

HOUSE BILL 1103
By Godsey

AN ACT to amend Tennessee Consumer Protection Act of 1977,
Title 47, Chapter 18, Part 1, relative to the protection of
elder citizens

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is hereby
amended by adding the following as an appropriately codified new section:

Protection of Elder Persons--Cumulative, additional and supplemental penalties.

(a) Any person who willfully or knowingly uses, or has willfully or knowingly used, a method, act or practice in violation of the Tennessee Consumer Protection Act, which method, act or practice victimizes or attempts to victimize elder persons, and commits such violation when he or she knew or should have known that his or her conduct was unfair, misleading or deceptive or that he or she knew or should have known that they were soliciting, marketing or promoting to an elder person, is liable to the State of Tennessee for a civil penalty of not more than ten thousand (\$10,000.00) per violation for each such violation. Each violation may include but is not limited to, each elder person solicited, each advertisement that was distributed, each misrepresentation or deceptive statement that appeared on a solicitation, each time that an advertisement appeared on television or on radio, each contact *i.e.*, telephone call, direct mail solicitation or in person solicitation with an elder person to promote or solicit using unfair, misleading or deceptive acts or practices. The court should calculate each

violation in a liberal manner to strongly discourage persons from victimizing elder persons in Tennessee or from Tennessee's borders.

(b) In order to establish that a person knew or should have known that he or she was soliciting, marketing or promoting to an elder person, the State's burden of proof may be met, in addition to any other means or proof, by a preponderance of the evidence, by the following means or proof:

(1) That more than fifty percent (50%) of the persons that were solicited marketed or promoted were in fact elder persons;

(2) That more than fifty percent (50%) of the persons that purchased the goods or services promoted or offered were in fact elder persons;

(3) By presenting testimony of elder person(s) that were solicited, marketed or promoted to by the company, who, from the testimony, one could reasonably conclude, were over 60 merely by their contact with that elder person or persons;

(4) By presenting testimony of elder person(s) that purchased goods or services from the company, who, from the testimony, one could reasonably conclude were over 60 merely by their contact with that elder person;

(5) That company records reflecting, indicating or representing that the age of a person that was solicited, marketed or promoted was over 60.

(6) That company records reflecting, indicating or representing that the age of a person purchased goods or services was over 60.

(7) That the advertisements or solicitations are promoted or displayed on television, radio or publications read or viewed by an

average of more than fifty percent (50%) of elder persons. The State may establish this by using Nielsen or other distribution studies including those used to sell the advertising to businesses and others;

(8) By presenting affidavits of elder persons stating that they are over 60 and the company or person solicited, marketed, promoted or sold goods or services to the elder person; or

(9) By presenting any evidence or information indicating that a person or company targeted or otherwise desired to primarily solicit, market or promote their goods or services to elder persons.

(c) The civil penalties recoverable by the State of Tennessee under this part are supplemental and cumulative to any other available civil penalties and relief available under other laws, regulations and rules, including but not limited to those available pursuant to Tenn. Code Annotated, § 47-18-108.

(d) As used in this section, unless the context otherwise requires:

(1) "elder person" means any person who is sixty (60) years of age or older. The elder person need not be a citizen of Tennessee if the company or individual is operating from Tennessee or the court otherwise has jurisdiction over the company or individual for engaging in an unfair, misleading or deceptive act or practice from Tennessee.

(2) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, Tenn. Code Annotated, § 47-18-101 *et seq* and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include but are not limited to, the Prize and Promotion Act, Tenn.

Code Annotated, § 47-18-120 *et seq.*, Health Club Act, Tenn. Code Annotated, § 47-18-301 *et seq.*, Buyer's Clubs Act, Tenn. Code Annotated § 47-18-501 *et seq.*, Home Solicitations Sales Act of 1974, Tenn. Code Annotated, § 47-18-601 *et seq.*, Tennessee Credit Services Businesses Act, Tenn. Code Annotated, § 47-18-1001 *et seq.*, Consumer Telemarketing Protection Act of 1990, Tenn. Code Annotated, § 47-18-1501, Unsolicited Telefacsimile Advertising Act, Tenn. Code Annotated, § 47-18-1601 *et seq.*, Tennessee Employment Agency Act, Tenn. Code Annotated, § 47-18-1701 *et seq.*, and Membership Camping Act, Tenn. Code Annotated, § 66-32-301 *et seq.*

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming law the public welfare requiring it.