

House Bill 475 (AS PASSED HOUSE AND SENATE)

By: Representatives Harden of the 148th, Corbett of the 174th, Hogan of the 179th, Epps of the 144th, and McCall of the 33rd

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 17 of Title 43 of the Official Code of Georgia Annotated, relating to
2 charitable solicitations, so as to implement additional requirements for use of collection
3 receptacles for donations; to revise penalties and provide additional penalties for violation
4 of said chapter; to provide for related matters; to allow local governing authorities to issue
5 written notices; to allow local governing authorities to petition the superior court for an order
6 for the removal of collection receptacles; to provide for a superior court to order collection
7 receptacles to be removed at the cost of the paid solicitor or charitable organization; to
8 provide for local governing authorities to remove any collection receptacle subject to the
9 court's order at the cost of the property owner, paid solicitor, or charitable organization; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 SECTION 1.

13 Chapter 17 of Title 43 of the Official Code of Georgia Annotated, relating to charitable
14 solicitations, is amended by revising paragraph (4.1) of Code Section 43-17-2, relating to
15 definitions, as follows:

16 "(4.1) 'Collection receptacle' means an unattended container, located outdoors, for the
17 purpose of collecting donations of clothing, books, personal or household items, or other
18 goods. Such term shall not include containers used for the purpose of collecting
19 monetary donations."

20 SECTION 2.

21 Said chapter is further amended by adding new subsections to Code Section 43-17-8.1,
22 relating to requirements for use of collection receptacles for donations, to read as follows:

23 "(e)(1) A person placing and operating any collection receptacle on property in which
24 such person has no ownership or leasehold interest shall, prior to such placement and
25 operation, obtain notarized, written permission from all owners of such property, a
26 property management service, or all holders of a leasehold interest in such property to
27 place and operate such collection receptacle on such property. Copies of such notarized,

28 written permission shall be maintained by the person placing and operating such
29 collection receptacle and provided to every owner or leaseholder of such property at any
30 time upon request by any such owner or leaseholder. If such permission is obtained from
31 such property owner or owners, the person placing and operating the collection
32 receptacle shall provide written notification to any leaseholders, tenants, or other
33 occupants of such property of the consent of such property owner or owners to such
34 placement and operation. The notarized, written permission required by this subsection
35 shall include the signature of the person placing and operating the collection receptacle,
36 or such person's authorized agent, and of all owners or leaseholders of the property, as
37 applicable.

38 (2) A person with an existing collection receptacle located on property in which such
39 person has no ownership or leasehold interest shall have until December 31, 2018, to
40 comply with the requirements of this subsection.

41 (f)(1) Any owner or leaseholder of property on which a collection receptacle is placed
42 and operated in conformance with subsection (e) of this Code section may demand
43 removal of such collection receptacle in writing by United States mail, return receipt
44 requested, or statutory overnight delivery to the address listed on the collection receptacle
45 pursuant to this Code section. Such owner or leaseholder shall also send a copy of any
46 such demand to the office of the Secretary of State. The person placing the collection
47 receptacle shall remove the collection receptacle as well as any contents left in and
48 around the collection receptacle within 30 days of the date such demand is either
49 deposited in the United States mail, return receipt requested, or received by statutory
50 overnight delivery.

51 (2) If the person placing and operating the collection receptacle on another's property
52 fails to remove such collection receptacle as required by paragraph (1) of this subsection,
53 any owner or any leaseholder of such property shall have the immediate right to take
54 possession of, remove, and dispose of such collection receptacle and its contents without
55 incurring any civil or criminal liability for such actions. Any expenses incurred in such
56 removal and disposal by such owner or leaseholder shall be invoiced to, and paid by, the
57 person who placed and operated such collection receptacle on such property. The owner
58 or leaseholder may also request that law enforcement personnel take possession of,
59 remove, and dispose of such collection receptacle and the contents thereof. If law
60 enforcement personnel, in their discretion, honor such request, they will be immune from
61 any civil or criminal liability for such actions.

62 (g) Any owner or any leaseholder of the property may demand immediate removal of a
63 collection receptacle if the person who placed and operated the collection receptacle on the
64 property fails to comply with subsection (e) of this Code section.

65 (h) The person placing and operating the collection receptacle shall maintain such
 66 receptacle in a structurally sound, clean, and sanitary condition and regularly empty such
 67 receptacle at least every two weeks. Such person shall also be responsible for ensuring that
 68 no donations are present on the ground area surrounding the collection receptacle for a time
 69 period exceeding 48 hours.

70 (i) Any owner or leaseholder of property who incurs expenses in removing or disposing
 71 of any collection receptacle or its contents following the expiration of the period referred
 72 to in paragraph (1) of subsection (f) of this Code section, or as a result of any violation of
 73 this Code section, may bring a civil action to recover actual damages. The action shall be
 74 brought in a court of competent jurisdiction in the county in which the collection receptacle
 75 was located, in the county in which the person who placed and operated the collection
 76 receptacle conducts, transacts, or has transacted business, or, if such person cannot be
 77 found in any of the foregoing locations, in the county in which such receptacle is located.

78 (j) Any violation of this Code section shall constitute a misdemeanor."

79 **SECTION 3.**

80 Said chapter is further amended by adding a new Code section to read as follows:

81 "43-17-8.2.

82 (a) Notwithstanding any other provision of law to the contrary, any local governing
 83 authority which has collection receptacles located within its geographical boundaries shall
 84 be authorized to issue written notices of violations to both the property owner and the paid
 85 solicitor responsible for each collection receptacle at any time the immediate area
 86 surrounding such collection receptacle is not maintained in an orderly, clean, and sanitary
 87 manner. Notice shall be promptly sent to the property owner and the paid solicitor, with
 88 a copy to the charitable organization. The notice shall provide for a ten-day period from
 89 the date of the notice to remediate the violation and clean and maintain the area around
 90 such collection receptacle.

91 (b)(1) If the property owner, paid solicitor, or charitable organization responsible for the
 92 operation of a collection receptacle fails to comply with the notice in accordance with
 93 subsection (a) of this Code section three times in any calendar year, or, if the governing
 94 authority finds that the area surrounding such collection receptacle is a nuisance, the local
 95 governing authority shall be authorized to petition the superior court to issue an order
 96 requiring the removal of such collection receptacle from the geographical boundaries of
 97 the jurisdiction for a period of not less than three years.

98 (2) The relief imposed by the superior court shall require the immediate removal of such
 99 collection receptacle at the cost of the property owner or paid solicitor responsible for it,

100 or, alternatively, the charitable organization for which such collection receptacle was
 101 placed and the imposition of court costs.
 102 (3) If a collection receptacle is not removed within 30 days of the superior court's order,
 103 the local governing authority shall be authorized to remove such collection receptacle and
 104 seek reimbursement from the property owner, paid solicitor, or charitable organization for
 105 court costs and fees related to the removal of such collection receptacle."

106 **SECTION 4.**

107 Said chapter is further amended by revising subparagraphs (a)(1)(A) and (a)(1)(B) of Code
 108 Section 43-17-13, relating to penalties, cease and desist orders, injunctions, restitution,
 109 appointment and powers of receiver, and subpoenas, as follows:

110 "(A) Subject to notice and opportunity for hearing in accordance with Code Section
 111 43-17-16, unless the right to notice is waived by the person against whom the sanction
 112 is imposed, the Secretary of State may:

- 113 (i) Issue a cease and desist order against any person;
- 114 (ii) Censure the person if the person is registered as a paid solicitor;
- 115 (iii) Bar or suspend the person from association with a paid solicitor or charitable
 116 organization; ~~or~~
- 117 (iv) Issue an order against a paid solicitor who willfully violates this chapter,
 118 imposing a civil penalty up to a maximum of \$2,500.00 for a single violation or up
 119 to ~~\$25,000.00~~ \$5,000.00 for multiple violations in a single proceeding or a series of
 120 related proceedings; or
- 121 (v) Regarding any willful act, practice, or transaction, issue an order imposing a civil
 122 penalty up to a maximum of \$250.00 against any person for a single violation or
 123 \$500.00 for multiple violations in a single proceeding or a series of related
 124 proceedings;

125 (B) Imposition of the sanctions under this paragraph is limited as follows:

- 126 (i) If the Secretary of State revokes the registration of a charitable organization or
 127 paid solicitor or bars a person from association with a charitable organization or paid
 128 solicitor under subparagraph (A) of this paragraph, the imposition of that sanction
 129 precludes imposition of the ~~sanction~~ sanctions specified in ~~division (iv)~~ divisions (iv)
 130 and (v) of subparagraph (A) of this paragraph; and
- 131 (ii) The imposition by the Secretary of State of one or more sanctions under this
 132 paragraph with respect to a specific violation precludes the Secretary of State from
 133 later imposing any other sanctions under this paragraph with respect to the violation;
 134 or"

135

SECTION 5.

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