

House Bill 150 (AS PASSED HOUSE AND SENATE)

By: Representatives Bruce of the 61st, Pruett of the 149th, Roberts of the 155th, Burns of the 159th, Lindsey of the 54th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia
2 Annotated, relating to the Fair Business Practices Act, so as to change provisions relating to
3 prohibited telemarketing and Internet activities; to provide for definitions; to prohibit certain
4 persons from collecting a fee for removing certain individuals' arresting booking photographs
5 from a website; to change provisions relating to acts exempt from the part; to provide for
6 related matters; to provide an effective date; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
11 relating to the Fair Business Practices Act, is amended in Code Section 10-1-393.5, relating
12 to prohibited telemarketing, Internet activities, or home repair, by adding a new subsection
13 to read as follows:

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

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

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

19 (i) Access to his or her case or charges was restricted pursuant to Code Section
20 35-3-37;

21 (ii) Prior to indictment, accusation, or other charging instrument, his or her case was
22 never referred for further prosecution to the proper prosecuting attorney by the
23 arresting law enforcement agency and the offense against such individual was closed
24 by the arresting law enforcement agency;

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

27 (iv) Prior to indictment, accusation, or other charging instrument, his or her case was
 28 referred to the prosecuting attorney but was later dismissed;
 29 (v) Prior to indictment, accusation, or other charging instrument, the grand jury
 30 returned two no bills;
 31 (vi) After indictment or accusation, all charges were dismissed or nolle prossed;
 32 (vii) After indictment or accusation, the individual pleaded guilty to or was found
 33 guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or
 34 hallucinogenic drug and was sentenced in accordance with the provisions of Code
 35 Section 16-13-2, and the individual successfully completed the terms and conditions
 36 of his or her probation; or
 37 (viii) The individual was acquitted of all of the charges by a judge or jury.
 38 (2) Any person who is engaged in any activity involving or using a computer or
 39 computer network who publishes on such person's publicly available website a subject
 40 individual's arrest booking photograph for purposes of commerce shall be deemed to be
 41 transacting business in this state. Within 30 days of the sending of a written request by
 42 a subject individual, including his or her name, date of birth, date of arrest, and the name
 43 of the arresting law enforcement agency, such person shall, without fee or compensation,
 44 remove from such person's website the subject individual's arrest booking photograph.
 45 Such written request shall be transmitted via certified mail, return receipt requested, or
 46 statutory overnight delivery, to the registered agent, principal place of business, or
 47 primary residence of the person who published the website. Without otherwise limiting
 48 the definition of unfair and deceptive acts or practices under this part, a failure to comply
 49 with this paragraph shall be unlawful."

50 **SECTION 2.**

51 Said part is further amended by revising paragraph (2) of Code Section 10-1-396, relating
 52 to acts exempt from part, as follows:

53 "(2) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical,
 54 or radio station or network, or television station or network in the publication or
 55 dissemination in print or electronically of:

56 (A) News or commentary; or

57 (B) An advertisement of or for another person, when the publisher, owner, agent, or
 58 employee did not have actual knowledge of the false, misleading, or deceptive character
 59 of the advertisement, did not prepare the advertisement, or did not have a direct
 60 financial interest in the sale or distribution of the advertised product or service."

61 **SECTION 3.**

62 This Act shall become effective upon its approval by the Governor or upon its becoming law
63 without such approval.

64 **SECTION 4.**

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