

1 HB29
2 196325-1
3 By Representative Martin
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 02/14/2019

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8 SYNOPSIS: Under existing Alabama law, no penalty
9 exists for the knowing use of misleading caller
10 identification information by telephone solicitors.

11 This bill would prohibit the intentional use
12 of misleading caller identification information by
13 telephone solicitors. Violations would also be made
14 violations of the Deceptive Trade Practices Act, in
15 order to provide for effective enforcement by the
16 Attorney General.

17 This bill would not apply to telephone
18 solicitations made on behalf of charitable
19 institutions. This bill would also not apply to
20 solicitations in which the telephone solicitor has
21 substituted the proper caller identification
22 information of the party on whose behalf the
23 solicitation has been made.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. However,
13 the bill does not require approval of a local
14 governmental entity or enactment by a 2/3 vote to
15 become effective because it comes within one of the
16 specified exceptions contained in the amendment.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT

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22 Relating to telemarketers and telephone
23 solicitations; to amend Sections 8-19A-3, 8-19C-5, and
24 8-19C-11 of the Code of Alabama 1975, to prohibit the
25 intentional display of misleading caller identification
26 information within telephone solicitations; to provide
27 exceptions for solicitations made on behalf of charitable

1 institutions; to make violations also a violation of the
2 Deceptive Trade Practices Act; and in connection therewith
3 would have as its purpose or effect the requirement of a new
4 or increased expenditure of local funds within the meaning of
5 Amendment 621 of the Constitution of Alabama of 1901, now
6 appearing as Section 111.05 of the Official Recompilation of
7 the Constitution of Alabama of 1901, as amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 8-19A-3, 8-19C-5, and 8-19C-11
10 of the Code of Alabama 1975, are amended to read as follows:

11 "§8-19A-3.

12 "As used in this chapter and Chapter 19C, the
13 following terms shall have the following meanings unless the
14 context clearly indicates otherwise:

15 "(1) CALLER IDENTIFICATION SERVICE. A type of
16 telephone service which permits telephone subscribers to see
17 the telephone number of incoming telephone calls.

18 "(2) COMMERCIAL TELEPHONE SELLER. Any person who
19 engages in commercial telephone solicitation on his or her own
20 behalf or through salespersons, except that a commercial
21 telephone seller does not include any of the persons or
22 entities exempted from this chapter by Section 8-19A-4. A
23 commercial telephone seller does not include a salesperson as
24 defined in subdivision (15). A commercial telephone seller
25 includes, but is not limited to, owners, operators, officers,
26 directors, partners, or other individuals engaged in the

1 management activities of a business entity pursuant to this
2 chapter.

3 "(3) COMMERCIAL TELEPHONE SOLICITATION.

4 "a. An unsolicited telephone call to a person
5 initiated by a commercial telephone seller or salesperson, or
6 an automated dialing machine used in accordance with this
7 chapter for the purpose of inducing the person to purchase or
8 invest in consumer goods or services.

9 "b. Other communication with a person where:

10 "1. A gift, award, or prize is offered to a
11 purchaser who has not previously purchased from the person
12 initiating the communication.

13 "2. A telephone call response is invited.

14 "3. The salesperson intends to complete a sale or
15 enter into an agreement to purchase during the course of the
16 telephone call.

17 "c. Other communication with a person which
18 represents a price, quality, or availability of consumer goods
19 or services and which invites a response by telephone or which
20 is followed by a call to the purchaser by a salesperson. For
21 purposes of this section, "other communication" means a
22 written or oral notification or advertisement transmitted
23 through any means. ~~Also, for purposes of this section,~~
24 ~~"invites a response by telephone" does not mean the mere~~
25 ~~listing or including of a telephone number in a notification~~
26 ~~or advertisement.~~

1 "(4) COMMISSION. The Alabama Public Service
2 Commission.

3 "(5) CONSUMER. An actual or prospective purchaser,
4 lessee, or recipient of consumer goods or services.

5 "(6) CONSUMER GOODS OR SERVICES. Any real property
6 or any tangible or intangible personal property which is
7 normally used for personal, family, or household purposes
8 including, without limitation, any property intended to be
9 attached to or installed in any real property, without regard
10 to whether it is so attached or installed, as well as cemetery
11 lots, timeshare estates and licenses, and any services related
12 to the property.

13 "(7) DIVISION. The Consumer Division of the Office
14 of the Attorney General.

15 "(8) DOING BUSINESS IN THIS STATE. Businesses
16 conducting telephonic sales calls from a location in Alabama
17 or from other states or nations to consumers located in
18 Alabama.

19 "(9) ENFORCING AUTHORITY. The division or the office
20 of the district attorney if a violation of this chapter occurs
21 in or affects the judicial circuit under the jurisdiction of
22 the office of the district attorney.

23 "(10) GIFT, AWARD, or PRIZE. A gratuity which the
24 purchaser believes to be of value.

25 "(11) INDIVIDUAL. A single human being but does not
26 mean a firm, association of individuals, corporation,

1 partnership, joint venture, sole proprietorship, or any other
2 entity.

3 "(12) MERCHANT. A person who, directly or
4 indirectly, offers or makes available to consumers any
5 consumer goods or services.

6 "(13) PERSON. Any individual, group of individuals,
7 firm, association, corporation, partnership, joint venture,
8 sole proprietorship, or any other business entity.

9 "(14) PURCHASER. A person who is solicited to become
10 or does become obligated to a commercial telephone seller.

11 "(15) SALESPERSON. Any individual employed,
12 appointed, or authorized by a commercial telephone seller,
13 regardless of whether the commercial telephone seller refers
14 to the individual as an agent, representative, or independent
15 contractor, who attempts to solicit or solicits a sale on
16 behalf of the commercial telephone seller. A salesperson,
17 however, does not include individuals exempted from this
18 chapter by Section 8-19A-4 or employees or agents of persons
19 exempted from this chapter by Section 8-19A-4, or companies
20 and individuals under contract with persons exempted from this
21 chapter by Section 8-19A-4 when liability is assumed by the
22 exempt entity.

23 "(16) TELEMARKETER or TELEPHONE SOLICITOR. Any
24 natural person, firm, organization, partnership, association,
25 or corporation, or a subsidiary or affiliate thereof, doing
26 business in this state, who makes or causes to be made a
27 telephonic sales call.

1 "(17) TELEMARKETING or TELEPHONE SOLICITATION. A
2 voice communication over a telephone line for the purpose of
3 encouraging the purchase or rental of, or investment in
4 property, goods, or services, but does not include
5 communications by or on behalf of any of the exempt persons in
6 Section 8-19A-4.

7 "(18) TELEPHONE SOLICITATION CALL. A call made by a
8 telephone solicitor to a consumer, for the purpose of
9 soliciting a sale of consumer goods or services, or for the
10 purpose of obtaining information that may be used for the
11 direct solicitation of a sale of consumer goods or services or
12 an extension of credit for consumer goods or services, or for
13 the purpose of obtaining information that may be used for the
14 direct solicitation of a sale of consumer goods or services or
15 an extension of credit for such purposes.

16 "(19) UNSOLICITED SOLICITATION SALES CALL. A
17 telephonic sales call other than a call made to a person with
18 whom the telephone solicitor has a prior or existing business
19 relationship; or by a newspaper publisher or his or her agent
20 or employee in connection with his or her business; or any of
21 the exempt persons in Section 8-19A-4."

22 "§8-19C-5.

23 "(a) Any person or entity who makes a telephone
24 solicitation to the telephone line of a residential,
25 commercial, or cellular subscriber in this state shall
26 identify himself or herself as provided under Section
27 8-19A-12.

1 "(b) No person or entity who makes a telephone
2 solicitation to the telephone line of a residential,
3 commercial, or cellular subscriber in this state may knowingly
4 utilize a method to block or otherwise circumvent the use of a
5 caller identification service by the subscriber, or otherwise
6 intentionally cause misleading caller identification
7 information to be displayed to a subscriber. This section does
8 not apply to solicitations in which the name and telephone
9 number of the party on whose behalf the call is made has been
10 substituted for the name and telephone number of the service
11 used to make the call."

12 "§8-19C-11.

13 "The remedies, duties, prohibitions, and penalties
14 of Sections 8-19C-2 to 8-19C-10, inclusive, of this chapter
15 shall not be exclusive and shall be in addition to all other
16 causes of action, remedies, and penalties provided by law. Any
17 violation of this chapter shall also be considered a violation
18 of the Deceptive Trade Practices Act, Section 8-19-1, et seq."

19 Section 2. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended, because the
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 3. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.