

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

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 9, 10, 15, 50, and 51 of the Official Code of Georgia Annotated, relating to
2 civil practice, commerce and trade, courts, state government, and torts, respectively, so as
3 to provide for definitions; to change and provide certain provisions relating to legal
4 proceedings and legal services; to provide for protective orders for certain high-ranking
5 members of a governmental body or public or private entity; to require the disclosure of the
6 nature and practices of businesses that provide legal services; to provide for legislative
7 findings; to provide for definitions; to prohibit misrepresentations in advertising and media;
8 to conform a cross-reference; to provide for violations; to prohibit false advertising related
9 to legal services; to prohibit persons ineligible to provide legal services from holding
10 themselves out as attorneys; to provide liability for the misrepresentation of the practice of
11 law; to provide for designees of state government entities for service of process for civil
12 actions; to provide for related matters; to provide for an effective date and applicability; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

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17 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended in
18 Code Section 9-11-26, relating to general provisions concerning discovery, by revising
19 subsection (c) as follows:

20 "(c) **Protective orders.** Upon motion by a party or by the person from whom discovery
21 is sought and for good cause shown, including, but not limited to, the factors provided in
22 Code Section 9-11-26.1 for the deposition of a high-ranking officer, the court in which
23 the action is pending or, alternatively, on matters relating to a deposition, the court in the
24 county where the deposition is to be taken may make any order which justice requires to
25 protect a party or person from annoyance, embarrassment, oppression, or undue burden
26 or expense, including one or more of the following:

- 27 (1) That the discovery not be had;
- 28 (2) That the discovery may be had only on specified terms and conditions, including a
29 designation of the time or place;
- 30 (3) That the discovery may be had only by a method of discovery other than that selected
31 by the party seeking discovery;
- 32 (4) That certain matters not be inquired into or that the scope of the discovery be limited
33 to certain matters;
- 34 (5) That discovery be conducted with no one present except persons designated by the
35 court;
- 36 (6) That a deposition, after being sealed, be opened only by order of the court;
- 37 (7) That a trade secret or other confidential research, development, or commercial
38 information not be disclosed or be disclosed only in a designated way; or
- 39 (8) That the parties simultaneously file specified documents or information enclosed in
40 sealed envelopes to be opened as directed by the court.

41 If the motion for a protective order is denied in whole or in part, the court may, on such
42 terms and conditions as are just, order that any party or person provide or permit discovery.
43 Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses
44 incurred in relation to the motion."

45 **SECTION 1-2.**

46 Said title is further amended by adding a new Code section to read as follows:

47 "9-11-26.1.

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

49 (1) 'Officer' means a current or former high-ranking officer of an organization with
50 unique and extensive scheduling demands or responsibilities.

51 (2) 'Organization' includes any governmental entity and any other organization, public
52 or private, that is large and complex.

53 (b) Good cause for a protective order to prohibit the deposition of an officer may be shown
54 by proof that such person is an officer and lacks unique personal knowledge of any matter
55 that is relevant to the subject matter involved in the pending action.

56 (c) The party or person seeking a protective order has the burden of establishing the factors
57 provided under subsection (b) of this Code section.

58 (d) Good cause for a protective order shall not be deemed shown where the party seeking
59 discovery demonstrates that:

60 (1) Such party has exhausted other reasonable means of discovery and such discovery
61 is inadequate; and

62 (2) The person seeking the protective order has unique personal knowledge of one or
63 more matters relevant to the subject matter involved in the pending action.

64 (e) To the extent that the party or person seeking a protective order shows that an officer
65 lacks unique personal knowledge of some, but fewer than all, matters relevant to the

66 subject matter involved in the pending action, the court may limit the scope of the
67 deposition accordingly, rather than prohibiting altogether the deposition of the officer."

68

PART II

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SECTION 2-1.

70 The General Assembly finds that:

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

73 (2) Commercial speech that does no more than propose a commercial transaction through
74 advertising or solicitation is entitled to First Amendment free speech protection, but only
75 if it concerns lawful activity and is not misleading;

76 (3) The state should take necessary actions to ensure that all Georgians have their
77 constitutional rights protected and appropriately vindicated when violated;

78 (4) The government has a substantial interest in protecting Georgians from false or
79 misleading commercial practices relating to the handling of legal matters before the courts
80 of this state and the courts of the United States;

81 (5) These practices have been particularly damaging to Georgia's older residents who may
82 have become confused or misled by such treatment; and

83 (6) A ban on commercial speech falsely claiming to handle legal matters before the courts
84 of this state and the courts of the United States is necessary to directly advance the
85 government's interest in protecting Georgians from false or misleading business advertising
86 and solicitations that offer to protect or vindicate constitutional rights of Georgians.

87

SECTION 2-2.

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

90 "10-1-424.1.

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

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

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

96 (3) 'Media' means any publication, including, but not limited to, any radio or television
97 advertising device, public outcry, proclamation, Internet search engine ad, or any other
98 such manner or means of public outreach.

99 (4) 'Solicit' means actions taken directly or indirectly to perform or to do anything of any
100 nature whatsoever to induce the public to enter into any obligation relating thereto.

101 (b) It shall be unlawful for any person, firm, association, or corporation to solicit in any
102 media regarding the provision of legal services by:

103 (1) Misrepresenting the true nature of its business by use of the words 'legal services,'
104 'practice of law,' 'law firm,' 'attorney,' 'attorney at law,' 'lawyer,' or equivalent terms in any
105 language in such manner as to convey the impression that such person, firm, association,
106 or corporation is entitled to practice law or is entitled to furnish legal advice, services, or
107 counsel;

108 (2) Representing itself as providing legal services or use the words 'practice of law,' 'law
109 firm,' 'attorney,' 'attorney at law,' 'lawyer,' or equivalent terms in any language in such
110 manner as to convey the impression that such person, firm, association, or corporation is
111 entitled to practice law or is entitled to furnish legal advice, services, or counsel, unless
112 such person is a duly licensed attorney at law;

113 (3) Representing that any person featured in media for legal services is admitted to the
114 Georgia bar or may offer legal services in this state when such person in such media is
115 not a duly licensed attorney at law, even if such representation is made by a person

116 featured in such media, who is not a duly licensed attorney at law, employs a person who
117 is duly licensed attorney at law; or
118 (4) Otherwise failing to disclose or otherwise provide qualifying language that accurately
119 reflects the legal services, abilities, practice areas, scope of work, success rate, claim or
120 case management and oversight, or fees of a person."

121 **SECTION 2-3.**

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

124 "10-1-426.

125 Any person, firm, association, or corporation violating any of the provisions of Code
126 ~~Sections~~ Section 10-1-424, 10-1-424.1, or and 10-1-425 shall be guilty of a misdemeanor.

127 Nothing in Code Section 10-1-424, 10-1-424.1, or 10-1-425 or this Code section shall
128 apply to any visual or sound broadcasting station or to any publisher or printer of a
129 newspaper, magazine, or other form of online or printed advertising who broadcasts,
130 telecasts, publishes, or prints such advertisement in good faith without knowledge of its
131 false or fraudulent character."

132 **SECTION 2-4.**

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

136 "10-1-427.

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

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

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

142 (3) 'Media' means any publication, including, but not limited to, any radio or television
143 advertising device, public outcry, proclamation, Internet search engine ad, or any other
144 such manner or means of public outreach.

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

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

150 (B) Omit a fact or law resulting in the information conveyed being a material
151 misrepresentation or unsubstantiated;

152 (C) Are presented with such specificity as would lead a reasonable person to conclude
153 that the claim or comparison can be substantiated, but cannot; or

154 (D) Are substantially likely to lead a reasonable person to:

155 (i) Formulate erroneous conclusions:

156 (I) About the legal services, abilities, practice areas, scope of work, success rate,
157 claim or case management and oversight, or fees of a duly licensed attorney at law;

158 (II) Regarding comparing a duly licensed attorney at law to another or similarly
159 situated duly licensed attorney at law; or

160 (III) To take action to preserve such person's rights or claims when, in fact, no
161 action is required; or

162 (ii) Have an unjustifiable expectation of future success based on prior performances;

163 (E) Fail to disclose or otherwise provide qualifying language to preclude a person from
164 being deceived or otherwise having a mistaken impression.

165 (F) Falsely portray individuals as clients; or

166 (G) Falsely portray individual circumstantial outcomes in a light where an ordinary
167 person would be misled to believe hiring such duly licensed attorney at law would
168 create or lead to a similar outcome.

169 (5) 'Person' means an individual or a firm, corporation, or association, or any employee
170 thereof.

171 (6) 'Solicit' means actions taken directly or indirectly to perform or to do anything of any
172 nature whatsoever to induce the public to enter into any obligation relating thereto.

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

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

188 ~~(c)(d)~~ The Attorney General is authorized and empowered, upon the receipt of a complaint
189 or upon his or her own initiative, to investigate any advertising which might be in violation
190 of subsection ~~(a)~~ (b) of this Code section. If the Attorney General determines that any
191 advertising is in violation of subsection ~~(a)~~ (b) of this Code section, he or she is authorized
192 and empowered, after providing the offender with reasonable notice and an opportunity for

193 a hearing, to issue a public reprimand, to issue a cease and desist order against the offender,
194 to report any such action to any board, agency, commission, association, or other entity
195 governing or supervising the legal profession, and to publicize any such action in a medium
196 or media likely to reach the recipients of the improper advertising. Any person against
197 whom the Attorney General issues an adverse decision may, as his or her sole remedy in
198 equity or at law, seek a restraining order against such adverse decision in the superior court.
199 ~~(d)~~(e) Any person who violates a cease and desist order issued pursuant to
200 subsection ~~(e)~~ (d) of this Code section shall be guilty of a misdemeanor in the county in
201 which such person resides. Nothing in this subsection shall prohibit any board, agency,
202 commission, association, or other entity governing or supervising the legal profession from
203 taking any lawful action against such person as a result of such improper practices. Each
204 publication of an advertisement in violation of any such cease and desist order shall
205 constitute a separate offense."

206 SECTION 2-5.

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

209 "15-19-55.

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

218 **SECTION 2-6.**

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

221 "51-1-57.

222 Any person who solicits in any media in violation of Code Section 10-1-424.1 or 10-1-427
223 shall, in addition to any other remedies provided by law, be liable for damages caused by
224 each media that is in violation of such Code sections. A claim of a violation of such Code
225 sections may be brought in a representative capacity and may be the subject of a class
226 action under Code Section 9-11-23. Damages for such violation shall be the actual
227 damages or \$500.00 per each media that is in violation, whichever is greater."

228 **PART III**229 **SECTION 3-1.**

230 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
231 by revising Code Section 50-21-35, relating to service of process and mailing of complaint,
232 as follows:

233 "50-21-35.

234 (a) A chief executive officer of a state government entity shall provide a designee or
235 designees for service of process for civil actions brought against the state under this article
236 by publishing conspicuously on the homepage of the state government entity's website:

237 (1) The name and title of such designee or designees; and

238 (2) The office address of such designee or designees for service of process.

239 (b) The director of the Risk Management Division of the Department of Administrative
240 Services shall provide a designee for service of process for civil actions brought against the
241 state under this article by publishing conspicuously on the homepage of such division's
242 website:

243 (1) The name and title of such designee; and

244 (2) The office address of such designee for service of process.

245 (c) A designee for service of process shall be present at the published office address no
 246 fewer than three days each Monday through Friday, excluding state observed holidays and
 247 other office closures, between the hours of 9:00 A.M. and 5:00 P.M. eastern standard time
 248 or eastern daylight time, whichever is applicable.

249 (d) Except as otherwise provided in subsection (f) of this Code section, in ~~in~~ all civil
 250 actions brought against the state under this article, to perfect service of process the plaintiff
 251 must both:

252 (1) Cause ~~cause~~ process to be served upon the chief executive officer of the state
 253 government entity involved, or his or her designee, at his or her usual office address; and

254 (2) Cause ~~cause~~ process to be served upon the director of the Risk Management Division
 255 of the Department of Administrative Services, or his or her designee, at his or her usual
 256 office address.

257 (e) The time for the state to file an answer shall not begin to run until process has been
 258 served upon all required persons.

259 (f) A copy of the complaint showing the date of filing shall also be mailed to the Attorney
 260 General at his or her usual office address, by certified mail or statutory overnight delivery,
 261 return receipt requested, and there shall be attached to the complaint a certificate that this
 262 requirement has been met."

263 **PART IV**

264 **SECTION 4-1.**

265 This Act shall become effective upon its approval by the Governor or upon its becoming law
 266 without such approval, provided that:

267 (1) Part II of this Act shall:

268 (A) Apply to contracts entered into on and after such effective date; and

269 (B) Not apply to contracts entered into before such effective date; provided, however,
270 that any contract in violation of the provisions of Part II of this Act entered into before
271 such effective date shall be void after the initial period set forth in such contract and shall
272 not be renewed or otherwise extended on terms in violation of Part II of this Act; and

273 (2) Part III of this Act shall apply only to causes of action occurring on or after July 1,
274 2023.

275 **SECTION 4-2.**

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