

Senate Bill 74

By: Senators Tillery of the 19th, Brass of the 28th, Hatchett of the 50th, Dugan of the 30th,
Still of the 48th and others

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 10, 15, and 51 of the Official Code of Georgia Annotated, relating to
2 commerce and trade, courts, and torts, respectively, so as to require the disclosure of the
3 nature and practices of businesses that provide legal services; to provide for legislative
4 findings; to provide for definitions; to prohibit misrepresentations in advertising; to conform
5 a cross-reference; to provide for violations; to prohibit false advertising related to legal
6 services; to prohibit persons ineligible to provide legal services from holding themselves out
7 as attorneys; to provide liability for the misrepresentation of the practice of law; to provide
8 for related matters; to provide for an effective date and applicability; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly finds that:

13 (1) The First Amendment protects commercial speech unless it involves illegal conduct
14 or is misleading or fraudulent;

- 15 (2) Commercial speech that does no more than propose a commercial transaction through
 16 advertising or solicitation is entitled to First Amendment free speech protection, but only
 17 if it concerns lawful activity and is not misleading;
- 18 (3) The state should take necessary actions to ensure that all Georgians have their
 19 constitutional rights protected and appropriately vindicated when violated;
- 20 (4) The government has a substantial interest in protecting Georgians from false or
 21 misleading commercial practices relating to the handling of legal matters before the courts
 22 of this state and the courts of the United States;
- 23 (5) These practices have been particularly damaging to Georgia's older residents who may
 24 have become confused or misled by such treatment; and
- 25 (6) A ban on commercial speech falsely claiming to handle legal matters before the courts
 26 of this state and the courts of the United States is necessary to directly advance the
 27 government's interest in protecting Georgians from false or misleading business advertising
 28 and solicitations that offer to protect or vindicate constitutional rights of Georgians.

29

SECTION 2.

30 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 31 amended by a new Code section to read as follows:

32 "10-1-424.1.

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

34 (1) 'Duly licensed attorney at law' means a person authorized to provide legal services
 35 in this state.

36 (2) 'Legal services' means acts recited in Code Section 15-19-50 and in subsection (a) of
 37 Code Section 15-19-51.

38 (3) 'Media' means any publication, any radio or television advertising device, public
 39 outcry, proclamation, or any other such manner or means of public outreach.

40 (4) 'Solicitation' means actions taken directly or indirectly to perform or to do anything
41 of any nature whatsoever to induce the public to enter into any obligation relating thereto.
42 (b) It shall be unlawful for any person, firm, association, or corporation:
43 (1) To misrepresent the true nature of its business by use of the words 'legal services,'
44 'practice of law,' 'law firm,' 'attorney,' 'attorney at law,' 'lawyer,' or equivalent terms in any
45 language in such manner as to convey the impression that such person, firm, association,
46 or corporation is entitled to practice law or is entitled to furnish legal advice, services, or
47 counsel;
48 (2) To represent itself as providing legal services or use the words 'practice of law,' 'law
49 firm,' 'attorney,' 'attorney at law,' 'lawyer,' or equivalent terms in any language in such
50 manner as to convey the impression that such person, firm, association, or corporation is
51 entitled to practice law or is entitled to furnish legal advice, services, or counsel in any
52 form of sale or advertising, unless such person is a duly licensed attorney at law;
53 (3) To represent that any person featured in a solicitation for legal services is admitted
54 to the Georgia bar or may offer legal services in this state when such person in such
55 solicitation is not a duly licensed attorney at law, even if such representation is made by
56 a person featured in such solicitation, who is not a duly licensed attorney at law, employs
57 a person who is duly licensed attorney at law;
58 (4) To otherwise fail to disclose or otherwise provide qualifying language that accurately
59 reflects the legal services, abilities, practice areas, scope of work, success rate, claim or
60 case management and oversight, or fees of a person."

61 **SECTION 3.**

62 Said title is further amended by revising Code section 10-1-426, relating to the penalty for
63 violations of Code Section 10-1-424 and 10-1-425 and good faith exceptions, as follows:

64 "10-1-426.
65 Any person, firm, association, or corporation violating any of the provisions of Code
66 Sections Section 10-1-424, 10-1-424.1, or and 10-1-425 shall be guilty of a misdemeanor.
67 Nothing in Code Section 10-1-424, 10-1-424.1, or 10-1-425 or this Code section shall
68 apply to any visual or sound broadcasting station or to any publisher or printer of a
69 newspaper, magazine, or other form of printed advertising who broadcasts, telecasts,
70 publishes, or prints such advertisement in good faith without knowledge of its false or
71 fraudulent character."

72 **SECTION 4.**

73 Said title is further amended by revising Code Section 10-1-427, relating to false advertising
74 of legal services, good faith exemptions, complaints, and violation of cease and desist order,
75 as follows:

76 "10-1-427.

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

78 (1) 'Duly licensed attorney at law' means a person authorized to provide legal services
79 in this state.

80 (2) 'Legal services' means acts recited in Code Section 15-19-50 and in subsection (a) of
81 Code Section 15-19-51.

82 (3) 'Media' means any publication, any radio or television advertising device, public
83 outcry, proclamation, or any other such manner or means of public outreach.

84 (4) 'Misleading statement' means any communication that is untrue, fraudulent, or
85 deceptive and is known, or which by the exercise of reasonable judgment, should be
86 known to be untrue, fraudulent, or deceptive. Such term shall include, but shall not be
87 limited to, communications that:

88 (A) Contain a material misrepresentation of fact or law;

- 89 (B) Omit a fact or law resulting in the information conveyed being a material
90 misrepresentation or unsubstantiated;
- 91 (C) Are presented with such specificity as would lead a reasonable person to conclude
92 that the claim or comparison can be substantiated, but cannot; or
- 93 (D) Are substantially likely to lead a reasonable person to:
- 94 (i) Formulate erroneous conclusions:
- 95 (I) About the legal services, abilities, practice areas, scope of work, success rate,
96 claim or case management and oversight, or fees of a duly licensed attorney at law;
- 97 (II) Regarding comparing a duly licensed attorney at law to another or similarly
98 situated duly licensed attorney at law; or
- 99 (III) To take action to preserve such person's rights or claims when, in fact, no
100 action is required; or
- 101 (ii) Have an unjustifiable expectation of future success based on prior performances;
- 102 (E) Fail to disclose or otherwise provide qualifying language to preclude a person from
103 being deceived or otherwise having a mistaken impression.
- 104 (F) Falsely portray individuals as clients; or
- 105 (G) Falsely portray individual circumstantial outcomes in a light where an ordinary
106 person would be misled to believe hiring such duly licensed attorney at law would
107 create or lead to a similar outcome.
- 108 (5) 'Person' means an individual or a firm, corporation, or association, or any employee
109 thereof.
- 110 (6) 'Solicit' means actions taken directly or indirectly to perform or to do anything of any
111 nature whatsoever to induce the public to enter into any obligation relating thereto.
- 112 ~~(a)(b) No duly licensed attorney at law shall solicit in any media by any misleading No~~
113 ~~person, firm, corporation, or association or any employee thereof, with intent directly or~~
114 ~~indirectly to perform legal services or to do anything of any nature whatsoever to induce~~
115 ~~the public to enter into any obligation relating thereto, shall make or disseminate or cause~~

116 ~~to be made or disseminated before the public in this state, in any newspaper or other~~
117 ~~publication, radio, television, or advertising device or by public outcry or proclamation or~~
118 ~~any other manner or means whatever, any statement concerning such legal services or~~
119 ~~concerning any circumstances or matter of fact connected with the proposed performance~~
120 ~~thereof which is untrue, fraudulent, deceptive, or misleading and which is known or which~~
121 ~~by the exercise of reasonable care should be known to be untrue, fraudulent, deceptive, or~~
122 ~~misleading of legal services.~~

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

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

138 ~~(d)~~(e) Any person who violates a cease and desist order issued pursuant to
139 subsection ~~(c)~~ (d) of this Code section shall be guilty of a misdemeanor in the county in
140 which such person resides. Nothing in this subsection shall prohibit any board, agency,
141 commission, association, or other entity governing or supervising the legal profession from
142 taking any lawful action against such person as a result of such improper practices. Each

143 publication of an advertisement in violation of any such cease and desist order shall
144 constitute a separate offense."

145 **SECTION 5.**

146 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
147 Code Section 15-19-55, relating to the prohibition of certain solicitation, as follows:

148 "15-19-55.

149 It shall be unlawful for any person, corporation, or voluntary association to solicit legal
150 employment on behalf of any attorney, firm, corporation, or organization where the
151 attorney, firm, corporation, or organization would not himself or itself be authorized to
152 engage in such solicitation or legal employment. However, nothing in this article shall be
153 construed to prohibit a person, association, or corporation lawfully engaged in the business
154 of conducting a mercantile or collection agency or adjustment bureau from employing an
155 attorney at law to give legal advice concerning, or to prosecute actions in court which relate
156 to, the adjustment or collection of debts and accounts only."

157 **SECTION 6.**

158 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended in Chapter 1,
159 relating to general provisions, by adding a new Code section, to read as follows:

160 "51-1-57.

161 Any person who violates Code Sections 10-1-424.1 or 10-1-427 shall, in addition to any
162 other remedies provided by law, be liable for damages caused by such violations. A claim
163 of a violation of such Code sections may be brought in a representative capacity and may
164 be the subject of a class action under Code Section 9-11-23. Damages for such violation
165 shall be the actual damages or \$500.00 per violation, whichever is greater."

166

SECTION 7.

167 This Act shall become effective upon its approval by the Governor or upon its becoming law
168 without such approval and shall:

169 (1) Apply to contracts entered into on and after such effective date; and

170 (2) Not apply to contracts entered into before such effective date; provided, however, that
171 any contract in violation of the provisions of this Act entered into before such effective date
172 shall be void after the initial period set forth in such contract and shall not be renewed or
173 otherwise extended on terms in violation of this Act.

174

SECTION 8.

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