

(i) This Code section shall not apply to:

- (1) Food sold in a presealed kosher food package; or
- (2) Food represented as 'kosher-style' or 'kosher-type.'

10-1-393.12.

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

- (1) 'Residential real estate' means a new or existing building constructed for habitation by one to four families, including detached garages.
- (2) 'Residential roofing contractor' means a person or entity in the business of contracting or offering to contract with an owner or possessor of residential real estate to repair or replace roof systems.
- (3) 'Roof system' means a roof covering, roof sheathing, roof weatherproofing, roof framing, roof ventilation system, and insulation.

(b) A person who has entered into a written contract with a residential roofing contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract prior to midnight on the fifth business day after the insured has received written notice from the insurer that all or any part of the claim or contract is not a covered loss under such insurance policy. Cancellation shall be evidenced by the insured giving written notice of cancellation to the residential roofing contractor at the address stated in the contract. Notice of cancellation, if given by mail, shall be effective upon deposit into the United States mail, postage prepaid and properly addressed to the residential roofing contractor. Notice of cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

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

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

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

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

**'NOTICE OF CANCELLATION'**

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

I HEREBY CANCEL THIS TRANSACTION

\_\_\_\_\_

Date

\_\_\_\_\_

Insured's signature

- (d) In circumstances in which payment may be made from the proceeds of a property and casualty insurance policy, a residential roofing contractor shall not require any payments from an insured until the five-day cancellation period has expired. If, however, the residential roofing contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the residential roofing contractor shall be entitled to collect the amount due for the emergency services at the time they are rendered. Any provision in a contract as provided in subsection (b) of this Code section that requires the payment of any fee for anything except emergency services shall not be enforceable against any insured who has canceled a contract under this Code section.
- (e) A residential roofing contractor shall not represent or negotiate, or offer or advertise to represent or negotiate, on behalf of an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems. This subsection shall not apply to a public adjuster licensed under Chapter 23 of Title 33.

10-1-393.13.

- (a) As used in this Code section, the term:
- (1) 'ADAD equipment' means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating prerecorded messages to the numbers so selected or dialed.

- (2) 'Business' means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.
- (3) 'Caller identification service' means a type of telephone service which permits subscribers to see the telephone number of incoming telephone calls.
- (4) 'In this state' means the call:
- (A) Originates from this state; or
  - (B) Is directed by the caller to this state and received at the place to which it is directed.
- (5) 'Subscriber' means a person or business that has subscribed to telephone service from a local exchange company or mobile, wireless, or other telephone service provider or other persons living, residing, or working with such person or business.
- (6) 'Telephone solicitation' means any voice communication from a live operator, through the use of ADAD equipment or by other means, over a telephone line or computer network for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services or donation to any organization, but shall not include communications:
- (A) To any subscriber with that subscriber's prior express invitation or permission;
  - (B) By or on behalf of any person or entity with whom a subscriber has a prior or current business or personal relationship; or
  - (C) Which convey a political message.
- (b) Without otherwise limiting the definition of unfair or deceptive acts or practices under this part and without limiting any other Code section under this part, in connection with a telephone solicitation:
- (1) At the beginning of such call, the person or entity making the call shall state clearly the identity of the person or entity initiating the call;
  - (2) No person or entity who makes a telephone solicitation to the telephone line of a subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service;
  - (3) The telephone number displayed on the caller identification service shall be a working telephone number capable of receiving incoming calls at the time the call is placed; and
  - (4) The identity of the caller displayed on the caller identification service shall accurately reflect the identity of the caller.
- (c) Notwithstanding Code Section 10-1-399, a claim of a violation of this Code section may be brought in a representative capacity and may be the subject of a class action under Code Section 9-11-23. Damages for such violation shall be the greater of actual damages or \$10.00 per violation.

10-1-394.

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

(b) Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall apply to the promulgation of rules and regulations by the Attorney General pursuant to subsection (a) of this Code section and in taking testimony pursuant to Code Sections 10-1-403 and 10-1-404.

10-1-395.

(a) The Attorney General shall have the necessary powers and authority to carry out the duties vested in him or her pursuant to this title. Any authority, power, or duty vested in the Attorney General by any provision of this title and Code Section 46-5-27 may be exercised, discharged, or performed by any employee of the office of the Attorney General acting in the Attorney General's name and by his or her delegated authority. The Attorney General shall be responsible for the official acts of such persons who act in his or her name and by his or her authority.

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

(2) All members appointed to the board by the Attorney General shall be appointed for terms of three years and until their successors are appointed and qualified. In the event of a vacancy during the term of any member by reason of death, resignation, or otherwise,

the appointment of a successor by the Attorney General shall be for the remainder of the unexpired term of such member.

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

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

- (A) Policy matters relating to consumer interests; and
- (B) The effectiveness of the state consumer programs and operations.

(5) The board shall make recommendations concerning:

- (A) The improvement of state consumer programs and operations;
- (B) The elimination of duplication of effort;
- (C) The coordination of state consumer programs and operations with other local and private programs related to consumer interests;
- (D) Legislation needed in the area of consumer protection; and
- (E) Avoidance of unnecessary burdens on business, if any, resulting from the administration of this part.

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

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

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

(f) In the event a person holding a professional license as defined in Chapter 4 of Title 26 or in Title 43 shall be determined by the Attorney General to be operating a business or

profession intentionally, persistently, and notoriously in a manner contrary to this part, the Secretary of State, at the instruction of the Attorney General, shall begin proceedings to revoke such professional license.

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

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

10-1-396.

Nothing in this part shall apply to:

- (1) Actions or transactions specifically authorized under laws administered by or rules and regulations promulgated by any regulatory agency of this state or the United States;
- (2) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical, radio station or network, or television station or network in the publication or dissemination in print or electronically of:
  - (A) News or commentary; or
  - (B) An advertisement of or for another person, when the publisher, owner, agent, or employee did not have actual knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

10-1-397.

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

- (1) 'Call' means any communication, message, signal, or transmission.
- (2) 'Telecommunications company' shall have the same meaning as provided in Code Section 46-5-162.
- (3) 'Telecommunications services' shall have the same meaning as provided in Code Section 46-5-162.

(b) Whenever it may appear to the Attorney General that any person is using, has used, or is about to use any method, act, or practice declared by this part or by regulations made



under Code Section 10-1-394 to be unlawful and that proceedings would be in the public interest, whether or not any person has actually been misled, the Attorney General may:

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

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

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

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

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

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

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

(C) A declaratory judgment;

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

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

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

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

(d) With the exception of consent judgments entered before any testimony is taken, a final judgment under this Code section shall be admissible as prima-facie evidence of such

specific findings of fact as may be made by the court which enters the judgment in subsequent proceedings by or against the same person or his or her successors or assigns.

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

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

(2) The suspension of billing under this subsection shall remain in effect until the Attorney General certifies to the telecommunications company that the matter has been resolved. The Attorney General shall certify to the telecommunications company with reasonable promptness when the matter has been resolved. In this certification, the Attorney General shall advise the telecommunications company to collect none of, all of,

or any designated part of the billings in accordance with the documents or orders which resolved the matter. The telecommunications company shall collect or not collect the billings in the manner so designated and shall not incur any liability to any person for doing so.

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

10-1-397.1.

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

10-1-398.

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

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

(1) The order which has issued and which is proposed to be issued;

(2) The ground for issuing such order and proposed order;

(3) That the person to whom such notice is sent will be afforded a hearing upon request if such request is made within ten days after receipt of the notice; and

(4) That the person to whom such notice is sent may obtain a temporary stay of the order upon a showing of irreparable harm in any superior court of competent jurisdiction.

(c) Whenever a person requests a hearing in accordance with this Code section, there shall promptly be set a date, time, and place for such hearing and the person requesting such hearing shall be notified thereof. The date set for such hearings shall be within 15 days,

but not earlier than five days after the request for hearing has been made, unless otherwise agreed to by the Attorney General and the person requesting the hearing.

(d) In the case of any hearing conducted under this Code section, the Attorney General or his or her designated representative may conduct the hearing.

(e) The Attorney General shall have authority to do the following:

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

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

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

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

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

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

(1) Set forth his or her findings with respect to the matters involved; and

(2) Enter an order in accordance with his or her findings.

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

10-1-398.1.

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

10-1-399.

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

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

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

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

(e) Any manufacturer or supplier of merchandise whose act or omission, whether negligent or not, is the basis for action under this part shall be liable for the damages assessed against

or suffered by retailers charged under this part. A claim of such liability may be asserted by cross-claim, third-party complaint, or by separate action.

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

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

10-1-400.

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

10-1-401.

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

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

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

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

10-1-402.

In the administration of this part the Attorney General may accept an assurance of voluntary compliance with respect to any act or practice deemed to be violative of this part from any person who has engaged or was about to engage in such act or practice. Any such assurance shall be in writing and be filed with the clerk of the superior court of the county in which the alleged violator resides or has his or her principal place of business or with the clerk of the Superior Court of Fulton County. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus processed

may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to Code Section 10-1-397. This Code section shall not bar any claim against any person who has engaged in any act or practice in violation of this part.

10-1-403.

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

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

(c)(1) Each such investigative demand shall state the nature of the conduct constituting the alleged violation of this part which is under investigation and the provision of law applicable thereto; describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified; describe the nature, scope, and purpose of the investigation with such definiteness and certainty as to permit any person whose testimony is sought to be fairly appraised of the subject matter of the inquiry; prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction and the person or persons whose testimony is sought may prepare for the same; and identify the person to whom such material shall be made available.



(2) No such investigative demand shall:

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

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

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

10-1-404.

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

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

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

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

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

10-1-405.

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

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

(c) Any intentional violation by a corporation, partnership, or association shall be deemed to be also that of the individual directors, officers, partners, employees, or agents of the corporation, partnership, or association who knew or should have known of the acts constituting the violation and who directly authorized, supervised, ordered, or did any of the acts constituting in whole or in part the violation; provided, however, no such individual directors, officers, partners, employees, or agents shall have any individual liability under this subsection unless the corporation, partnership, or association, as the case may be, which has committed the intentional violation shall fail to pay into the court within 30 days after judgment sufficient moneys or assets to satisfy the judgment.

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

10-1-406.

Whenever an investigation has been conducted under this article and such investigation reveals conduct which constitutes a criminal offense, the Attorney General shall have the authority to prosecute the case or forward the results of such investigation to a prosecuting attorney of this state who shall commence any criminal prosecution that such prosecuting attorney deems appropriate.

10-1-407.

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

10-1-408.

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

### **SECTION 3.**

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

"10-1-414.

Sellers shall not:

- (1) Represent that a business opportunity or multilevel program provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential, which data shall be furnished to the Attorney General or his or her representatives upon request;
- (2) Use the trademark, service mark, trade name, logotype, advertising, or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the business opportunity or multilevel distribution company; or
- (3) Make or authorize the making of any reference to its compliance with this part in any advertisement or other contract with purchasers or participants or in any manner represent, explicitly or implicitly, that the State of Georgia or any department, agency, officer, or employee has reviewed, approved, sanctioned, or endorsed a business opportunity or multilevel program."

### **SECTION 4.**

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

"10-1-427.

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

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

(c) The Attorney General is authorized and empowered, upon the receipt of a complaint or upon his or her own initiative, to investigate any advertising which might be in violation of subsection (a) of this Code section. If the Attorney General determines that any advertising is in violation of subsection (a) of this Code section, he or she is authorized and empowered, after providing the offender with reasonable notice and an opportunity for a hearing, to issue a public reprimand, to issue a cease and desist order against the offender, to report any such action to any board, agency, commission, association, or other entity governing or supervising the legal profession, and to publicize any such action in a medium or media likely to reach the recipients of the improper advertising. Any person against whom the Attorney General issues an adverse decision may, as his or her sole remedy in equity or at law, seek a restraining order against such adverse decision in the superior court.

(d) Any person who violates a cease and desist order issued pursuant to subsection (c) of this Code section shall be guilty of a misdemeanor in the county in which such person resides. Nothing in this subsection shall prohibit any board, agency, commission, association, or other entity governing or supervising the legal profession from taking any lawful action against such person as a result of such improper practices. Each publication of an advertisement in violation of any such cease and desist order shall constitute a separate offense."

## **SECTION 5.**

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

"10-1-438.

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

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

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

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

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

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

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

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

## **SECTION 6.**

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

### **"ARTICLE 21**

10-1-590.

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

10-1-591.

As used in this article, the term:

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

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

(3) 'Buying service,' 'buying club,' or 'club' means any corporation, partnership, unincorporated association, or other business enterprise which is organized with the primary purpose of providing benefits to members from the cooperative purchase of service or merchandise and which desires to effect such purpose through direct solicitation or other business activity in this state.

(4) 'Contract' means any contract or agreement by which a person becomes a member of a buying service or club.

(5) 'Member' means any natural person who is entitled to any of the benefits of a buying service or buying club.

10-1-592.

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

10-1-593.

As a condition to the issuance or retention of a license required by this article, each buying service or club shall:

(1) Comply with such reasonable conditions for the issuance of a license as may be required by the Attorney General pursuant to this article;

(2) Maintain a bond in the amount of \$25,000.00 with a surety company duly authorized to do business in this state or post a cash bond in such amount, payable to the Governor of this state; in either case, such bond shall be for the use and benefit of any person who has entered into a contract for membership in a buying service or club. Such bond shall be conditioned to pay all losses, damages, and expenses that may be sustained by such member by reason of any fraudulent misrepresentation or by reason of any breach of contract by the club; and

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

10-1-594.

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

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

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

10-1-595.

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

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

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

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

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

10-1-596.

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

10-1-597.

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

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

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

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

10-1-598.

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

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

**'MEMBER'S RIGHT TO CANCEL**

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

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

10-1-599.

No contract shall be valid for a term longer than 18 months from the date upon which the contract is signed. However, a club may allow a member to convert his or her contract into a contract for a period longer than 18 months after the member has been a member of the club for a period of at least six months. The duration of the contract shall be clearly and conspicuously disclosed in the contract in boldface type of a minimum size of 14 points.

10-1-600.

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

- (1) Accurate accounts, books, and records of all transactions in this state;
- (2) Copies of all agreements;
- (3) Dates and amounts of payments made and accepted thereon; and
- (4) The names and addresses of all members in this state.

(b) Such accounts, books, and records shall be open for inspection by the Attorney General during normal business hours on all normal business days.



10-1-601.

The Attorney General is authorized to promulgate, adopt, and issue rules, regulations, and orders necessary or convenient to carry out the provisions and purposes of this article. Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall apply to the promulgation of rules and regulations by the Attorney General pursuant to this Code section.

10-1-602.

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

10-1-603.

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

10-1-604.

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

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

(c) The Attorney General may file, in the superior court of the county in which the person under an order resides, or if the person is a corporation, in the superior court of the county in which the corporation under an order maintains its principal place of business, or in the

superior court of the county in which the violation occurred, a certified copy of the final order of the Attorney General unappealed from or of a final order of the Attorney General affirmed upon appeal. Thereupon, the court shall render judgment in accordance therewith and shall notify the parties. Such judgment shall have the same effect and proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by such court.

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

10-1-605.

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

10-1-606.

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

#### **SECTION 7.**

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

"10-1-773.

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

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

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

- (1) Restitution to any person or persons adversely affected by a defendant's actions in violation of this article;
- (2) Punitive damages in an amount equal to \$50,000.00 or three times the combined total of damages, costs, and fees, whichever is greater;
- (3) Expenses of litigation, including reasonable attorney's fees; and
- (4) Other relief as the court deems just and equitable.

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

### **SECTION 8.**

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

#### "ARTICLE 28

10-1-780.

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

10-1-781.

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

10-1-782.

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

- (1) 'Adjusted capitalized cost' means the amount shown as the adjusted capitalized cost in the lease agreement.
- (2) 'Attorney General' means the Attorney General or his or her designee.
- (3) 'Authorized agent' means any person, including a franchised motor vehicle dealer, who is authorized by the manufacturer to service motor vehicles.
- (4) 'Collateral charges' means charges incurred by a consumer as a result of the purchase of a new motor vehicle including, but not limited to, charges attributable to factory or dealer installed options, sales tax and title charges, and earned finance charges.
- (5) 'Consumer' means each of the following:
  - (A) A person who purchases or leases a new motor vehicle for personal, family, or household use and not for the purpose of selling or leasing the new motor vehicle to another person; and
  - (B) A person who purchases or leases ten or fewer new motor vehicles a year for business purposes other than limousine rental services.
- (6) 'Days' means calendar days.
- (7) 'Express warranty' means a warranty which is given by the manufacturer in writing.
- (8) 'Incidental costs' means any reasonable expenses incurred by a consumer in connection with the repair of a new motor vehicle, including, but not limited to, payments to new motor vehicle dealers for the attempted repair of nonconformities, towing charges, and the costs of obtaining alternative transportation.
- (9) 'Informal dispute settlement mechanism' means any procedure established, employed, utilized, or sponsored by a manufacturer for the purpose of resolving disputes with consumers under this article.
- (10) 'Lemon law rights period' means the period ending two years after the date of the original delivery of a new motor vehicle to a consumer or the first 24,000 miles of operation after delivery of a new motor vehicle to the original consumer, whichever occurs first. The lemon law rights period shall be extended by one day for each day that repair services are not available to the consumer as a direct result of a strike, war, invasion, terrorist act, blackout, fire, flood, other disaster, or declared state of emergency.
- (11) 'Lessee' means any consumer who enters into a written lease agreement or contract to lease a new motor vehicle for a period of at least one year and is responsible for repairs to such vehicle.
- (12) 'Lessee cost' means the aggregate payment made by the lessee at the inception of the lease agreement or contract, inclusive of any allowance for a trade-in vehicle, and all other lease payments made by or on behalf of the lessee to the lessor.

(13) 'Lessor' means a person who holds title to a new motor vehicle that is leased to a consumer under a written lease agreement or contract or who holds the lessor's rights under such agreement.

(14) 'Manufacturer' means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing or receiving imports of new motor vehicles into the United States for the purpose of selling or distributing them to new motor vehicle dealers.

(15) 'New motor vehicle' means any self-propelled vehicle primarily designed for the transportation of persons or property over the public highways that was leased, purchased, or registered in this state by the consumer or lessor to whom the original motor vehicle title was issued without previously having been issued to any person other than a new motor vehicle dealer. The term 'new motor vehicle' does not include any vehicle on which the title and other transfer documents show a used, rather than new, vehicle. The term 'new motor vehicle' also does not include trucks with more than 12,000 pounds gross vehicle weight rating, motorcycles, or golf carts. If a new motor vehicle is a motor home, this article shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as living quarters, office, or commercial space.

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

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

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

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

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

(21) 'Reacquired vehicle' means a new motor vehicle with an alleged nonconformity that has been replaced or repurchased by the manufacturer as the result of any court order or

judgment, arbitration decision, voluntary settlement entered into between a manufacturer and the consumer, or voluntary settlement between a new motor vehicle dealer and a consumer in which the manufacturer directly or indirectly participated.

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

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

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

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

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

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

10-1-783.

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

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

(c) By October 1 of each year, the manufacturer shall forward to the Attorney General one copy of the owner's manual and the express warranty for each make and model of current year new motor vehicles it sells in this state. To the extent the instructions, terms, and conditions in the owner's manuals and express warranties for other models of the same make are substantially the same, submission of the owner's manual and express warranty for one model and a list of all other models for that make will satisfy the requirements of this subsection.

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

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

10-1-784.

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

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

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

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

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

(2)(A) If the manufacturer through an authorized agent or a new motor vehicle dealer is unable to repair and correct a nonconformity after a reasonable number of attempts, the consumer shall notify the manufacturer by statutory overnight delivery or certified mail, return receipt requested, of the need to repair and correct the nonconformity. The notice shall be sent to the address provided by the manufacturer in the owner's manual. The manufacturer shall have 28 days from its receipt of the notice to make a final attempt to repair and correct the nonconformity.

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

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

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

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



manufacturer shall have 20 days from receipt of the notice to repurchase or replace the vehicle.

(2)(A) If a consumer who is a lessee elects to receive a replacement motor vehicle, in addition to providing the replacement motor vehicle, the manufacturer shall pay to the lessor an amount equal to all charges that the lessor will incur as a result of the replacement transaction and shall pay the lessee an amount equal to all incidental costs that have been incurred by the lessee plus all charges that the lessee will incur as a result of the replacement transaction. If a lessee elects to receive a replacement motor vehicle, all terms of the existing lease agreement or contract shall remain in force and effect, except that the vehicle identification information contained in the lease agreement or contract shall be changed to conform to the vehicle identification information of the replacement vehicle.

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

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

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

10-1-785.

(a)(1) If a manufacturer does not replace or repurchase a nonconforming new motor vehicle after being requested to do so under subsection (b) of Code Section 10-1-784, the consumer may move to compel replacement or repurchase by applying for arbitration pursuant to Code Section 10-1-786. However, if a manufacturer has established an

informal dispute settlement mechanism which the Attorney General has certified as complying with the provisions and rules of this article, the consumer shall be eligible to apply for arbitration only after submitting a dispute under this article to the informal dispute settlement mechanism.

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

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

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

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

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

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

(e) At any time the Attorney General has reason to believe that a certified informal dispute settlement mechanism is no longer in compliance with this article, he or she may notify the

manufacturer of intent to revoke the informal dispute settlement mechanism's certification. The notice shall contain a statement of the reason or reasons for the revocation.

(f) The manufacturer shall have ten days from its receipt of notice of denial of requested certification or notice of intent to revoke certification to submit a written request for a hearing to contest the denial or intended revocation. If a hearing is requested, it shall be held within 30 days of the Attorney General's receipt of the hearing request. The hearing shall be conducted by the Office of State Administrative Hearings following the procedures set forth in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

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

10-1-786.

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

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

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

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

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

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

(3) If the court finds that a consumer's appeal from a determination of ineligibility is frivolous or has been filed in bad faith or for the purpose of harassment, the court may

require the consumer to pay to the Attorney General all costs incurred as a direct result of the appeals from the Attorney General's determination of ineligibility.

(c) A lessee shall notify the lessor of the pending arbitration, in writing, within ten days of the lessee's receipt of notice that a dispute has been deemed eligible for arbitration and shall provide to the arbitrator or arbitrators proof that notice was given to the lessor. Within ten days of its receipt of notice from the lessee, a lessor may petition the arbitrator or arbitrators to be a party to the arbitration proceeding.

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

(e) If the arbitrator or arbitrators determine:

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

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

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

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

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

10-1-787.

(a) The decision of the arbitrator or arbitrators is final unless a party to the arbitration, within 30 days of entry of the decision, appeals the decision to the superior court. A party

who appeals a decision shall follow the procedures set forth in Article 2 of Chapter 3 of Title 5, and any appeal shall be de novo; however, the decision of the arbitrator or arbitrators shall be admissible in evidence.

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

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

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

10-1-788.

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

10-1-789.

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

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

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

(d) Neither the Attorney General, an entity with which the Attorney General has contracted, nor any arbitrator shall be civilly liable for any decision, action, statement, or omission made in connection with any proceeding under this article, except in circumstances where the decision, action, statement, or omission was made with malice or gross negligence.

10-1-790.

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

- (1) The fact of the reacquisition and nature of any alleged nonconformity are clearly and conspicuously disclosed in writing to the prospective transferee, lessee, or buyer; and
- (2) The manufacturer warrants to correct such nonconformity for a term of one year or 12,000 miles, whichever occurs first.

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

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

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

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

10-1-791.

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

(b) The Attorney General shall have the power to enforce the provisions of this Code section. The Attorney General's enforcement power shall include:

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

10-1-792.

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

(b) The provisions of this article shall not impair any obligation under any manufacturer-dealer franchise agreement; provided, however, that any provision of any

manufacturer-dealer franchise agreement which attempts to shift any duty, obligation, responsibility, or liability imposed upon a manufacturer by this article to a new motor vehicle dealer, either directly or indirectly, shall be void and unenforceable, except for any liability imposed upon a manufacturer by this article which is directly caused by the gross negligence of the dealer in attempting to repair the motor vehicle after such gross negligence has been determined by the hearing officer, as provided in Article 22 of this chapter, the 'Georgia Motor Vehicle Franchise Practices Act.'

10-1-793.

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

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

10-1-794.

Reserved.

10-1-795.

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

10-1-796.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.



10-1-797.

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

10-1-798.

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

#### **SECTION 9.**

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

"10-1-835.

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

#### **SECTION 10.**

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

#### **"ARTICLE 31**

10-1-850.

As used in this article, the term:

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

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine; and

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

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

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

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

10-1-851.

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

10-1-852.

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

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

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

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

(4) Whether the defendant's conduct caused an elder or disabled person to suffer any of the following:

(A) Mental or emotional anguish;

(B) Loss of or encumbrance upon a primary residence of the elder or disabled person;

- (C) Loss of or encumbrance upon the elder or disabled person's principal employment or principal source of income;
  - (D) Loss of funds received under a pension or retirement plan or a government benefits program;
  - (E) Loss of property set aside for retirement or for personal or family care and maintenance; or
  - (F) Loss of assets essential to the health and welfare of the elder or disabled person; or
- (5) Any other factors the court deems appropriate.

10-1-853.

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

10-1-854.

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

10-1-855.

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

10-1-856.

Nothing in this article shall serve to prevent the Attorney General from investigating and pursuing unfair and deceptive acts or practices committed under Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act of 1975.' Notwithstanding any other provision of law to the contrary, the names, addresses, telephone numbers, social security numbers, or any other information which could reasonably serve to identify any person making a

complaint about unfair or deceptive practices under Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act of 1975,' shall be confidential. However, the complaining party may consent to public release of his or her identity by giving such consent expressly, affirmatively, and directly to the Attorney General. Nothing contained in this Code section shall be construed to prohibit any valid discovery under the relevant discovery rules, or to prohibit the lawful subpoena of such information.

10-1-857.

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

#### **SECTION 11.**

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

#### **"CHAPTER 15**

10-15-1.

As used in this chapter, the term:

- (1) 'Attorney General' means the Attorney General or his or her designee.
- (2) 'Business' means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this state, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. The term also includes an entity that destroys records. However, for purposes of this chapter, the term shall not include any bank or financial institution that is subject to the privacy and security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq., as amended, and as it existed on January 31, 2002, nor shall it include any hospital or health care institution licensed under Title 31 which is subject to the privacy and security provisions of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, nor any other entity which is governed by federal law, provided that the federal law

governing the business requires the business to discard a record containing personal information in the same manner as Code Section 10-15-2.

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

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

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

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

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

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

(9) 'Personal information' means:

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

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

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

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

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

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

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

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

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

10-15-2.

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

- (1) Shreds the customer's record before discarding the record;
- (2) Erases the personal information contained in the customer's record before discarding the record;
- (3) Modifies the customer's record to make the personal information unreadable before discarding the record; or
- (4) Takes actions that it reasonably believes will ensure that no unauthorized person will have access to the personal information contained in the customer's record for the period between the record's disposal and the record's destruction.

10-15-3.

(a) A merchant who accepts a payment card for the transaction of business shall not print more than five digits of the payment card's account number or print the payment card's expiration date on a receipt provided to the cardholder. This subsection applies only to receipts described in subsection (b) of this Code section and does not apply to a transaction in which the sole means of recording the payment card's account number or expiration date is by handwriting or by an imprint or copy of the payment card.

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

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

10-15-4.

(a) No person shall use a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a

payment card with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

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

10-15-5.

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

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

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

10-15-6.

(a) If the Attorney General determines, after notice and hearing, that a business has violated Code Section 10-15-2, the Attorney General may issue an administrative order imposing a penalty of not more than \$500.00 for each customer's record that contains personal information that is wrongfully disposed of or discarded; provided, however, in no event shall the total fine levied by the Attorney General exceed \$10,000.00. It shall be an affirmative defense to the wrongful disposing of or discarding of a customer's record that contains personal information if the business can show that it used due diligence in its attempt to properly dispose of or discard such records.

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

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

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

10-15-7.

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

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

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

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

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

## **SECTION 12.**

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

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



### SECTION 13.

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

"16-9-120.

As used in this article, the term:

- (1) 'Attorney General' means the Attorney General or his or her designee.
- (2) 'Business victim' means any individual or entity that provided money, credit, goods, services, or anything of value to someone other than the intended recipient where the intended recipient has not given permission for the actual recipient to receive it and the individual or entity that provided money, credit, goods, services, or anything of value has suffered financial loss as a direct result of the commission or attempted commission of a violation of this article.
- (3) 'Consumer victim' means any individual whose personal identifying information has been obtained, compromised, used, or recorded in any manner without the permission of that individual.
- (4) 'Health care records' means records however maintained and in whatever form regarding an individual's health, including, but not limited to, doctors' and nurses' examinations and other notes, examination notes of other medical professionals, hospital records, rehabilitation facility records, nursing home records, assisted living facility records, results of medical tests, X-rays, CT scans, MRI scans, vision examinations, pharmacy records, prescriptions, hospital charts, surgical records, mental health treatments and counseling, dental records, and physical therapy notes and evaluations.
- (5) 'Identifying information' shall include, but not be limited to:
  - (A) Current or former names;
  - (B) Social security numbers;
  - (C) Driver's license numbers;
  - (D) Checking account numbers;
  - (E) Savings account numbers;
  - (F) Credit and other financial transaction card numbers;
  - (G) Debit card numbers;
  - (H) Personal identification numbers;
  - (I) Electronic identification numbers;
  - (J) Digital or electronic signatures;
  - (K) Medical identification numbers;
  - (L) Birth dates;
  - (M) Mother's maiden name;

- (N) Selected personal identification numbers;
  - (O) Tax identification numbers;
  - (P) State identification card numbers issued by state departments;
  - (Q) Veteran and military medical identification numbers; and
  - (R) Any other numbers or information which can be used to access a person's or entity's resources or health care records.
- (6) 'Resources' includes, but is not limited to:
- (A) A person's or entity's credit, credit history, credit profile, and credit rating;
  - (B) United States currency, securities, real property, and personal property of any kind;
  - (C) Credit, charge, and debit accounts;
  - (D) Loans and lines of credit;
  - (E) Documents of title and other forms of commercial paper recognized under Title 11;
  - (F) Any account, including a safety deposit box, with a financial institution as defined by Code Section 7-1-4, including a national bank, federal savings and loan association, or federal credit union or a securities dealer licensed by the Secretary of State or the federal Securities and Exchange Commission;
  - (G) A person's personal history, including, but not limited to, records of such person's driving records; criminal, medical, or insurance history; education; or employment; and
  - (H) A person's health insurance, health savings accounts, health spending accounts, flexible spending accounts, medicare accounts, Medicaid accounts, dental insurance, vision insurance, and other forms of health insurance and health benefit plans."

#### **SECTION 14.**

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

"16-9-123.

The Attorney General shall have the authority to investigate any complaints of consumer victims regarding identity fraud. In conducting such investigations the Attorney General shall have all investigative powers which are available to the Attorney General under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' If, after such investigation, the Attorney General determines that a person has been a consumer victim of identity fraud in this state, the Attorney General shall, at the request of the consumer victim, provide the consumer victim with certification of the findings of such investigation. Copies of any and all complaints received by any law enforcement agency of this state regarding potential violations of this article shall be transmitted to the Georgia Bureau of Investigation. The Georgia Bureau of Investigation shall maintain a repository for all complaints in the State of Georgia regarding identity fraud. Information contained

in such repository shall not be subject to public disclosure. The information in the repository may be transmitted to any other appropriate investigatory agency or entity. Consumer victims of identity fraud may file complaints directly with the office of the Attorney General, the Georgia Bureau of Investigation, or with local law enforcement. Any and all transmissions authorized under this Code section may be transmitted electronically, provided that such transmissions are made through a secure channel for the transmission of such electronic communications or information, the sufficiency of which is acceptable to the Attorney General. Nothing in this Code section shall be construed to preclude any otherwise authorized law enforcement or prosecutorial agencies from conducting investigations and prosecuting offenses of identity fraud."

#### **SECTION 15.**

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

"16-9-127.

The Attorney General shall have authority to initiate any proceedings and to exercise any power or authority in the same manner as if he or she were acting under Part 2 of Article 15 of Chapter 1 of Title 10, as regards violations or potential violations of this article."

#### **SECTION 16.**

Said title is further amended by revising Code Section 16-9-130, relating to damages available to consumer victims of identity fraud, no defense that others engage in comparable practices, and service of complaint, as follows:

"16-9-130.

(a) Any consumer victim who suffers injury or damages as a result of a violation of this article may bring an action individually or as a representative of a class against the person or persons engaged in such violations under the rules of civil procedure to seek equitable injunctive relief and to recover general and punitive damages sustained as a consequence thereof in any court having jurisdiction over the defendant; provided, however, punitive damages shall be awarded only in cases of intentional violation. A claim under this article may also be asserted as a defense, setoff, cross-claim, or counterclaim or third-party claim against such person.

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

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

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

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

#### **SECTION 17.**

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

"16-9-131.

Whenever an investigation has been conducted by the Attorney General under this article and such investigation reveals conduct which constitutes a criminal offense, the Attorney General shall have the authority to prosecute such cases or forward the results of such investigation to any other prosecuting attorney of this state who shall commence any criminal prosecution that he or she deems appropriate."

#### **SECTION 18.**

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

#### **"CHAPTER 5**

18-5-1.

As used in this chapter, the term:

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

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

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

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

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

18-5-2.

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

18-5-3.

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

18-5-3.1.

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

- (1) Obtain from an independent third party certified public accountant an annual audit of all accounts of such person in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors. A copy of the summary results of such annual audit shall be made available upon written request to any party so requesting a copy for a charge not to exceed the cost of the reproduction of the annual audit; and
- (2) Obtain and maintain at all times insurance coverage for employee dishonesty, depositor's forgery, and computer fraud in an amount not less than the greater of \$100,000.00 or 10 percent of the monthly average for the immediately preceding six

months of the aggregate amount of all deposits made with such person by all debtors. The deductible on such coverage shall not exceed 10 percent of the face amount of the policy coverage. Such policy shall be issued by a company rated at least 'A-' or its equivalent by a nationally recognized rating organization and such policy shall provide for 30 days' advance written notice of termination of the policy to be provided to the Attorney General's office.

(b) A copy of the annual audits and insurance policies required by this Code section shall be filed annually with the Attorney General's office.

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

18-5-4.

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

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

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

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

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

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

18-5-5.

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

## **SECTION 19.**

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

"31-38-11.

Any tanning facility which finds that it is not possible to comply with Code Section 31-38-4 may apply to the Attorney General for a variance from the requirements of Code Section 31-38-4. Any such variance granted by the Attorney General shall be in writing and shall be drawn as narrowly as possible."

## **SECTION 20.**

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

"31-38-12.

Nothing contained in this chapter shall be construed as imposing any duty, requirement, or enforcement authority upon the Attorney General except as described in Code Section 31-38-11, provided that nothing contained in this chapter shall be construed in any manner as limiting the Attorney General from exercising any of his or her duties, powers, or authority under any other law. The Attorney General shall not be liable to any person for any reason as a result of granting or failing to grant any variance under Code Section 31-38-11."

## **SECTION 21.**

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

"33-4-6.

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

however, the attorney's fees shall be fixed on the basis of competent expert evidence as to the reasonable value of the services based on the time spent and legal and factual issues involved in accordance with prevailing fees in the locality where the action is pending; provided, further, the trial court shall have the discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or inadequate, to review and amend the portion of the verdict fixing attorney's fees without the necessity of disapproving the entire verdict. The limitations contained in this Code section in reference to the amount of attorney's fees are not controlling as to the fees which may be agreed upon by the plaintiff and the plaintiff's attorney for the services of the attorney in the action against the insurer.

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

## **SECTION 22.**

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

"33-4-7.

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

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

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



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

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

(f) The amount of recovery, including reasonable attorney's fees, if any, shall be determined by the trier of fact and included in a separate judgment against the insurer rendered in the action; provided, however, the attorney's fees shall be fixed on the basis of competent expert evidence as to the reasonable value of the services based on the time spent and legal and factual issues involved in accordance with prevailing fees in the locality where the action is pending; provided, further, the trial court shall have the discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or inadequate, to review and amend the portion of the verdict fixing attorney's fees without the necessity of disapproving the entire verdict. The limitations contained in this Code section in reference to the amount of attorney's fees are not controlling as to the fees which may be agreed upon by the plaintiff and his or her attorney for the services of the attorney.

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

### **SECTION 23.**

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

"(4) After 12 months of full implementation, the pricing of the consumer choice option may be reevaluated to consider actual costs incurred and the experience of the standard plan without the option as compared to the consumer choice option. Based on an independent actuarial evaluation of such actual costs incurred and experience, managed care entities may apply for a waiver of the cost provisions of paragraphs (2) and (3) of this subsection to the Insurance Commissioner's office."

#### **SECTION 24.**

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

#### **SECTION 25.**

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

"35-1-13.

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

#### **SECTION 26.**

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

"36-76-7.

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

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

(c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall establish a uniform set of rules, which may include fines and penalties, pursuant to which an affected local governing authority shall resolve subscriber complaints. Said rules shall include a requirement that the cable service provider or video service provider participate in mandatory nonbinding mediation with the affected local governing authority and the

subscriber if the issue cannot be resolved between the cable service provider or video service provider and the subscriber. Said rules shall apply only until 50 percent of the potential subscribers within an affected local governing authority are offered service by two or more cable service providers or video service providers holding a state franchise or a local franchise.

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

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

## **SECTION 27.**

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

"43-1A-4.

- (a) There is created the Georgia Occupational Regulation Review Council.
- (b) The council shall consist of nine members:
  - (1) The comptroller general or his or her designee;
  - (2) The Secretary of State or his or her designee;
  - (3) The commissioner of public health or his or her designee;
  - (4) The director of the Office of Planning and Budget or his or her designee;
  - (5) The commissioner of natural resources or his or her designee;
  - (6) The state revenue commissioner or his or her designee;
  - (7) The Commissioner of Agriculture or his or her designee;

- (8) The chairperson of the legislative committee of reference or that person's designee from that committee, but only when legislation referred by such committee is being considered by the council; and
- (9) The chairperson of that standing committee of the General Assembly appointed by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that chairperson's designee from that committee, but only when legislation of which that presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being considered by the council.
- (c) The director of the Office of Planning and Budget or his or her designee shall serve as chairperson of the council.
- (d) Legislative members of the council appointed thereto pursuant to paragraphs (8) and (9) of subsection (b) of this Code section shall receive for their attendance of meetings of the council the same expense and mileage allowance authorized for legislative members of interim legislative committees."

#### **SECTION 28.**

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

"(b) The chairperson of the legislative committee of reference shall provide written notification to the council of any proposed legislation introduced in that house of the General Assembly of which that committee is a standing committee if that legislation provides for the licensure or certification of a business or profession not currently licensed or certified by the state. That chairperson at the same time shall provide written notification of that legislation to the presiding officer of the house of the General Assembly in which that legislation was not introduced, and that presiding officer shall then appoint the chairperson of a standing committee of that house to serve as a member of the council for the purpose of considering that legislation, except that the chairperson so appointed may instead designate another member of that standing committee to serve as a member of the council for that purpose. Within a period of time not to exceed nine months from the date of such notification to the council, but in no event later than the convening date of the next succeeding regular session of the General Assembly, the council shall provide a formal report evaluating the need to regulate the business or profession based on the factors and information provided under Code Section 43-1A-7 to the chairperson of the legislative committee of reference, the committee chairperson appointed to the council pursuant to paragraph (9) of subsection (b) of Code Section 43-1A-4, the presiding officers of the House of Representatives and the Senate, and the legislative counsel. If, subsequent to a review pursuant to paragraph (2) of subsection (a) of this Code section, the council

concludes changes are needed to the regulations of an existing regulatory entity, or that a regulatory entity's existence is no longer necessary or in the interests of the state, a formal report recommending such changes shall be completed and distributed in the same manner described previously herein. If the council determines a need for regulation, the report shall recommend an appropriate type of regulation and an appropriate state agency to oversee the regulation."

## **SECTION 29.**

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

"43-17-2.

As used in this chapter, the term:

- (1) 'Attorney General' means the Attorney General or his or her designee.
- (2) 'Charitable organization' means any benevolent, philanthropic, patriotic, or eleemosynary (of, relating to, or supported by charity or alms) person, as that term is defined in this Code section, who solicits or obtains contributions solicited from the general public, any part of which contributions is used for charitable purposes; and any person who or which falsely represents himself, herself, or itself to be a charitable organization as defined by this paragraph. The term charitable organization shall not include a religious organization as defined in paragraph (12) of this Code section.
- (3) 'Charitable purpose' means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic, or public interest; and any purpose which is falsely represented to be a charitable purpose as defined by this paragraph.
- (4) 'Charitable sales promotion' means an advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.
  - (4.1) 'Collection receptacle' means an unattended container for the purpose of collecting donations of clothing, books, personal or household items, or other goods. Such term shall not include containers used for the purpose of collecting monetary donations.
- (5) 'Commercial coventurer' means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.
- (6) 'Contribution' means the promise or grant of any money or property of any kind or value.

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

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

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

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

(9) 'Fundraising counsel' means any person, other than a paid solicitor required to register under this chapter, who plans, advises, consults, or prepares material for a solicitation of charitable contributions within, into, or from this state and who does not either:

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

(B) Have custody or control of contributions.

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

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

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

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

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

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

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

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

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

(ii) An attorney, investment counselor, accountant, or banker who, solely incidental to his or her profession, advises a person to make a charitable contribution or who holds funds subject to an escrow or trust agreement;

(iii) A person who removes or delivers donations placed in a collection receptacle for a fixed fee and who does not otherwise directly or indirectly receive any of the proceeds of the sale of such donations or derive any other benefit from such activity; or

(iv) A charitable organization registered with the Secretary of State which operates collection receptacles or a religious organization which operates collection receptacles.

(13) 'Person' means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, or any unincorporated organization.

(14) 'Religious organization' means an entity which:

(A) Conducts regular worship services; or

(B) Is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

(15) 'Solicitation,' 'solicitation of funds,' or 'solicit' means the request or acceptance directly or indirectly of money, credit, property, financial assistance, or any other thing of value to be used for any charitable purpose; and such act shall be a consumer act or

practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.'

(16) 'Solicitor agent' means any person, other than a paid solicitor or commercial coventurer, who or which solicits charitable contributions for compensation. The term 'solicitor agent' shall not include, with respect to a particular charitable organization which is either registered or exempt from registration under this chapter, any person who is a charitable organization itself or a bona fide officer, employee, or volunteer of such charitable organization which is either registered or exempt from registration under this chapter and who is neither supervised by, nor whose activities are directed by, any paid solicitor or its agent.

(17) 'State' means any state, territory, or possession of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands."

### **SECTION 30.**

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

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

### **SECTION 31.**

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

"43-17-19.

Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' Nothing contained in this chapter shall be construed to limit the authority of the Attorney General to take any action under



the 'Fair Business Practices Act of 1975' regarding unfair and deceptive acts or practices in a solicitation or in solicitations."

### **SECTION 32.**

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

"43-47-3.

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

- (1) Three members shall be independent used car dealers;
- (2) Three members shall be appointed from the public at large and shall have no connection whatsoever with the sale of used cars or parts;
- (3) The state revenue commissioner, or a designated agent, shall be a permanent ex officio member and shall be authorized to vote on all matters before the board;
- (4) Reserved;
- (5) One member shall be a representative of the automobile auction industry;
- (6) One member shall be an auto salvage pool operator;
- (7) Two members shall be used motor vehicle parts dealers who are not rebuilders;
- (8) One member shall be a rebuilder;
- (9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in the business of pawning automobile titles and is licensed as a used car dealer; and
- (10) One member shall be a representative of the automobile insurance industry.

(b) The members of the board referred to in paragraphs (1), (2), (5), (6), (7), (8), (9), and (10) of subsection (a) of this Code section shall be appointed by the Governor and shall take office on July 1, 1995, or as soon thereafter as appointed. The initial terms of those 13 appointed members shall expire as follows: three on June 30, 1996; three on June 30, 1997; three on June 30, 1998; and four on June 30, 1999. Thereafter, the appointed members of the board shall serve terms of four years. All members shall be residents of this state. No more than two of the appointed members shall be from the same congressional district. The terms of the two ex officio members shall be coextensive with their terms of office.

(c) Any vacancies on the board shall be filled by the Governor for the remainder of the unexpired term. The members of the board shall annually elect one of their number to serve as chairperson for a term of two years. The board chairperson shall not also serve contemporaneously as the chairperson of either division under this chapter. The first term as chairperson of the board shall be served by a member or members elected from either

division under this chapter; thereafter, the chairperson for each succeeding term shall not be elected from the same division as that of the chairperson from the immediately preceding term. In the event a chairperson of the board is unable to complete his or her term, his or her successor for the remainder of the term shall be elected from the same division as was the chairperson who is unable to complete the term. The chairperson of the board shall be an ex officio member of both divisions under this chapter, however, the chairperson of the board shall not be counted for purposes of determining whether a quorum is present in the division meeting for the division in which he or she is not a regular member.

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

(2) The members of the used car division shall be the three independent used car dealers, two of the members from the public at large, the state revenue commissioner or a designated agent, the representative of the automobile auction industry, and the pawnbroker. All powers and duties relating to used car dealers which are not specifically reserved to the board shall be assigned to the used car division. The used car division shall elect one of its members to serve as chairperson of the division for a period of one year.

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

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

### **SECTION 33.**

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

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

#### **SECTION 34.**

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

"(9) Any transaction involving the Public Service Commission's employment of any state employee who has any particular expertise or knowledge which may be of assistance to the Georgia Public Service Commission in fulfilling its duties and responsibilities under Title 46. The terms and conditions of such employment shall be solely determined by the Georgia Public Service Commission; but, in any event, the employee may not provide services to the Georgia Public Service Commission during such times as he or she is regularly scheduled to be at his or her primary place of employment unless the employee has received permission to do so from his or her regular employer or unless the employee is on annual leave or leave without pay;"

#### **SECTION 35.**

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

"46-2-23.1.

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

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

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

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

- (1) Is designed to and is likely to produce lower prices for consumers of natural gas in Georgia;
  - (2) Will provide incentives for the gas company to lower its costs and rates;
  - (3) Will provide incentives to improve the efficiency and productivity of the gas company;
  - (4) Will foster the long-term provision of natural gas service in a manner that will improve the quality and choices of service;
  - (5) Is consistent with maintenance and enhancement of safe, adequate, and reliable service and will maintain or improve preexisting service quality and consumer protection safeguards;
  - (6) Will not result in cross-subsidization among or between groups of gas company customers;
  - (7) Will not result in cross-subsidization among or between the portion of the gas company's business or operations subject to the alternative form of regulation and any unregulated portion of the business or operations of the gas company or of any of its affiliates;
  - (8) Will reduce regulatory delay and cost; and
  - (9) Will tend to enhance economic activity in the affected service territory.
- (d) Performance based regulation adopted by the commission as an alternative form of regulation shall provide for the following:
- (1) Equal and symmetric opportunities to earn above and below the performance standard;
  - (2) Performance incentives based upon conditions within the control of the management of the gas company; and
  - (3) Adjustments from time to time for the net effect of changes in tax rates, other costs imposed by law, and the cost of capital.
- (e) Where an application for an alternative form of regulation has been filed by a gas company and the commission determines that the proposal does not satisfy the requirements of this Code section, it may either reject the proposal or issue an order approving an alternative with such modifications as the commission deems necessary to satisfy the requirements of this Code section. The commission shall determine and prescribe in any such order establishing rates and charges the revenue requirements of the gas company filing the application.
- (f) An order adopting an alternative form of regulation may include:

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

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

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

(3) Any gas company which engages in a transaction of a type described in paragraph (1) of this subsection, which results in the allocation to the gas company of a share of the revenues or net margin therefrom, shall make a report to the commission annually describing each such transaction and explaining the benefits resulting to firm retail customers from each such transaction. "

### **SECTION 36.**

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

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

### **SECTION 37.**

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

"46-4-155.

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

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

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

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

(c) An electing distribution company shall offer each type of customer service to marketers at rates and on terms approved by the commission in accordance with this article and Code

Section 46-2-23.1 until such time as the commission determines that marketers have reasonably available alternatives to purchasing such service from the electing distribution company. The commission shall make a separate determination for each type of service. In making such determinations, the commission shall consider the following factors:

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

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

- (1) Offer interruptible distribution service and balancing services at rates and on terms approved by the commission in accordance with the provisions of this article and Code Section 46-2-23.1 to retail customers and marketers, subject to the rules, regulations, and general terms and conditions of the electing distribution company as approved by the commission;
- (2) Offer firm distribution service at rates and on terms approved by the commission in accordance with the provisions of this article and Code Section 46-2-23.1 to retail customers and marketers, subject to the rules, regulations, and general terms and conditions of the electing distribution company as approved by the commission; and
- (3) Offer in conjunction with such firm distribution service a commodity sales service; provided, however, that the rates for such commodity sales service shall be established pursuant to the provisions of Code Section 46-2-26.5, relating to the filing and adoption of a gas supply plan; and provided, further, that the rates for such commodity sales service shall not be subject to the provisions of Code Section 46-2-26.5 nor subject to the approval of the commission if at least five marketers, excluding any marketer which is an affiliate of the electing distribution company, have been granted certificates of authority to serve in the delivery group.

(e)(1) As used in this subsection, the term 'interstate capacity assets' means interstate transportation and out-of-state gas storage capacity.

(2) If, pursuant to the provisions of this article, the rates for commodity sales service of an electing distribution company within a delivery group or groups become no longer subject to the approval of the commission nor to the provisions of Code Section 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible



for acquiring and contracting for the interstate capacity assets necessary for gas to be made available on its system, whether directly or by assignment to marketers, for firm distribution service to retail customers within such delivery group or groups unless determined otherwise by the commission in accordance with this subsection.

(3) At least every third year following the date when the rates for commodity sales service within a delivery group or groups become no longer subject to commission approval nor to the provisions of Code Section 46-2-26.5, the electing distribution company shall file, on or before August 1 of such year, a capacity supply plan which designates the array of available interstate capacity assets selected by the electing distribution company for the purpose of making gas available on its system for firm distribution service to retail customers in such delivery group or groups.

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

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

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

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

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

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

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

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

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

(9) All commission orders issued pursuant to this subsection shall contain the commission's findings of fact and conclusions of law upon which the commission's action is based. Any such order shall be deemed a final order subject to judicial review under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

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

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

(12) After an electing distribution company has no obligation to provide commodity sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and upon the petition of any interested person and after notice and opportunity for hearing afforded to the electing distribution company, all parties to the most current proceeding establishing a capacity supply plan for such electing distribution company, all marketers who have been issued a certificate of authority pursuant to Code Section 46-4-153, and all owners or operators of interstate gas pipelines that are a part of said capacity supply plan, the commission may issue an order eliminating the responsibility of the electing distribution company for acquiring and contracting for interstate capacity assets necessary

for gas to be made available on its system as well as the obligation of such electing distribution company to file any further capacity supply plans with the commission pursuant to the provisions of this subsection, if the commission determines that:

- (A) Marketers can and will secure adequate and reliable interstate capacity assets necessary to make gas available on the system of the electing distribution company for service to firm retail customers;
- (B) Adequate, reliable, and economical interstate capacity assets will not be diverted from use for service to retail customers in Georgia;
- (C) There is a competitive, highly flexible, and reasonably accessible market for interstate capacity assets for service to retail customers in Georgia;
- (D) Elimination of such responsibility on the part of the electing distribution company would not adversely affect competition for natural gas service to retail customers in Georgia; and
- (E) Elimination of such responsibility on the part of the electing distribution company is otherwise in the public interest.

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

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

(14) Any order eliminating the responsibility of the electing distribution company for acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this

subsection and any plan for assignment of interstate capacity assets pursuant to paragraph (13) of this subsection shall, at a minimum, ensure that:

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

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

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

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

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

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

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

### **SECTION 38.**

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

"46-4-158.2.

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

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

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

(3) The consumer shall have a right to contact the commission if he or she is not satisfied with the response of the marketer;

- (4) Marketers shall provide all consumers with a three-day right of rescission following the receipt of the disclosure statement, which shall be provided to consumers at times specified in rules and regulations of the commission. Consumers may cancel an agreement in writing or electronically by contacting the marketer;
- (5) Whenever a marketer offers a fixed term agreement and the expiration date of such agreement is approaching, or whenever a marketer proposes to change its terms of service under any type of agreement, the marketer shall provide written notification to the natural gas consumer, clearly explaining the consumer's options at that point, including, but not limited to, the option to seek another marketer;
- (6) A marketer shall not charge cancellation fees to a low-income residential consumer seeking service for the first time from the regulated provider;
- (7) Gas service to a consumer shall be disconnected only for failure to pay for service from the consumer's current marketer. A marketer may not request disconnection of service for nonpayment of a bill which was not sent to the consumer in a timely manner. Every marketer shall be required to offer at least one reasonable payment arrangement in writing to a consumer prior to requesting that such consumer be disconnected for failure to pay. Disconnection of service to a consumer is authorized no earlier than 15 days after a notice that service will be disconnected;
- (8) Marketers shall be prohibited from sending estimated bills to natural gas consumers; provided, however, that when information from actual meter readings is not made available by the electing distribution company or any other party authorized to perform meter reading, marketers may send an estimated bill for not more than two consecutive months; and
- (9) No marketer shall be authorized to prevent a consumer from obtaining distribution and commodity sales service from another marketer or provider."

### **SECTION 39.**

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

"46-4-158.3.

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

- (1) A disclosure statement shall be provided to consumers in an understandable format that enables such consumers to compare prices and services on a uniform basis. Rules

adopted by the commission shall provide when disclosure statements shall be provided to consumers. Such disclosure statements shall include, but shall not be limited to, the following:

(A) For fixed rate charges for natural gas service, a clear disclosure of the components of the fixed rate, the actual prices charged by the marketer, presented in a single standard pricing unit which includes any charges imposed by the marketer or its agent, so that the consumer can compare rates among marketers. This disclosure shall not include state and local sales taxes. The standard pricing disclosure unit must include all recurring monthly charges;

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

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

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

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

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

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

(H) A statement of the natural gas consumer's right to contact the commission if he or she is not satisfied with the response of the marketer, including the local and toll-free telephone numbers of these agencies;

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

(J) The following statement:

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

(K) The following statement:

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

(L) A statement setting forth the requirements of paragraphs (6) through (9) of Code Section 46-4-158.2; and

(M) A statement that deposits shall not exceed \$150.00; and

(2) Natural gas consumers' bills shall be accurate and understandable and shall contain sufficient information for a consumer to compute and compare the total cost of competitive retail natural gas services. Such bills shall include, but not be limited to, the following:

(A) The consumer's name, billing address, service address, and natural gas company account number;

(B) The dates of service covered by the bill, an itemization of each type of competitive natural gas service covered by the bill, any related billing components, the charge for each type of natural gas service, and any other information the consumer would need to recalculate the bill for accuracy;

(C) The applicable billing determinants, including beginning meter reading, ending meter reading, multipliers, and any other consumption adjustments;

(D) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the consumer's account during the current period, any late payment charges or gross and net charges, if applicable, and the total amount due and payable;

(E) The due date for payment to keep the account current;

(F) The current balance of the account, if the natural gas consumer is billed according to a budget plan;

(G) Options and instructions on how the natural gas consumer can make a payment;

(H) A toll-free or local telephone number and address for consumer billing questions or complaints for any retail natural gas company whose charges appear on the bill;

(I) The applicable electing distribution company's 24 hour local or toll-free telephone number for reporting service emergencies; and

(J) An explanation of any codes and abbreviations used."

## SECTION 40.

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

"46-4-160.

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

- (1) Adopt reasonable rules and regulations governing the certification of a marketer;
- (2) Grant, modify, impose conditions upon, or revoke a certificate;
- (3) Adopt reasonable rules governing service quality. In promulgating consumer protection rules under this article, the commission shall, to the extent practicable, provide for rules with a self-executing mechanism to resolve such complaints in a timely manner. Such consumer protection rules shall encourage marketers to resolve complaints without recourse to the commission and shall expedite the handling of those complaints that do require action by the commission by providing for a minimum payment of \$100.00 to the consumer, plus penalties and fines as determined by the commission, for violations of such rules;
- (4) Resolve complaints against a marketer regarding that marketer's service;
- (5) Adopt reasonable rules and regulations relating to billing practices of marketers and information required on customers' bills. The commission shall require at a minimum that bills specify the gas consumption amount, price per therm, distribution charges, and any service charges. The commission shall prescribe performance standards for marketer billing relating to accuracy and timeliness of customer bills;
- (6) Adopt reasonable rules and regulations relating to minimum resources which marketers are required to have in this state for customer service purposes. The rules and regulations shall require a marketer to have and maintain the ability to process cash payments from customers in this state. The rules and regulations shall provide procedures relating to the handling and disposition of customer complaints; and
- (7) Adopt reasonable rules and regulations requiring marketers to provide notification to retail customers of or include with customer bills information relating to where customers may obtain pricing information relative to gas marketers.

(b) Prior to the determination by the commission pursuant to Code Section 46-4-156 that adequate market conditions exist within a delivery group, each marketer must separately state on its bills to retail customers within the delivery group the charges for firm distribution service and for commodity sales.

(c) Except as otherwise provided by this article, the price at which a marketer sells gas shall not be regulated by the commission.



(d) The commission shall have access to the books and records of marketers as may be necessary to ensure compliance with the provisions of this article and with the commission's rules and regulations promulgated under this article.

(e) Except as otherwise provided in this article, certification of a person as a marketer by the commission pursuant to Code Section 46-4-153 does not subject the person to the jurisdiction of the commission under this title, including without limitation the provisions of Article 2 of Chapter 2 of this title.

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

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

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

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

(j) As used in this subsection, the phrase 'terms and conditions' does not include price. At least 30 days prior to the effective date of any changes in the terms and conditions for service authorized by the marketer's certificate of authority, a marketer shall file such changes with the commission. Such changes to the terms and conditions of service shall go into effect on the effective date proposed by the marketer; provided, however, that the

commission shall be authorized to suspend the effective date of the proposed changes for up to 90 days if it appears to the commission that the proposed terms and conditions are unconscionable or are unfair, deceptive, misleading, or confusing to consumers. If the commission does not issue a final decision on the proposed terms and conditions of service within the 90 day suspension period, the proposed changes shall be deemed approved.

(k) Any consumer determined by the commission to be the victim of slamming shall be able to switch back to his or her desired marketer without any charge. No marketer responsible for slamming a consumer shall be entitled to any remuneration for services provided to that customer, and any refund owed to such a consumer by the marketer who switched the consumer without his or her consent shall be paid within 30 days of the date the commission determined the consumer was a victim of slamming. No marketer responsible for slamming a consumer who is determined to be a victim of slamming shall report to a credit reporting agency any moneys owed by such a consumer to such marketer; any marketer who violates the prohibition set out in this sentence shall be required by the commission to pay such a consumer \$1,000.00 for each such prohibited report."

#### **SECTION 41.**

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

"46-4-160.5.

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

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

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

## SECTION 42.

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

"46-4A-4.

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

(1) To adopt, modify, repeal, and promulgate, after consultation with all affected parties and due notice and public hearings held in accordance with and established pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' rules and regulations for the establishment and implementation of the Residential Conservation Service program. The initial proposed regulations shall be based upon the state plan for the Residential Conservation Service as approved by the United States Department of Energy and shall include provisions for:

- (A) Identification of covered utilities;
- (B) Utility responsibilities, such as:
  - (i) Providing program information for customers;
  - (ii) Performance of on-site energy audits;
  - (iii) Arranging financing and installation;
  - (iv) Distribution of lists of contractors, suppliers, and lenders;
  - (v) Conducting inspections of installed measures;
  - (vi) Determining qualifications of auditors and inspectors; and
  - (vii) Establishing record keeping, financial accounting, and reporting requirements;
- (C) Development and maintenance of master records of contractors, suppliers, and lenders;
- (D) Consumer complaint mechanisms;
- (E) Utility supply, installation, and financing of energy products;
- (F) Coordination with affected agencies, especially the commission and the office of the Attorney General;
- (G) Compliance and enforcement procedures; and
- (H) Other program elements required by federal law;

(2) To administer and enforce this chapter and all rules and regulations and orders promulgated hereunder;

(3) To receive and administer any federal funding available for the purposes of this chapter; and

(4) To amend the regulations promulgated under this chapter to conform to any future changes in the federal law and regulations governing the program."

### **SECTION 43.**

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

"46-4A-12.

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

- (1) On the activities of any privately or publicly owned utility which is not a covered utility;
- (2) On the activities of covered utilities, when such activities are not subject to this chapter;
- (3) On the activities of contractors, suppliers, or lenders, when such activities are not subject to this chapter;
- (4) On the activities of the Division of Energy Resources of the Georgia Environmental Finance Authority in the enforcement or administration of any program or provision of law; and
- (5) On the power of any state or local agency in the enforcement or administration of any provision of law it is specifically permitted or required to enforce or administer, including, but not limited to, the Public Service Commission, the office of the Attorney General, and the Construction Industry Licensing Board."

### **SECTION 44.**

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

"46-5-27.

(a) The General Assembly finds that:

- (1) The use of the telephone to market goods and services is pervasive now due to the increased use of cost-effective telemarketing techniques;
- (2) Over 30,000 businesses actively telemarket goods and services to business and residential customers;
- (3) Every day, over 300,000 solicitors place calls to more than 18 million Americans, including citizens of this state;
- (4) Telemarketing, however, can be an intrusive and relentless invasion of the privacy and peacefulness of individuals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (3) No later than January 1, 1999, the commission shall promulgate regulations which:
- (A) Require each local exchange company to inform its residential, mobile, or wireless subscribers of the opportunity to provide notification to the commission or its contractor that such subscriber objects to receiving telephone solicitations;
  - (B) Specify the methods by which each residential, mobile, or wireless subscriber may give notice to the commission or its contractor of his or her objection to receiving such solicitations and methods for revocation of such notice;
  - (C) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;
  - (D) Specify the methods by which such objections and revocations shall be collected and added to the data base;
  - (E) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base as required to avoid calling the telephone numbers of residential, mobile, or wireless subscribers included in the data base; and
  - (F) Specify such other matters relating to the data base that the commission deems desirable.
- (4) If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications Commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the commission shall include the part of such single national data base that relates to Georgia in the data base established under this Code section.
- (e) The commission may provide by rule or regulation for administrative fees to be imposed upon:
- (1) A residential, mobile, or wireless subscriber for each notice of inclusion in the data base established under this Code section; provided, however, that the commission shall not set this fee in an amount greater than \$5.00; and
  - (2) A person or entity desiring to make telephone solicitations for access to or for electronic copies of the data base established under this Code section.
- (f)(1) Information contained in the data base established under this Code section shall be used only for the purpose of compliance with this Code section or in a proceeding or action under subsection (h) or (i) of this Code section. Such information shall not be subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50.
- (2) No person shall knowingly compile or disseminate or compile and disseminate information obtained from the data base for any reason other than those legitimate purposes established by law. Any person found guilty of violating this subsection shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed

\$1,000.00. Each instance of an unauthorized disclosure of information from the data base shall constitute a separate offense.

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

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

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

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

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

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

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

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

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

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

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

#### **SECTION 45.**

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

#### **SECTION 46.**

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

#### **"ARTICLE 4**

51-12-70.

As used in this article, the term:

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

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

(3) 'Applicable law' means:

(A) The federal laws of the United States;

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

(C) The laws of any other jurisdiction:

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

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

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

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present using the most recently



published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(5) 'Interested parties' means, with respect to any structured settlement agreement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement.

(6) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(7) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code, United States Code Title 26.

(8) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement.

(9) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

(10) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments.

(11) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(12) 'Structured settlement payment rights' means rights to receive periodic payments (including lump sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

(A) The payee or any other interested party is domiciled in this state;

(B) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(C) The settled claim was pending before the courts of this state when the parties entered into the structured settlement agreement.

(13) 'Terms of the structured settlement' includes, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement.

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

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

(B) Any testamentary disposition by the payee.

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

51-12-71.

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

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

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

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

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

(B) The aggregate amount of such payments;

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

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

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

(F) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in subparagraph (E) of this paragraph;

- (G) The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and
- (H) The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (4) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of the notice with the court.
- (b) At least 20 days before the hearing which is scheduled on an application for authorizing a transfer of structured settlement payment rights under this Code section, the transferee shall file with the court and deliver to all interested parties a notice of the proposed transfer and the application for its authorization. The notice shall include the following:
- (1) A copy of the transferee's application to the court;
  - (2) A copy of the transfer agreement;
  - (3) A copy of the disclosure statement required under paragraph (3) of subsection (a) of this Code section;
  - (4) Notification that an interested party may support, oppose, or otherwise respond to the transferee's application, either in person or through counsel, by participating in the hearing or by submitting written comments to the court; and
  - (5) A rule nisi containing notification of the time and place of the hearing and notification of the manner in and the time by which any written response to the application must be filed in order to be considered by the court. A written response shall be filed within 15 days after service of the transferee's notice.
- (c) Delivery of notice as required by subsection (b) of this Code section may be made as provided in Code Section 9-11-4 or by registered or certified mail, return receipt requested. Notice by registered or certified mail is effective upon the date of delivery as shown on the return receipt. If notice by registered or certified mail is refused or returned undelivered, notice shall be delivered as provided in Code Section 9-11-4.
- (d) The venue for any application brought under this Code section shall be in the county in which any transferee or transferor resides or in any county in which any of the transferees or transferors have consented to venue.

51-12-72.

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

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

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

**'NOTICE OF CANCELLATION RIGHTS:**

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

This cancellation right cannot be waived in any manner.

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

---

Address to which cancellation is to be returned.

---

I (we) hereby cancel this transaction.

---

Payee's Signature

---

Date

51-12-73.

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

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

51-12-74.

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

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

51-12-75.

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

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

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

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

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

51-12-76.

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

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

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

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

51-12-77.

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

#### **SECTION 47.**

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