Hugh Wood

WWW.WOODANDMEREDITH.COM

SATURDAY, JUNE 12, 2010

The FBTA does Not Apply to Georgia Law Firms

Hugh Wood, Atlanta, GA

The Georgia Supreme Court ruled that the Georgia Fair Business Practices Act [FBPA] does not apply to Georgia lawyers.

ABOUT ME

HUGH WOOD
ATLANTA, GA, UNITED STATES

Lawyer: Complex Civil Litigation; Real Estate Litigation; Probate Tax Sales; Title Ins. for Tax Sale Property; Litigation: Georgia :: WebSite: www.woodandmeredith.com :: Phone : 404-633-4100 Email: hwood@woodandmeredith.com twitter: USALawyer_ Have a Question?: Email me.

VIEW MY COMPLETE PROFILE

BLOG ARCHIVE

▼ 2010 (11)

► December (3)

► November (2)
► September (1)
▼ June (3)
The FBTA does Not Apply to Georgia Law Firms
SPEEDY APPELLATE RECORDS
TILA Penalties for Failure to Record Assignments
► May (2)
► 2009 (30)
► 2008 (42)

The Governor's Office of Consumer Affairs [OCA] has always stated that it will pursue Fair Business Practices Act [FBPA] violations that fall within the following parameters: "This law applies to consumer transactions involving the sale, lease or rental of goods, services or property mainly for personal, family or household purposes. The Governor's Office of Consumer Affairs (OCA) will pursue a case of this nature whenever the Administrator determines there is a substantial public interest." [1]

Notwithstanding that broad language, the Georgia Supreme Court recently held that the FBPA does not apply to lawyers or the practice of law (in part, because it is an attempt by the executive and legislative branch to regulate the practice of law – a domain controlled by the Supreme Court). [2]

The case arose as follows: (Paraphrased) After receiving complaints alleging abusive debt collection practices, the Governor's OCA issued an investigative demand to Frederick J. Hanna & Associates, P.C., which is a law firm that seeks to collect debts on behalf of creditors. When [Hanna] refused to comply with the demand, the Governor's Office filed an application for an order compelling compliance. The trial court denied the application, concluding that, because Hanna's day-to-day operation directly involved the practice of law. Because the investigative demand directly impacted Hanna's practice of law, that demand was an attempt by Executive Branch [The Governor's Office] to regulate the practice of law and constituted an impermissible interference by the executive branch into the exclusive jurisdiction of the Supreme Court in violation of the separation of powers doctrine. *Hanna*, Supra, at ¶¶s 1 and 2.

The OCA appealed from that Order.

The Georgia Supreme Court held:

[W]e hold that the representation of clients by a law firm does not come within the FBPA even if certain services were provided by non-lawyers within the firm and could have been offered by a company without any attorneys. If Appellee's employees

engaged in wrongful conduct against debtors, the remedy must be found outside the FBPA. See Heintz v. Jenkins, 514 U.S. 291 (115 S.C. 1489, 131 L.Ed.2d 395) (1995) (federal Fair Debt Collection Practices Act (FDCPA) applies even to lawyers regularly engaged in collecting consumer debt through litigation); Rules of Professional Conduct 5.3 (responsibilities regarding non-lawyer assistants), 5.7 (responsibilities regarding law-related services). Hanna, at ¶ 4.

This resticitive language in Georgia seems to run, on the state level, in the opposite direction from the recent United States Supreme Court opinion in *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA, et al.*, 559 U.S. ___, ____ S.Ct._____,_____L.Ed._____ (April 21, 2010) (Appeal No. 08-1200). But, it is a Georgia, not a federal, statute.

Go figure.

Hugh Wood, Esq.
Wood & Meredith, LLP
3756 LaVista Road
Suite 250
Atlanta (Tucker), GA 30084

www.woodandmeredith.com
hwood@woodandmeredith.com
www.hughwood.blogspot.com
Phone: 404-633-4100
Fax: 404-633-0068

The FBPA is reproduced at the end of the endnotes.

& & &

[1]

http://www.georgia.gov/00/channel_createdate/0,2095,5426814_38690666,00.html

[2]

State of Georgia Ex Rel. Joseph B. Doyle, v. Frederick J. Hanna & Associates, P.C., ___ Ga. ____, ____ S.E.2d.____, 2010 WL 2243255 (Ga). (Georgia Supreme Court, June 7, 2010) (Appeal No. S10A0397).

CARLEY, Presiding Justice.
Joseph B. Doyle is the Administrator of the Fair Business Practices Act of 1975 (FBPA), OCGA §10-1-390 et seq., which he enforces through the Governor's Office of Consumer Affairs (OCA). After receiving complaints alleging abusive debt collection practices, the Administrator issued an investigative demand to Frederick J. Hanna & Associates, P.C. (Appellee), which is a law firm that seeks to collect debts on behalf of creditors.
When Appellee refused to comply with the demand, Appellant State of Georgia ex rel. Doyle filed an application for an order compelling compliance therewith. The trial court denied the application, concluding that, because Appellee's day-to-day operation directly involves the practice of law, and because the investigative demand directly impacts Appellee's practice of law, that demand is an attempt by Appellant and the OCA to regulate the practice of law and constitutes an impermissible interference by the executive branch into the exclusive jurisdiction of this Court in violation of the separation of powers doctrine. Appellant appeals from this order.
1. Appellant contends that it was unnecessary for the trial court to reach the merits of Appellee's arguments that Appellant was not authorized to regulate the practice of law. Citing cases such as Securities and Exchange Comm. v. Brigadoon Scotch Distrib. Co., 480 F.2d 1047, 1052-1053 (II) (2nd Cir. 1973) and BankWest v. Oxendine, 266 Ga.App. 771, 774 (1) (598 S.E.2d 343) (2004) (citing Brigadoon), Appellant argues that an agency's investigative authority is broader than its enforcement authority and that it may investigate simply to determine whether certain activities come within its regulatory authority.
However, the FBPA specifically provides that any person to whom an investigative demand or subpoena is issued may object to it "on grounds that it fails to comply with [the FBPA] or upon any constitutional or other legal right or privilege of such person." OCGA §10-1-404 (b). Therefore, "the kind of [investigative]

> authority that existed in the cases cited by [Appellant] is lacking, and thus the policy against interfering with administrative investigations must give way." Federal Trade Comm. v. Miller, 549 F.2d 452, 462 (III) (7th Cir. 1977) (distinguishing Brigadoon). Accordingly, the distinction drawn by the dissent (p. 10) between investigation under the FBPA and the availability of its remedies is not viable under Georgia law, and we now turn to the merits.
>
> 2. Some state courts have interpreted consumer protection statutes "as providing an exemption for conduct within the actual practice of law or medicine, but not for commercial or entrepreneurial activities of a physician or an attorney." Lori J. Parker, Proof of a Claim Involving Alleged Violation of State Consumer Portection or Similar Statute Against Physician or Attorney, 79 AmJur Proof of Facts 3d 199, § 1 (2004). See also Mary Dee Pridgen, Consumer Protection and the Law § 4:36. In 2005, we joined those courts with respect to the practice of medicine, concluding
>
> that their reasoning is equally applicable to claims under the Georgia FBPA. . . . "[T]he touchstone for a legally sufficient (FBPA) claim against a health care provider is an allegation that an entrepreneurial or business aspect of the provision of services aside from medical competence is implicated, or aside from medical malpractice based on the adequacy of staffing, training, equipment or support personnel. . . ." [Cit.]
>
> Henderson v. Gandy, 280 Ga. 95, 98 (623 S.E.2d 465) (2005). Like comparable statutes in other jurisdictions, the FBPA
>
> contains no language expressly excluding or including the legal profession within its ambit. Despite the absence of such language, there appears to be little dispute among the decisions addressing this issue that consumer protection statutes do not apply to claims arising out of the "actual practice of law."
>
> Cripe v. Leiter, 703 N.E.2d 100, 105 (Ill. 1998). See also Beyers v. Richmond, 937 A.2d 1082, 1086 (a) (Pa. 2007).
>
> The foreign case on which Appellant most heavily relies is Heslin v. Conn. Law Clinic of Trantolo and Trantolo, 461 A.2d 938 (Conn. 1983). However, that case was subsequently distinguished by Haynes v. Yale-New Haven Hosp., 699 A.2d 964, 973 (II) (Conn. 1997). Haynes is the very case on which we primarily relied and the rationale of which we expressly adopted in Henderson v. Gandy, supra at 97, 98. In accordance therewith, we hold that, [a]lthough physicians and other health care providers are subject to [the FBPA], only the entrepreneurial or commercial aspects of the profession are covered, just as only the entrepreneurial aspects of the practice of law are covered by [the FBPA]. . . . "[I]t is important not to 'interfere with the attorney's primary duty of robust representation of the interests of his or her client.' [Cit.] . . . The noncommercial aspects of lawyering–that is, the representation of the client in a legal capacity–should be excluded for public policy reasons. [Cit.]" [Cit.]

Haynes v. Yale-New Haven Hosp., supra at 972-973 (II). Moreover, "'no statute is controlling as to the civil regulation of the practice of law in this state. Only this Court has the inherent power to govern the practice of law in Georgia.'" GRECAA v. Omni Title Services, 277 Ga. 312, 313 (2) (588 S.E.2d 709) (2003). In the exercise of that power, we administer the Rules of Professional Conduct, which constitute

a comprehensive regulatory scheme governing attorney conduct. . . . [The FBPA does] not . . . specify that it intended the Act's provisions to apply to the conduct of attorneys in relation to their clients. Given this [C]ourt's role in that arena, we find that, had the legislature intended the Act to apply in this manner, it would have stated that intention with specificity. [Cit.] Absent a clear indication by the legislature, we will not conclude that the legislature intended to regulate attorney-client relationships through the [FBPA].

Cripe v. Leiter, supra at 105-106. Compare OCGA § 10-1-427 (explicitly regulating the false advertising of legal services).

3. The Court of Appeals has held that the FBPA is applicable to the collection of a debt by a collection agency. 1st Nationwide Collection Agency v. Werner, 288 Ga.App. 457, 458 (1) (654 S.E.2d 428) (2007). However, the trial court was authorized to find that Appellee is a law firm whose day-to-day operations require licensed, practicing attorneys. The issue in this case is not whether the FBPA applies to a law firm's own commercial or entrepreneurial activity when, for example, it attempts to collect fees from a client. Instead, this case involves Appellee's attempt[s] to collect moneys that were owed to [its] clients. In doing so [it was] rendering a professional service that is often carried out by law firms or attorneys. . . . [Indeed,] [d]ebt collection . . . is a necessary part of the practice of debtor-creditor law. Because [Appellee was] engaged in that very practice here, [it was] rendering a professional legal service. Accordingly, [its] acts fall within the learned profession exemption.

Reid v. Ayers, 531 S.E.2d 231, 235-236 (N.C. App. 2000) (although the consumer protection statute there contained a learned profession exemption in general terms, the court noted, consistent with Henderson and other jurisdictions, that the exemption would not apply to entrepreneurial aspects of legal practice, citing a case relied on by Cripe from a jurisdiction without any express exemption for learned professionals). The nature of such representation of clients in a legal capacity is not destroyed by the utilization of "'staffing, training, equipment or support personnel.'" Henderson v. Gandy, supra at 98. Indeed, the manner in which such support is used and managed in the representation of clients is part of the actual practice of law and, therefore, does not involve the entrepreneurial or commercial aspects of professional practice within the contemplation of the FBPA. See Henderson v. Gandy, supra at 99.

Accordingly, we hold that the representation of clients by a law firm does not come within the FBPA even if certain services were provided by non-lawyers within the firm and could have been offered by a company without any attorneys. If Appellee's employees engaged in wrongful conduct against debtors, the remedy must be found outside the FBPA. See Heintz v. Jenkins, 514 U.S. 291 (115 S.C. 1489, 131 L.Ed.2d 395) (1995) (federal Fair Debt Collection Practices Act (FDCPA) applies even to lawyers regularly engaged in collecting consumer debt through litigation); Rules of Professional Conduct 5.3 (responsibilities regarding non-lawyer assistants), 5.7 (responsibilities regarding law-related services). Like the dissent, we recognize that the debt collection practices of attorneys "would be subject to investigation by the Federal Trade Commission, the regulatory entity responsible for enforcement of the FDCPA. [Cit.]" (Dissent, p. 13) As a result, the State Bar is not the sole entity authorized to investigate a lawyer for engaging in unfair debt collection practices.

Contrary to the dissent, OCGA § 10-1-391 (b) does not constitute a "legislative mandate" for consistent interpretation of the FBPA and the Federal Trade Commission Act (FTCA) such that an attorney who violates the FTCA has also violated the FBPA. Consistent construction of these federal and state laws must take into account the differences between the statutory schemes. Agnew v. Great Atlantic & Pacific Tea Co., 232 Ga.App. 708, 711 (2) (502 S.E.2d 735) (1998) (causation and injury are required elements under the FBPA, but not under the FTCA). The application of the FTCA to attorneys collecting consumer debt is by way of the FDCPA, a separate act which expressly addresses debt collection and applies to attorneys only because of the repeal of a prior exemption for them. Heintz v. Jenkins, supra at 294-295. Moreover, Congress obviously acts in a different governmental context than does the General Assembly. As already noted, if this state's legislature had intended to regulate the conduct of attorneys in relation to their clients notwithstanding this Court's unique role with respect thereto, one would expect to find a clear and specific provision like the regulation of false advertising of legal services in OCGA § 10-1-427. Cripe v. Leiter, supra.

4. We need not address whether application of the FBPA to the practice of law would violate the constitutional separation of powers doctrine. See Board of Tax Assessors of Columbus v. Tom's Foods, 264 Ga. 309, 310 (444 S.E.2d 771) (1994).

Judgment affirmed.

All the Justices concur, except Hines, Melton, and Nahmias, JJ., who dissent.

MELTON, Justice, dissenting.

Because the FBPA is a law of general application that has nothing to do with impermissibly regulating the practice of law in violation of separation of powers, I must respectfully dissent from the majority's erroneous conclusion that the remedies relating to

Appellee's allegedly abusive debt collection practices "must be found outside the FBPA."Maj. Op. at 6. Investigating violations of the law that happen to involve lawyers does not automatically amount to impermissibly "regulating" the practice of law, as a lawyer who violates the law is just as subject to investigation as any other common offender. See Higgins v. Dept. of Public Safety, 256 Ga. 288 (347 S.E.2d 562) (1986) (attorney given traffic citation for speeding); Smith v. Jefferson County, 201 Ga. 674 (40 S.E.2d 773) (1946) (attorney arrested in connection with helping client erect fence around property that client claimed was hers). See also Midboe v. Commission on Ethics for Pub. Employees, 646 So.2d 351, 359 (La. 1994) ("A person possessing a law license is not exempt from the duties of citizenship or ordinary state laws") (citation omitted), overruled on other grounds, Transit Mgmt. v. Commission on Ethics for Pub. Employees, 703 So.2d 576(La. 1994).

The FBPA is a law of general application that applies to anyone who engages in consumer debt collection practices, and attorneys are not specifically exempted from the statute's application. See OCGA §10-1-391 (FBPA "shall be liberally construed and applied to promote its underlying purposes and policies"); OCGA §10-1-397 (Administrator authorized to issue cease and desist order to "any person [who] is using, has used, or is about to use any method, act, or practice declared . . . to be unlawful [by the FBPA]") (emphasis supplied); OCGA §10-1-396 (no mention of attorneys in exemptions from application of FBPA). See also 1st Nationwide Collection Agency, Inc. v. Werner, 288 Ga.App. 457 (654 S.E.2d 428) (2007) (violations of Federal Fair Debt Collection Practices Act also constitute violations of Georgia's FBPA). In this regard, the Administrator may initiate an investigation when it reasonably appears that any person

has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by [the FBPA] or when [the Administrator] 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 [the FBPA].

OCGA §10-1-403 (a). A lawyer, like any other person engaged in or about to engage in unlawful activity prohibited by the FBPA, would be subject to investigation pursuant to the plain terms of the statute. There is no statutory exemption that would prohibit lawyers from being investigated when they are suspected of being involved in unfair business practices.

In this connection, it cannot be said that a mere investigation into alleged abusive debt collection practices conducted by lawyers would constitute regulating the practice of law in violation of the separation of powers principle. See Heslin v. Connecticut Law Clinic of Trantolo & Trantolo, 461 A.2d 938 (Conn. 1983) (investigative demand provisions of Connecticut Unfair Trade

Practices Act were applicable to attorneys and did not violate separation of powers where no specific exemption for attorneys existed in the statute). Indeed, compliance with the investigative demand here to determine whether or not the FBPA has been violated would not require Appellee to change how it practiced law, impose any additional requirements on Appellee's practice of law, or interfere with any attorney disciplinary proceedings that could be initiated in this case. Even though the the majority purports to side step the issue of separation of powers by claiming that "[w]e need not address whether application of the FBPA to the practice of law would violate the separation of powers doctrine" (Maj. Op. at 6), the majority actually relies on a thinly-veiled separation of powers analysis in reaching its erroneous conclusion that the FBPA can have no application here. See Haynes v. Yale-New Haven Hosp., 699 A.2d 964, 972-973 (II) (relying on separation of powers analysis applicable to legal profession from Heslin, supra, in order to limit application of Connecticut Unfair Trade Practices Act to entrepreneurial or commercial aspects of medical profession); Maj. Op. at 4. As explained more fully below, the majority reaches its erroneous conclusion simply because it misses the point that the FBPA is not being applied to impermissibly regulate the practice of law here, but to sustain an inquiry into potentially abusive consumer debt collection practices that fall squarely within the regulatory scope of the FBPA. See 1st Nationwide Collection Agency, Inc., supra. Because application of the FBPA here has nothing to do with impermissibly regulating the practice of law, and everything to do with regulating a commercial activity that may be properly investigated pursuant to the FBPA, there can be no violation of the separation of powers principle. See Heslin, supra, 461 A.2d at 946-947 (III). In any event,

[w]e need not in this case decide whether every provision of [the FBPA] permits regulation of every aspect of the practice of law by every member of the bar of this state. For now, we need conclude only that [the FBPA's] regulation of "the conduct of any trade or commerce" does not totally exclude all conduct of the profession of law. For the purpose of sustaining an investigatory demand, [the FBPA] applies to the conduct of attorneys.

Id. at 943 (II).

Contrary to the majority's misreading of Henderson v. Gandy, 280 Ga. 95 (623 S.E.2d 465) (2005) and Haynes v. Yale-New Haven Hosp., supra, this Court's decision in Henderson actually compels the result that the activities of Appellee here may be properly investigated by the Administrator. In Henderson, we relied on Haynes, supra, to limit the application of the FBPA to the entrepreneurial or commercial aspects of the medical profession. We did this because "[o]nly when physicians are engaging in the entrepreneurial, commercial, or business aspect of the practice of medicine are they engaged in 'trade or commerce' within the

purview of the [FBPA]." (Citation and punctuation omitted.) Id. at 97. Where, however, the claims involve professional malpractice, we made clear that "[m]edical malpractice claims recast as FBPA claims cannot form the basis for a FBPA violation[, because to] hold otherwise would transform every claim for medical malpractice into a FBPA claim." (Citation and punctuation omitted.) Id. at 98. See also Haynes, supra, 699 A.2d at 972 ("[P]rofessional negligence -- that is, malpractice -- does not fall under [the Connecticut Unfair Trade Practices Act]"). Here, Appellee is directly engaged in trade or commerce regulated by the FBPA by collecting consumer debts from the public. See 1st Nationwide Collection Agency, Inc., supra. We are not applying the FBPA to a private matter between an attorney and his or her client that would "transform [a] claim for [legal] malpractice into a FBPA claim." Henderson, supra, 280 Ga. at 98. Here, we are specifically dealing with commercial debt collection practices aimed at the general public, which fall directly within the purview of the FBPA. 1st Nationwide Collection Agency, Inc., supra, 288 Ga.App. at 459 (1). Thus, the rationale provided in Henderson shows exactly why the attorneys here would be subject to investigation under the FBPA, not why they would not be, as the majority contends. The collection of consumer debts, in and of itself, has nothing to do with the practice of law, as it is simply a commercial activity that any person can perform, and any person who engages in the activity is involved in "trade or commerce" governed by the FBPA. See 1st Nationwide Collection Agency, Inc., supra. Accordingly, to the extent that the attorneys in this case are involved in the debt collection process – again, an activity that anyone can perform – they are engaged in commercial activities that are directly regulated by the FBPA. Whether or not the individuals collecting the debts happen to be lawyers makes no difference, as the FBPA applies directly to the commercial activities involved here and there is no statutory exemption that would prevent the individuals involved from being investigated pursuant to the terms of the statute.[1]

It also makes no difference that Appellee is collecting debts on behalf of clients as part of its law practice, as such law practice simply does not shield Appellee from investigation under the FBPA. Indeed, as explained above, the collection of consumer debts is indisputably a commercial activity that falls within the purview of the FBPA. Further, the focus here is not simply on the rendering of professional legal services, but the manner in which consumer debts are being collected. Just like any other law of general application, the FBPA would subject anyone to investigation who is engaged in unlawful practices with respect to debt collection. Under the majority's analysis, however, any illegal commercial activity taken by a lawyer "on behalf of a client" would not be subject to investigation by any State entity other than the State Bar, even where the relevant State statute that authorizes

such investigation contains no express exemption for lawyers. Such an analysis would be untenable in the context of criminal statutes, and is equally untenable here. For example, as the majority would surely have to concede, a lawyer who punches another person in the face "on behalf of a client" would not be shielded from investigation for criminal battery by claiming that punching people in the face was simply part of the way that he practiced law on behalf of clients. Similarly, an attorney cannot abuse members of the public by engaging in unfair and unlawful debt collection practices and then shield himself from investigation under the FBPA because he was engaging in such unfair practices "on behalf of a client." A lawyer can, and must, practice law without punching people in the face. And a lawyer can, and must, practice law without violating the FBPA by abusing members of the public. The fact that one is practicing law does not place one above it. Midboe, supra, 646 So.2d at 359.

As further evidence that an investigation under the FBPA has nothing to do with impermissibly regulating the practice of law here, an investigation into allegedly unfair debt collection practices does nothing to interfere with the disciplinary authority that lies within the exclusive province of this Court. See, e.g., Scanlon v. State Bar of Georgia, 264 Ga. 251, 252 (1) (443 S.E.2d 830) (1994) ("Matters relating to the practice of law, including the admission of practitioners, their discipline, suspension, and removal, are within the inherent and exclusive power of the Supreme Court of Georgia") (citations and punctuation omitted). Indeed, all of the possible punishments for violations of the Professional Rules of Conduct would be available and uncompromised in any way if an investigation of Appellee's debt collection practices implicated aspects of the professional duties of Appellee's individual lawyer employees. See Ga. State Bar Rule 4-102 (possible discipline for violations of Rules of Professional Conduct includes disbarment, suspension, public reprimand, review panel reprimand, investigative panel reprimand, or formal admonition). Under the majority's analysis, however, the sole type of State investigation against a lawyer for engaging in unfair debt collection practices would be limited to actions by the State Bar to determine whether an attorney should be disbarred, suspended, publicly reprimanded, subjected to a review panel reprimand, subjected to an investigative panel reprimand, or given a formal admonition. Id. Such an investigation and the remedies available following such an investigation have nothing to do with any investigation under the FBPA. Further, the entity responsible for pursuing such an investigation and remedies – the State Bar of Georgia – does not look to the FBPA to determine whether or not individual lawyer misconduct would be subject to attorney discipline. Rather, the State Bar focuses its investigation and enforcement efforts on the lawyer specific Rules of Professional Conduct.

In this sense, even the remedies authorized by the FBPA do not interfere with the potential sanctions that may be imposed for individual lawyer misconduct within Appellee's company. Unlike the lawyer specific Rules of Professional Conduct and the punishments available for violations of them, under the FBPA, the Administrator may (1) issue a cease and desist order prohibiting any unfair practice; (2) impose a civil penalty for those who continue to engage in the prohibited practice; or (3) petition the superior court to enter (a) a temporary restraining order or temporary or permanent injunction, (b) a civil penalty, (c) a declaratory judgment, (d) restitution to any person adversely affected by the defendant's unfair practices, (e) the appointment of a receiver, auditor, or conservator for the defendant or its assets; or (f) other relief as the court deems just and equitable. OCGA §10-1-397 (a). All of these remedies are designed, not to discipline an attorney for the manner in which he or she practices law, but to prevent that individual from engaging in unlawful commercial activities. Indeed, any lawyer could continue to practice law and collect debts on behalf of clients after being subjected to a cease and desist order from the Administrator. That lawyer would just have to start collecting debts in a manner permitted by the FBPA, just like any other person who collected consumer debts.

Individual Bar discipline, on the other hand, could result in the attorney being suspended from the practice of law or disbarred from practicing law entirely (Ga. State Bar Rule 4-102) – leaving the lawyer unable to practice law in any capacity.[2] However, despite the fact that even the remedies available under the FBPA and those available to the State Bar have nothing to do with each other, the majority would not even allow a mere investigation into the alleged unfair debt collection practices of Appellee. This is particularly troubling where the investigation authorized by the FBPA would merely complement, rather than impede, any potential separate investigation by the State Bar that could lead to individual attorney discipline. Instead of allowing an investigation under the FBPA to complement that of the State Bar, however, the majority would choose to insulate lawyers from any FBPA investigation, and accordingly shield them from any remedies that could be pursued by the Administrator – even though such remedies could be pursued entirely separately from any action that the Bar might deem appropriate.

Moreover, the majority's interpretation of the FBPA runs directly contrary to the express legislative intent of the statute. Specifically, OCGA §10-1-391 (b) provides that "[i]t is the intent of the General Assembly that [the FBPA] 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)) [the "FTC Act"], as from time to time amended." The United States Supreme Court and this Court have made clear that the FTC Act

would reach the commercial conduct of professionals such as doctors and dentists. FTC v. Indiana Federation of Dentists, 476 U.S. 447 (106 S.C. 2009, 90 L.Ed.2d 445) (1986) (policy among dentists to refuse to submit x-rays to dental insurers for use in benefits determination constituted an unfair method of competition under the FTC Act); Henderson, supra, 280 Ga. at 99. The FTC Act would logically reach the commercial practices of attorneys as well. See Heslin, supra, 461 A.2d at 942 (II) ("Although the federal courts have not directly addressed the issue of whether the [FTC Act] applies to attorneys, . . .it is reasonable to conclude that the federal courts would construe the FTC Act as applying to attorneys"). As explained above, the collection of consumer debts is a commercial practice, regardless of who is collecting the consumer debts. The FTC Act would apply to such practices. See 15 USC § 1692 (b) ("[A] violation of [the Federal Fair Debt Collection Practices Act] shall be deemed an unfair or deceptive act or practice in violation of [the FTC Act]"). The majority, however, would interpret the FBPA such that the statute would not apply where the FTC Act would, which is directly contrary to the legislative mandate that we interpret the statutes in such a manner that they be consistent with one another. OCGA § 10-1-391 (b).

In this regard, as the majority concedes, the Federal Fair Debt Collection Practices Act (the "FDCPA") applies to the conduct of the attorneys here. Maj. Op. at 6. Heintz v. Jenkins, 514 U.S. 291 (115 S.C. 1489, 131 LE 2d 395) (1995) (FDCPA applies even to lawyers regularly engaged in collecting consumer debt through litigation). This being the case, it must also be said that if the attorneys here have violated the FDCPA then they have also violated the FTC Act. See 15 USC § 1692 (b). See also 1st Nationwide Collection Agency, Inc., supra, 288 Ga.App. at 459 (1) ("[A] violation of the FDCPA is clearly considered a violation of the Federal Trade Commission Act"). The lawyers would also be violating the FBPA, as a "violation of the FDCPA also constitute[s] a violation of [Georgia's] FBPA." 1st Nationwide Collection Agency, Inc., supra, 288 Ga.App. at 459 (1). Based on the violation of federal law, the attorneys would be subject to investigation by the Federal Trade Commission, the regulatory entity responsible for enforcement of the FDCPA. 15 USC § 1692 (a) ("Compliance with [the FDCPA] shall be enforced by the [Federal Trade] Commission"). Based on the violation of the FBPA, the lawyers would be subject to investigation by the Administrator. See OCGA § 10-1-403 (a). Consistent with the federal interpretations given to the FTC Act in relation to professionals, the scope of enforcement given to the FTC in relation to the types of collection practices involved here, and the FBPA's application to these same activities, the Administrator should be free to investigate the debt collection practices being employed by Appellee in this case.

The investigation here is not rooted in legal malpractice. It is being

conducted to root out potential illegal commercial activity that just happens to be conducted by an alleged law firm. Such an investigation is proper pursuant to the terms of the FBPA, and I believe that holding otherwise inappropriately places lawyers above the law by writing an exception into a law of general application that simply does not exist. 'This Court is forbidden from engaging in such an exercise. State v. Fielden, 280 Ga. 444, 448 (629 S.E.2d 252) (2006) ("[U]nder our system of separation of powers this Court does not have the authority to rewrite statutes."). " Davis v. Dunn, 286 Ga. 582n.4 (690 S.E.2d 389) (2010).[3] Indeed,

attorneys are subject to laws other than the Rules of Professional Conduct, and sometimes those laws relate to their actions as attorneys. A person who receives a license to practice law and adheres to the Rules of Professional Conduct is not insulated from other regulations and conditions under which the license may be used. For example, a lawyer's business is affected and limited by local zoning ordinances, yet these regulations do not impede or frustrate this Court's authority over the practice of law. A lawyer who converts and commingles his clients' money may have violated this Court's disciplinary rules but is also subject to the state criminal theft laws. Similarly, an attorney who is a public official or employee is subject to the Rules of Professional Conduct, as well as the ethics code rules which apply to all public servants, as long as the ethics code provisions do not impede or frustrate this Court's authority to regulate the practice of law. (Citation omitted.) Midboe, supra, 646 So.2d at 359. Moreover, the majority's holding runs contrary to the express legislative mandate that Georgia's FBPA be construed consistently with applicable interpretations of federal law. OCGA § 10-1-391 (b). I therefore respectfully dissent.

I am authorized to state that Justice Hines and Justice Nahmias join in this dissent.

Notes:

[1] It is not even clear in this case that the debts involved are being collected by lawyers. Appellee employs approximately four hundred and fifty persons, only ten of whom are lawyers, and the non-attorneys in the business are heavily involved in the initial debt collection process without the involvement of any of the attorneys. In any event, it makes no difference whether or not attorneys are or are not engaged at some point in the process, as the FBPA allows the Administrator to launch an investigation into Appellee's debt collection practices to determine whether or not the law is being violated.

[2]Ironically, however, this suspended or disbarred lawyer would still be able to work as a debt collector.

[3]To reach its intended result, the majority relies on case law from another jurisdiction interpreting an unfair debt collection

statute that contained a "learned profession exemption." See Reid v. Ayers, 531 S.E.2d 231, 235 (N.C. App. 2000). Again, Georgia's FBPA contains no such exemption. The majority's reliance on this foreign case law is therefore inappropriate, as it only serves to impermissibly graft language onto Georgia's FBPA that does not exist.

[3]

CODE OF GEORGIA
Title 10. COMMERCE AND TRADE
Chapter 1. SELLING AND OTHER TRADE PRACTICES
Article 15. DECEPTIVE OR UNFAIR PRACTICES
Part 2. FAIR BUSINESS PRACTICES ACT
Current through the 2010 Legislative Session
§ 10-1-390. Short Title
This part shall be known and may be cited as the "Fair Business Practices Act of 1975."

§ 10-1-391. Purpose And Construction Of Part
(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. Definitions; When Intentional Violation Occurs
(a) As used in this part, the term:
(1) 'Administrator' means the administrator appointed pursuant to subsection (a) of Code Section 10-1-395 or his or her delegate.
(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 Resources.

(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.

(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.

(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.

(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.

(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 administrator 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 administrator 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 administrator.
History. Amended by 2009 Ga. Laws 344, §2, eff. 7/1/2009. Amended by 2001 Ga. Laws 383, §1, eff. 7/1/2001.

§ 10-1-393. Unfair Or Deceptive Practices In Consumer Transactions Unlawful; Examples
(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 publish in any local telephone classified advertising directory any advertisement containing a local telephone number for the business unless the advertisement clearly states the nonlocal location of the business; or
(ii) For any nonlocal business to cause to be listed in any

nonclassified advertising local telephone directory a local telephone number for the business if calls to the number are routinely forwarded or otherwise transferred to the nonlocal business location that is outside the calling area covered by such local telephone directory and the listing fails to state clearly the principal place of business of the nonlocal business.

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

(i) "Local" or "local area" refers to the area in which any particular telephone directory is distributed free of charge to some or all telephone service subscribers.

(ii) "Local telephone classified advertising directory" refers to any telephone classified advertising directory which is distributed free of charge 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.

(iii) "Local telephone number" refers to any telephone number which is not clearly identifiable as a long-distance telephone number and which has a three-number prefix typically used by the local telephone service company for telephones physically located within the local area.

(iv) "Nonclassified advertising local telephone directory" refers to any telephone directory which is distributed free of charge to some or all telephone subscribers in any area of the state and which does not contain classified advertising and includes such directories distributed by telephone service companies as well as such directories distributed by other parties.

(v) "Nonlocal business" refers to 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;

(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, or by periodical. 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 administrator, the sponsor or promoter must within ten days furnish to the administrator 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. The administrator may seek and shall receive the assistance of the prosecuting attorneys of this state in the commencement and prosecution of persons who promote and sponsor promotions which constitute an unlawful lottery;

(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.

_____

Seller's Name

_____

Address to which cancellation is to be mailed

_____

I (we) hereby cancel this transaction.

_____

Buyer's Signature

_____

Buyer's Signature

_____

Date

_____

Printed Name(s) of Buyer(s)

_____

Street Address

_____

City, State, ZIP Code"

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

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

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

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

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

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

amount of any other financial benefits that the debtor will receive;
(ii) This contract shall contain a statement in boldface type which complies substantially with the following:
"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:

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

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

(i) Which are outside the scope of personal care services; and

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

Nothing in this subparagraph prohibits advertising by a personal care home for services authorized by the Department of Community Health under a waiver or variance pursuant to subsection (b) of Code Section 31-2-9 ;

(C) 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.

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 Act.

(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 administrator in consultation with the Department of Community Health; provided, however, that the administrator shall not have any responsibility for matters or functions related to the licensure of home health agencies;

(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" means any unsolicited telephone call or telephone call arising from an unsolicited telephone call.

(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; or

(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.

(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) 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 administrator or administrator's employees. Nothing contained in this subsection shall be construed to prevent the subject of the complaint, or any other person to whom disclosure to the complainant's identity may aid in resolution of the complaint, from being informed of the identity of the complainant, to prohibit any valid discovery under the relevant discovery rules, or to prohibit the lawful subpoena of such information.

History. Amended by 2009 Ga. Laws 102, §1-11, eff. 7/1/2009.
Amended by 2009 Ga. Laws 102, §1-4, eff. 7/1/2009.
Amended by 2009 Ga. Laws 31, §18, eff. 7/1/2009.
Amended by 2005 Ga. Laws 367, §2, eff. 10/1/2005.
Amended by 2005 Ga. Laws 68, §4-2, eff. 7/1/2005.
Amended by 2004 Ga. Laws 451, §1, eff. 7/1/2004.
Amended by 2001 Ga. Laws 2.
Amended by 2001 Ga. Laws 358.

§10-1-393.1. Office Supply Transactions; Solicitations For Telephone Directory Listings

(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. Requirements For Health Spas
(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:

_____
Name of health spa

_____
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 administrator 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 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.

(l)(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 administrator requiring, in addition to whatever other information the administrator may require, as much detail as to the size, facilities, equipment, or services to be provided as the administrator may require;

(B) The health spa has obtained the approval in writing of the administrator 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 administrator, on forms prescribed by the administrator, 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 administrator. The bank or trust company must be approved by the administrator. The administrator 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 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 administrator or for inspection or copying by the administrator's employees upon request;

(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 administrator 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 administrator or in accordance with representations made to membership purchasers. No action may be maintained in any court against the administrator or any of his employees for any determination or as a consequence of any determination made by the administrator under this subparagraph unless the administrator's determination was a willful and wanton abuse of discretion given the facts and circumstances actually provided to the administrator in making this determination;

(F) If the administrator 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 administrator 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 administrator 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 administrator or his designee certifying that a copy of the contract is on file with the administrator and is in compliance with this part. Health spas may begin submitting a copy of their contract for approval by the administrator 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 administrator 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 administrator 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. Prohibited Use Of Purchaser's Credit Card Information By Merchant

(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. Prohibited Pricing Practices During State Of Emergency
(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 as long as such state of emergency exists, to sell or offer for sale at retail any goods or services 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 or installer of lumber, plywood, and other lumber products may increase the price of such products as may be necessary to replenish his or her existing daily stock at current market rates, maintaining the same markup percentage he or she applied prior to the state of emergency.

§ 10-1-393.5. Prohibited Telemarketing, Internet Activities, Or Home Repair
(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.

(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 administrator, and notwithstanding Code Sections 16-11-126, 16-11-128, 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 administrator shall be authorized to promulgate procedural rules relating to his or her enforcement duties under this Code section.

History. Amended by 2004 Ga. Laws 564, §10, eff. 5/13/2004.

§ 10-1-393.6. Unlawful Telemarketing Transactions; Criminal Penalty

(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.
History. Amended by 2004 Ga. Laws 564, §10, eff. 5/13/2004.

§10-1-393.7. Solicitation During Final Illness; Penalty
(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. [Social Security Number Privacy
(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.
History. Added by 2006 Ga. Laws 603, §1, eff. 7/1/2006.

§ 10-1-393.9. Registry of Private Child Support Collectors
(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.
History. Added by 2009 Ga. Laws 344, §3, eff. 7/1/2009.

§ 10-1-393.10. Contracts for Collection of Child Support
(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 Governor's Office of Consumer Affairs.
(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 administrator 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 administrator 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 administrator to not be compliant with the provisions of this Code section, the administrator 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.
History. Added by 2009 Ga. Laws 344, §3, eff. 7/1/2009.

§ 10-1-394. Adoption Of Federal Rules Prohibiting Unfair Or Deceptive Practices; Application Of Chapter 13 Of Title 50
(a) The administrator is 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) Such rules shall be promulgated only when it is determined by the administrator, in the reasonable exercise of his discretion, on the basis of his expertise and facts, submissions, evidence, and all information before him, that such rules are needed to prohibit or control acts or practices which create the probability of actual and substantial injury to consumers. No rule shall be promulgated

where it is reasonably certain that the burden of complying with the rule will outweigh the public interest in prohibiting or controlling the practice which would be so prohibited or controlled. No such rule so promulgated shall be arbitrary or capricious nor shall its promulgation be characterized by an abuse of discretion or an unwarranted exercise of discretion.
(c) Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall apply to the promulgation of rules and regulations by the administrator pursuant to subsection (a) of this Code section and in taking testimony pursuant to Code Sections 10-1-403 and 10-1-404.
(d) The Consumer Advisory Board shall be authorized to ratify or veto rules promulgated by the administrator at its next regular meeting after the rules are promulgated by the administrator under the provisions of Chapter 13 of Title 50.

§ 10-1-395. Appointment And Duties Of Administrator; Consumer Advisory Board; Relations With Other Regulatory Agencies
(a) The administrator shall be appointed by the Governor and shall serve at his pleasure. The office of the administrator shall be attached to the office of the Governor for administrative purposes only. The administrator shall perform all functions formerly performed by the Consumer Services Unit of the Division of Special Programs of the Department of Human Resources (now known as the Department of Human Services) .
(b)(1) A Consumer Advisory Board is created whose duty it shall be to advise and make recommendations to the administrator. The board shall consist of 15 members with the administrator or his designee to serve as the ex officio member. The members of this board shall be appointed by the Governor; 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)(A) On and after July 1, 1983, the Consumer Advisory Board shall consist of 15 members who shall be appointed by the Governor as provided in this paragraph. The initial terms of those members other than the ex officio member shall be as follows: five members shall be appointed to serve for a term ending July 1, 1984; five members shall be appointed to serve for a term ending July 1, 1985; and five members shall be appointed for a term ending July 1, 1986. Thereafter, all members appointed to the board by the Governor 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 Governor shall be for the remainder of the unexpired term of such member.

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

(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 administrator. 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 responsibilities.

(4) The board shall assist the administrator 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.

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

(c) The administrator shall receive all complaints under this part. He 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 administrator of his 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 administrator 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 administrator, shall begin proceedings to revoke such professional license.
(g) The administrator 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 administrator that the exercise of such powers would not be in the public interest.
(h) On December 31 of each year the administrator shall make a written report to the Governor summarizing the types and numbers of complaints received and the dispositions concerning these complaints by his office.
(i) 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.
History. Amended by 2009 Ga. Laws 102, §2-6, eff. 7/1/2009.

§10-1-396. Acts Exempt From Part
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, or radio or television station in the publication or dissemination of an advertisement of or for another person, when the publisher, owner, agent, or employee did not have 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. Authority Of Administrator To Issue Cease And Desist Order Or Impose Civil Penalty; Judicial Relief; Receivers
(a) Whenever it may appear to the administrator that any person is using, has used, or is about to use any method, act, or practice declared by Code Section 10-1-393, 10-1-393.1, 10-1-393.2, 10-1-

393.3, 10-1-393.4, 10_1_393.5, or 10_1_393.6 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, he or she 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; or

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

(2) Without regard as to whether the administrator has issued any orders under this Code section, upon a showing by the administrator 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 administrator, 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 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.

(b) Unless the administrator determines that a person subject to this part designs quickly to depart from this state or to remove his property therefrom or to conceal himself or his property therein or that there is immediate danger of harm to citizens of this state or of another state, he shall, unless he 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 administrator and execute an assurance of voluntary compliance as provided in this part. The determination of the administrator under this subsection shall be final and not subject to judicial review.

(c) With the exception of consent judgments entered before any testimony is taken, a final judgment under this Code section is 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 successors or assigns.

(d) When a receiver is appointed by the court pursuant to this part, he shall have the power to sue for, collect, receive, and take into his 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.

(e)(1) Whenever the administrator 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 administrator may certify to the appropriate local or long distance carrier responsible for billing consumers for the charges that billing for the charges or for certain of the charges should be suspended. The carrier 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 carrier would act to preserve its own assets, provided that the carrier 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 carrier 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 administrator certifies to the carrier that the matter has been resolved. The administrator shall certify to the carrier with reasonable promptness when the matter has been resolved. In this certification the administrator shall advise the carrier 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 carrier 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 carrier to place its own restrictions, guidelines, or criteria, by whatever name denominated, upon the use of such telephone service, provided such restrictions, guidelines, or criteria do not conflict with the provisions of this subsection.
History. Amended by 2001 Ga. Laws 383, §2, eff. 7/1/2001.

§10-1-397.1. [Administrator's Authority To Intervene]
The administrator 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.
History. Added by 2001 Ga. Laws 383, §3, eff. 7/1/2001.

§10-1-398. Stay Of Cease And Desist Order; Hearing
(a) Any person receiving a cease and desist order from the administrator, and who demonstrates in any superior court of competent jurisdiction, after petition to the court and notice to the administrator, 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 administrator 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 administrator. 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 administrator and the person requesting the hearing.
(d) In the case of any hearing conducted under this Code section, the administrator may conduct the hearing or he may appoint a referee to conduct the hearing who shall have the same powers and authority in conducting the hearing as are in this Code section granted to the administrator. The referee shall have been admitted

to the practice of law in this state and possess such additional qualifications as the administrator may require.

(e) The administrator or referee authorized to hold a hearing 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 or the referee.

(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 administrator 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 administrator 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 administrator shall issue a written order which shall:
(1) Set forth his findings with respect to the matters involved; and
(2) Enter an order in accordance with his findings.
(j) The administrator may promulgate such procedural rules and regulations as may be necessary for the effective administration of the authority granted to the administrator under this Code section.

§ 10-1-398.1. Appeal From Order Of Administrator
(a) An appeal may be taken from any order of the administrator resulting from a hearing held in accordance with Code Section 10-1-398 by any person adversely affected thereby to the Superior Court of Fulton County by serving on the administrator, within 20 days after the date of entry of such order, a written notice of appeal, signed by the appellant, stating:
(1) The order from which the appeal is taken; and
(2) The ground upon which a reversal or modification of the order is sought.
(b) The court shall not substitute its judgment for that of the administrator as to the weight of the evidence on questions of fact. The court may affirm the decision of the administrator or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the administrator;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 10-1-399. Civil Or Equitable Remedies By Individuals
(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 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 administrator 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 administrator 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 administrator.

§10-1-400. Limitation On Recovery In Case Of Bona Fide Error

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. Limitation Of Actions; Right To Set Off Damages Or Penalties Not Limited

(a) No 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. Assurances Of Voluntary Compliance

In the administration of this part the administrator 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 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 administrator 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. Investigations; Demands For Evidence

(a) When it reasonably appears to the administrator 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, with the consent of the Attorney General, 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 administrator 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 administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or his representative to examine the matter at the place where it is located. The administrator may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf; and he 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. Administrator's Subpoena And Hearing Powers; Procedural Rules; Court Enforcement Orders; Immunity From Self-incrimination; Confidentiality Of Information

(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 administrator, in addition to other powers conferred upon him by this part, may, with the consent of the Attorney General, 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) Upon failure of a person without lawful excuse to obey an investigative demand or subpoena, the administrator may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the investigative demand or subpoena on grounds that it fails to comply with this part or upon any constitutional or other legal right or privilege of such person.

The court may issue an order modifying or setting aside such demand or subpoena or directing compliance with the original demand or subpoena.
(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 administrator or his employees beyond the extent necessary for the enforcement of this part.
(2) The administrator or his employees shall be authorized to provide to any federal, state, or local law enforcement agency any information acquired under this part which is subpoenaed by such agency. State or local law enforcement agencies shall be authorized to provide any information to the administrator when the administrator issues an investigative demand or subpoena for such information.

§10-1-405. Civil Penalties; Individual Liability
(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 administrator, 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 had actual knowledge 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 administrator shall have the authority to compromise or settle claims for penalty brought under this Code section.

§10-1-406. Duty Of Prosecuting Attorneys
Whenever an investigation has been conducted under this article and such investigation reveals conduct which constitutes a criminal offense, the administrator shall 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. Part Not Exclusive
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.

.
END

POSTED BY HUGH WOOD AT 11:05 AM

LABELS: "HUGH WOOD" FBTA FAIR BUSINESS PRACTICES ACT GEORGIA LAW

0 COMMENTS:

Post a Comment

LINKS TO THIS POST

Create a Link

Newer Post Home Older Post

Subscribe to: Post Comments (Atom)