

1 SB7  
2 196534-1  
3 By Senator Melson  
4 RFD: Judiciary  
5 First Read: 05-MAR-19  
6 PFD: 01/15/2019

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, no penalty exists for  
9 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 of  
14 this act would also be made violations of the  
15 Deceptive Trade Practices Act in order to provide  
16 for enforcement by the 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  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT

14  
15 Relating to telemarketers and telephone  
16 solicitations; to amend Sections 8-19A-3, 8-19C-5, and  
17 8-19C-11 of the Code of Alabama 1975, to prohibit the knowing  
18 display of misleading caller identification information within  
19 telephone solicitations with the intent to defraud, cause  
20 harm, or wrongfully obtain anything of value; to provide  
21 exceptions for solicitations made on behalf of charitable  
22 institutions; to make violations also a violation of the  
23 Deceptive Trade Practices Act; and in connection therewith  
24 would have as its purpose or effect the requirement of a new  
25 or increased expenditure of local funds within the meaning of  
26 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 amended to read as follows:

6 "§8-19A-3.

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

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

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

24 "(3) COMMERCIAL TELEPHONE SOLICITATION.

25 "a. An unsolicited telephone call to a person  
26 initiated by a commercial telephone seller or salesperson, or  
27 an automated dialing machine used in accordance with this

1 chapter for the purpose of inducing the person to purchase or  
2 invest in consumer goods or services.

3 "b. Other communication with a person where:

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

7 "2. A telephone call response is invited.

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

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

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

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

25 "(6) CONSUMER GOODS OR SERVICES. Any real property  
26 or any tangible or intangible personal property which is  
27 normally used for personal, family, or household purposes

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

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

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

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

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

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

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

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

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

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

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

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

26           "(18) TELEPHONE SOLICITATION CALL. A call made by a  
27 telephone solicitor to a consumer, for the purpose of

1 soliciting a sale of consumer goods or services, or for the  
2 purpose of obtaining information that may be used for the  
3 direct solicitation of a sale of consumer goods or services or  
4 an extension of credit for consumer goods or services, or for  
5 the purpose of obtaining information that may be used for the  
6 direct solicitation of a sale of consumer goods or services or  
7 an extension of credit for such purposes.

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

14 "§8-19C-5.

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

20 "(b) No person or entity who makes a telephone  
21 solicitation to the telephone line of a residential,  
22 commercial, or cellular subscriber in this state may knowingly  
23 utilize a method to block or otherwise circumvent the use of a  
24 caller identification service by the subscriber, or cause  
25 misleading caller identification information to be displayed  
26 to a subscriber, with the intent to defraud, cause harm, or  
27 wrongfully obtain anything of value. This section does not



1 apply to solicitations in which the name and telephone number  
2 of the party on whose behalf the call is made has been  
3 substituted for the name and telephone number of the service  
4 used to make the call.

5 "§8-19C-11.

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

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

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