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## CRIMES AND OFFENSES Forgery and Fraudulent Practices: Prohibit Fraudulent Attempts to Obtain Refunds

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## CRIMES AND OFFENSES

### *Forgery and Fraudulent Practices: Prohibit Fraudulent Attempts to Obtain Refunds*

CODE SECTION: O.C.G.A. § 16-9-56 (amended)  
BILL NUMBER: HB 1378  
ACT NUMBER: 1050  
SUMMARY: The Act prohibits a person from giving a false or fictitious telephone number or from giving a telephone number of another person for the purposes of obtaining a refund from a business establishment. A violator of the Act is guilty of a misdemeanor.  
EFFECTIVE DATE: July 1, 1994

#### *History*

Shoplifting costs Georgia businesses an estimated \$600 million each year.<sup>1</sup> To offset these staggering losses, merchants are forced to raise prices an estimated fifteen percent.<sup>2</sup> Thus, the consumer is the ultimate victim of shoplifting-related offenses.<sup>3</sup> One common form of shoplifting is obtaining refunds for merchandise that has been stolen or purchased from another store at a lower price.<sup>4</sup> To deter this practice, merchants commonly require that persons wishing to obtain refunds for merchandise provide their name, address, and telephone number in order to provide a means to locate those who obtain fraudulent refunds.<sup>5</sup> In 1974, the Georgia General Assembly recognized the need for merchants to obtain accurate information from people seeking refunds and adopted Code section 16-9-56.<sup>6</sup> The Code section made it a misdemeanor "to give a false name or address . . . for the purposes of obtaining or attempting to obtain a refund for merchandise."<sup>7</sup>

However, in many instances, people provide wrong or disconnected telephone numbers to prevent merchants from being able to contact

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1. Shelley Emling, *Racism Alleged in Retail Policies; Consumers Talk of Discrimination*, ATLANTA J. & CONST., Dec. 25, 1993, at C1.

2. Connell L. Archey, *The Status of Private Searches Under the Louisiana Constitution of 1974*, 49 LA. L. REV. 873, 899 n.122 (1989).

3. *See id.*

4. Telephone Interview with Rep. Steve Clark, House District No. 40 (Mar. 27, 1994) [hereinafter Clark Interview]. Rep. Clark was one of several sponsors of HB 1758. *Id.*

5. *Id.*

6. 1978 Ga. Laws 1985 (codified at O.C.G.A. § 16-9-56(a) (1992)).

7. *Id.*

them.<sup>8</sup> The previous statute did not make it a criminal offense to provide a false or fictitious telephone number.<sup>9</sup> Consequently, violators could not be prosecuted for giving a false telephone number and thus retailers could not deter this practice.<sup>10</sup> Merchants lobbied for Code section 16-9-56 to be amended to include the giving of false or fictitious telephone numbers.<sup>11</sup> In response to this request, HB 1378 was introduced and subsequently adopted.<sup>12</sup>

### *HB 1378*

The Act amends Code section 16-9-56 by striking the language in subsection (a) and substituting new language in its place.<sup>13</sup>

The Act prohibits a person from giving "a false or fictitious name, address, or telephone number as that person's own" for the purposes of obtaining a refund.<sup>14</sup> The Act also prohibits a person from giving "the name, address, or telephone number of any other person without that other person's knowledge and approval" for the purposes of obtaining a refund.<sup>15</sup>

Following introduction, HB 1378 was sent to the House Judiciary Committee. The Committee offered a substitute bill which amended the original bill to include "knowingly" immediately prior to the phrase "to give a false or fictitious name, address, or telephone number."<sup>16</sup> This language was suggested to require that a person being prosecuted had the specific intent of providing a false telephone number for the purpose of obtaining a fraudulent refund.<sup>17</sup> The Committee wanted to prevent prosecutions when a person makes an honest mistake, such as giving a phone number from a prior residence.<sup>18</sup> The bill passed the House as amended by the Judiciary Committee.<sup>19</sup>

The bill was introduced on the Senate floor and subsequently sent to the Senate Special Judiciary Committee.<sup>20</sup> The Committee amended the bill by striking the word "knowingly."<sup>21</sup> The Committee argued

8. Clark Interview, *supra* note 4.

9. 1978 Ga. Laws 1985 (codified at O.C.G.A. § 16-9-56(1)(a) (1992)).

10. Clark Interview, *supra* note 4.

11. *Id.*

12. *Id.*

13. O.C.G.A. § 16-9-56(a) (Supp. 1994).

14. *Id.*

15. *Id.* The former Code section did not contain the language "other person" in referring to another person's consent. 1978 Ga. Laws 1985 (codified at O.C.G.A. § 16-9-56(1)(a) (1992)). The language "other" clarifies that the person whose name is used must give consent. Clark Interview, *supra* note 4.

16. HB 1378 (HCS), 1994 Ga. Gen. Assem.

17. Clark Interview, *supra* note 4.

18. *Id.*

19. See Final Composite Status Sheet, Mar. 16, 1994.

20. *Id.*

21. Compare HB 1378 (HCS), 1994 Ga. Gen. Assem. with HB 1378 (SCA), 1994 Ga.

that it would be virtually impossible to prove that someone “knowingly” gave the wrong information and that this should not be a specific intent crime.<sup>22</sup>

The Senate passed the bill as amended by the Senate Special Judiciary Committee.<sup>23</sup> The House concurred with the Senate and adopted the Act as passed by the Senate.<sup>24</sup>

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Gen. Assem.

22. Clark Interview, *supra* note 4.

23. See Final Composite Status Sheet, Mar. 16, 1994.

24. See O.C.G.A. § 16-9-56(a) (Supp. 1994).