

O.C.G.A. § 10-1-393.5

Current with Chapters 354 through 374 of the 2024 Regular Session of the General Assembly. The Statutes do not reflect possible future codification directives from the Revisor of Statutes pursuant to Code Section 28-9-5. Additionally, the Statutes may be affected by prior or subsequent legislative enactment, revision, or executive action.

Official Code of Georgia Annotated > TITLE 10 Commerce and Trade (Chs. 1 — 15) > CHAPTER 1 Selling and Other Trade Practices (Arts. 1 — 36) > Article 15 Deceptive or Unfair Practices (Pts. 1 — 9) > PART 2 Fair Business Practices Act (§§ 10-1-390 — 10-1-408)

10-1-393.5. Telemarketing, computer activities, and home repair or improvement work; certain prohibitions; offenses.

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

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

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

(b.1)

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

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

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

- (i) Access to his or her case or charges was restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2, 35-3-37, or 42-8-62.1;
- (ii) Prior to indictment, accusation, or other charging instrument, his or her case was never referred for further prosecution to the proper prosecuting attorney by the

arresting law enforcement agency and the offense against such individual was closed by the arresting law enforcement agency;

(iii) Prior to indictment, accusation, or other charging instrument, the statute of limitations expired;

(iv) Prior to indictment, accusation, or other charging instrument, his or her case was referred to the prosecuting attorney but was later dismissed;

(v) Prior to indictment, accusation, or other charging instrument, the grand jury returned two no bills;

(vi) After indictment or accusation, all charges were dismissed or nolle prossed;

(vii) After indictment or accusation, the individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation; or

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

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

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

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

(e) Persons employed full time or part time for the purpose of conducting potentially criminal investigations under this article shall be certified peace officers and shall have all the powers of a certified peace officer of this state when engaged in the enforcement of this article, including but not limited to the power to obtain, serve, and execute search warrants. Such Georgia certified peace officers shall be subject to the requirements of Chapter 8 of Title 35, the "Georgia Peace

Officer Standards and Training Act,” and are specifically required to complete the training required for peace officers by that chapter. Such certified peace officers shall be authorized, upon completion of the required training, with the written approval of the Attorney General, and notwithstanding Code Sections 16-11-126 and 16-11-129, to carry firearms of a standard police issue when engaged in detecting, investigating, or preventing crimes under this article.

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

History

Code 1981, § 10-1-393.5, enacted by Ga. L. 1996, p. 231, § 1; Ga. L. 1997, p. 1507, § 2; Ga. L. 2004, p. 631, § 10; Ga. L. 2010, p. 963, § 2-1/SB 308; Ga. L. 2013, p. 613, § 1/HB 150; Ga. L. 2015, p. 1088, § 2/SB 148; Ga. L. 2016, p. 443, § 6C-1/SB 367; Ga. L. 2020, p. 753, § 2-2/SB 288.

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