

1 HB506  
2 185031-1  
3 By Representatives South, Sells, Williams (JW) and Ingram  
4 RFD: State Government  
5 First Read: 13-APR-17

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8 SYNOPSIS: Under existing law, the Alabama  
9 Telemarketing Act regulates telemarketing and  
10 telephone solicitations. Persons primarily  
11 soliciting the sale of a newspaper, periodical of  
12 general circulation, or magazine are exempt from  
13 the law.

14 This bill would specify that the inclusion  
15 of a gift package or the offering of a magazine as  
16 a part of a membership does not preclude the  
17 solicitation from being exempt under the law and  
18 would further specify that a solicitation on behalf  
19 of a magazine would be exempt under the law if the  
20 magazine was approved as a magazine for the purpose  
21 of accruing income under the Internal Revenue Code.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1                   To amend Section 8-19A-4 of the Code of Alabama  
2 1975, relating to the Alabama Telemarketing Act, to further  
3 specify the exemption for a person primarily soliciting the  
4 sale of a newspaper, periodical, or magazine.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6                   Section 1. Section 8-19A-4 of the Code of Alabama  
7 1975, is amended to read as follows:

8                   "§8-19A-4.

9                   "The provisions of this chapter do not apply to:

10                  "(1) A person engaging in commercial telephone  
11 solicitation where the solicitation is an isolated transaction  
12 and not done in the course of a pattern of repeated  
13 transactions of like nature.

14                  "(2) A person making calls for religious,  
15 charitable, political, educational, or other noncommercial  
16 purposes or a person soliciting for a nonprofit corporation if  
17 that corporation is properly registered with the Secretary of  
18 State and is included within the exemption of the Alabama  
19 Revenue Code or Section 501(c)(3) of the Internal Revenue Code  
20 or rural electric cooperatives formed under Chapter 6 of Title  
21 37 of the Code of Alabama or affiliates or subsidiaries  
22 thereof.

23                  "(3) A person soliciting:

24                  "a. Without the intent to complete or obtain  
25 provisional acceptance of a sale during the telephone  
26 solicitation.

1            "b. Who does not make the major sales presentation  
2 during the telephone solicitation.

3            "c. Without the intent to complete, and who does not  
4 complete, the sales presentation during the telephone  
5 solicitation, but who completes the sales presentation at a  
6 later face-to-face meeting between the seller and the  
7 prospective purchaser. However, if a seller, directly  
8 following a telephone solicitation, causes an individual whose  
9 primary purpose it is to go to the prospective purchaser to  
10 collect the payment or deliver any item purchased, this  
11 exemption does not apply.

12            "(4) Any licensed securities, commodities, or  
13 investment broker, dealer, or investment adviser, when  
14 soliciting within the scope of his or her license. As used in  
15 this section, "licensed securities, commodities, or investment  
16 broker, dealer, or investment adviser" means a person subject  
17 to license or registration by the Securities and Exchange  
18 Commission, by the National Association of Securities Dealers  
19 or other self-regulatory organization as defined by the  
20 Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by  
21 an official or agency of this state or of any state,  
22 commonwealth or territory of the United States.

23            "(5) Any licensed associated person of a securities,  
24 commodities, or investment broker, dealer, or investment  
25 adviser, when soliciting within the scope of his or her  
26 license. As used in this section, "licensed associated person  
27 of a securities, commodities, or investment broker, dealer, or

1 investment adviser" means any associated person registered or  
2 licensed by the National Association of Securities Dealers or  
3 other self-regulatory organization as defined by the  
4 Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by  
5 an official or agency of this state or of any state,  
6 commonwealth or territory of the United States.

7 "(6) A person primarily soliciting the sale of a  
8 newspaper, periodical of general circulation, or magazine. For  
9 the purposes of this chapter, the words "primarily soliciting"  
10 includes a person soliciting a sale on behalf of a company  
11 that publishes and offers for sale one or more newspapers,  
12 periodicals of general circulation, or magazines. The  
13 inclusion of a gift package or the offering of a magazine as a  
14 part of a membership shall not preclude the solicitation of  
15 the sale from being considered as primarily soliciting the  
16 sale of a newspaper, periodical of general circulation, or  
17 magazine. Any company that makes an election under the U.S.  
18 Internal Revenue Code, Section 455, for deferring income on  
19 sales of magazines and receives acceptance from the Internal  
20 Revenue Service that the election is proper, shall be  
21 considered to be primarily soliciting the sale of a magazine  
22 and exempt from this chapter when a person is soliciting the  
23 sale of the magazine.

24 "(7) A book, video, or record club or contractual  
25 plan or arrangement:

1            "a. Under which the seller provides the consumer  
2 with a form which the consumer may use to instruct the seller  
3 not to ship the offered merchandise.

4            "b. Which is regulated by the Federal Trade  
5 Commission trade regulation concerning "use of negative option  
6 plans by sellers in commerce."

7            "c. Which provides for the sale of books, records,  
8 or videos which are not covered under paragraph a. or  
9 paragraph b., including continuity plans, subscription  
10 arrangements, standing order arrangements, supplements, and  
11 series arrangements under which the seller periodically ships  
12 merchandise to a consumer who has consented in advance to  
13 receive the merchandise on a periodic basis.

14            "(8) Any supervised financial institution or parent,  
15 subsidiary, or affiliate thereof. As used in this section,  
16 "supervised financial institution" means any commercial bank,  
17 trust company, savings and loan association, mutual savings  
18 bank, credit union, industrial loan company, consumer finance  
19 lender, commercial finance lender, or insurer, provided that  
20 the institution is subject to supervision by an official or  
21 agency of this state, of any state, or of the United States.

22            "(9) Any licensed insurance broker, agent, customer  
23 representative, or solicitor when soliciting within the scope  
24 of his or her license. As used in this section, "licensed  
25 insurance broker, agent, customer representative, or  
26 solicitor" means any insurance broker, agent, customer  
27 representative, or solicitor licensed by an official or agency

1 of this state or of any state of the United States licensed in  
2 accordance with the Alabama Insurance Code (Title 27).

3 "(10) A person soliciting the sale of services  
4 provided by a cable television system operating under  
5 authority of a franchise or permit.

6 "'(11) A business-to-business sale where:

7 "a. The commercial telephone seller has been  
8 operating continuously for at least three years under the same  
9 business name and has at least 50 percent of its dollar volume  
10 consisting of repeat sales to existing businesses.

11 "b. The purchaser business intends to resell or  
12 offer for purposes of advertisement or as a promotional item  
13 the property or goods purchased.

14 "c. The purchaser business intends to use the  
15 property or goods purchased in a recycling, reuse,  
16 remanufacturing, or manufacturing process.

17 "(12) A person who solicits sales or advertising by  
18 periodically publishing and delivering a catalog, periodical,  
19 or magazine of the seller's merchandise or ad purchasers,  
20 merchandise to prospective purchasers, if the catalog,  
21 periodical, or magazine:

22 "a. Contains a written description or illustration  
23 of each item or service offered for sale.

24 "b. Includes the physical, permanent business  
25 address or home address of the seller.

26 "c. Includes at least 20 pages of written material  
27 and illustration and is distributed in more than one state.

1           "d. Has an annual cumulative circulation by mailing  
2 of not less than 150,000.

3           "(13) A person who solicits contracts for the  
4 maintenance or repair of goods previously purchased from the  
5 person making the solicitation or on whose behalf the  
6 solicitation is made.

7           "(14) A telephone company or utility company which  
8 is regulated by the Alabama Public Service Commission, or any  
9 employee, officer, director, or authorized sales  
10 representative of such telephone company or utility company  
11 when soliciting products or services which would be subject to  
12 Public Service Commission regulation on behalf of such  
13 telephone company, utility company, or a Federal  
14 Communications Commission licensed cellular telephone company  
15 or affiliates or other bona fide radio telecommunication  
16 services provider. Provided, however, that such authorized  
17 sales representatives shall be subject to the same rules and  
18 regulations as the exempted company through the Public Service  
19 Commission.

20           "(15) A person who is licensed pursuant to Chapter  
21 13, Title 34, who is soliciting within the scope of the  
22 license.

23           "(16) A person licensed pursuant to Section 8-19A-5  
24 when soliciting pursuant to that license.

25           "(17) An issuer or a subsidiary of an issuer that  
26 has a class of securities which is subject to Section 12 of  
27 the Securities Exchange Act of 1934 (15 U.S.C. Section 781)



1 and which is either registered or exempt from registration  
2 under paragraph (A), paragraph (B), paragraph (C), paragraph  
3 (E), paragraph (F), paragraph (G), or paragraph (H) of  
4 subsection (g) (2) of that section.

5 "(18) A business soliciting exclusively the sale of  
6 telephone answering services provided that the telephone  
7 answering services will be supplied by the solicitor.

8 "(19) A person soliciting a transaction regulated by  
9 the Commodity Futures Trading Commission if the person is  
10 registered or temporarily licensed for this activity with the  
11 Commodity Futures Trading Commission under the Commodity  
12 Exchange Act (7 U.S.C. Section 1 et seq.) and the registration  
13 or license has not expired, or been suspended or revoked.

14 "(20) A person soliciting the sale of food or  
15 produce if the solicitation neither intends to result in, or  
16 actually results in, a sale which costs the purchaser in  
17 excess of five hundred dollars (\$500).

18 "(21) A person soliciting business from prospective  
19 consumers who have an existing business relationship with or  
20 who have previously purchased from the business enterprise for  
21 which the solicitor is calling, if the solicitor is operating  
22 under the same exact business name.

23 "(22) A person who has been operating, for at least  
24 one year, a retail business establishment under the same name  
25 as that used in connection with telemarketing, and both of the  
26 following occur on a continuing basis:

1           "a. Either products are displayed and offered for  
2 sale or services are offered for sale and provided at the  
3 business establishment.

4           "b. A majority of the seller's business involves the  
5 buyer obtaining the products or services at the seller's  
6 location.

7           "(23) Any person who is duly licensed under Section  
8 34-27-66.

9           "(24) Any telephone marketing service company which  
10 provides telemarketing sales services under contract to  
11 sellers and has been operating continuously for at least five  
12 years under the same business name and 75 percent of its  
13 contracts are performed on behalf of persons exempted from  
14 this chapter by this section.

15           "(25) A person or business soliciting the sale of an  
16 annual publication comprised of a biographical compilation of  
17 notable and distinguished individuals."

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