

1 HB86  
2 196048-1  
3 By Representative Shedd  
4 RFD: Technology and Research  
5 First Read: 05-MAR-19

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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.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
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.