

1 HB40
2 196367-1
3 By Representatives Lipscomb and Isbell
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 intentional use of misleading caller
10 identification information by telephone solicitors.

11 This bill would prohibit the intentional
12 misuse of misleading caller identification
13 information by telephone solicitors. Violations
14 would also be made violations of the Deceptive
15 Trade Practices Act, Section 8-19-1 et seq, in
16 order to provide for enforcement by the Attorney
17 General.

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

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official ReCompilation of the Constitution of

1 Alabama of 1901, as amended, prohibits a general
2 law whose purpose or effect would be to require a
3 new or increased expenditure of local funds from
4 becoming effective with regard to a local
5 governmental entity without enactment by a 2/3 vote
6 unless: it comes within one of a number of
7 specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

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12 A BILL
13 TO BE ENTITLED
14 AN ACT

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16 Relating to telemarketers and telephone
17 solicitations; to amend Sections 8-19A-3, 8-19C-5, and
18 8-19C-11 of the Code of Alabama 1975, to prohibit the knowing
19 display of misleading caller identification information within
20 telephone solicitations with the intent to defraud, cause
21 harm, or wrongfully obtain anything of value; to provide
22 exceptions for solicitations made on behalf of charitable
23 institutions; to make violations also a violation of the
24 Deceptive Trade Practices Act; and in connection therewith
25 would have as its purpose or effect the requirement of a new
26 or increased expenditure of local funds within the meaning of
27 Amendment 621 of the Constitution of Alabama of 1901, now

1 appearing as Section 111.05 of the Official ReCompilation of
2 the Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§8-19A-3.

8 "As used in this chapter and Chapter 19C, the
9 following terms shall have the following meanings unless the
10 context clearly indicates otherwise:

11 "(1) CALLER IDENTIFICATION SERVICE. A type of
12 telephone service which permits telephone subscribers to see
13 the telephone number of incoming telephone calls.

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

25 "(3) COMMERCIAL TELEPHONE SOLICITATION.

26 "a. An unsolicited telephone call to a person
27 initiated by a commercial telephone seller or salesperson, or

1 an automated dialing machine used in accordance with this
2 chapter for the purpose of inducing the person to purchase or
3 invest in consumer goods or services.

4 "b. Other communication with a person where:

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

8 "2. A telephone call response is invited.

9 "3. The salesperson intends to complete a sale or
10 enter into an agreement to purchase during the course of the
11 telephone call.

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

22 "(4) COMMISSION. The Alabama Public Service
23 Commission.

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

26 "(6) CONSUMER GOODS OR SERVICES. Any real property
27 or any tangible or intangible personal property which is

1 normally used for personal, family, or household purposes
2 including, without limitation, any property intended to be
3 attached to or installed in any real property, without regard
4 to whether it is so attached or installed, as well as cemetery
5 lots, timeshare estates and licenses, and any services related
6 to the property.

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

9 "(8) DOING BUSINESS IN THIS STATE. Businesses
10 conducting telephonic sales calls from a location in Alabama
11 or from other states or nations to consumers located in
12 Alabama.

13 "(9) ENFORCING AUTHORITY. The division or the office
14 of the district attorney if a violation of this chapter occurs
15 in or affects the judicial circuit under the jurisdiction of
16 the office of the district attorney.

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

19 "(11) INDIVIDUAL. A single human being but does not
20 mean a firm, association of individuals, corporation,
21 partnership, joint venture, sole proprietorship, or any other
22 entity.

23 "(12) MERCHANT. A person who, directly or
24 indirectly, offers or makes available to consumers any
25 consumer goods or services.

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

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

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

18 "(16) TELEMARKETER or TELEPHONE SOLICITOR. Any
19 natural person, firm, organization, partnership, association,
20 or corporation, or a subsidiary or affiliate thereof, doing
21 business in this state, who makes or causes to be made a
22 telephonic sales call.

23 "(17) TELEMARKETING or TELEPHONE SOLICITATION. A
24 voice communication over a telephone line for the purpose of
25 encouraging the purchase or rental of, or investment in
26 property, goods, or services, but does not include

1 communications by or on behalf of any of the exempt persons in
2 Section 8-19A-4.

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

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

18 "§8-19C-5.

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

24 "(b) No person or entity who makes a telephone
25 solicitation to the telephone line of a residential,
26 commercial, or cellular subscriber in this state may knowingly
27 utilize a method to block or otherwise circumvent the use of a

1 caller identification service by the subscriber, or cause
2 misleading caller identification information to be displayed
3 to a subscriber, with the intent to defraud, cause harm, or
4 wrongfully obtain anything of value. This section does not
5 apply to solicitations in which the name and telephone number
6 of the party on whose behalf the call is made has been
7 substituted for the name and telephone number of the service
8 used to make the call.

9 "§8-19C-11.

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

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

24 Section 3. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.