

HB427 INTRODUCED



1 HB427
2 5VJDI36-1
3 By Representatives Tillman, Clarke, Hassell, Morris, Daniels,
4 Moore (M), Bracy, Jones, Jackson, Travis
5 RFD: Judiciary
6 First Read: 12-Feb-26



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SYNOPSIS:

Under existing law, residential telephone subscribers may request to be added to the state's database of residential telephone subscribers who object to receiving telephone solicitations.

This bill would authorize commercial and cellular telephone subscribers to join the database.

Under existing law, telephone solicitors are prohibited from circumventing the use of caller identification systems.

This bill would prohibit telephone solicitors from using misleading caller identification information.

This bill would prohibit telephone solicitors from making solicitation calls before 8:00 a.m. or after 8:00 p.m.

This bill would prohibit telephone solicitors from making more than three solicitation calls to a given person over a 24-hour period.

Under existing law, the Public Service Commission may commence a proceeding against a knowing violation or threatened knowing violation of the prohibitions related to telephone solicitations.

This bill would authorize the Public Service Commission to commence a proceeding against any



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29 violation or threatened violation of the prohibitions.

30 Under existing law, the Public Service
31 Commission imposes a civil penalty of up to \$2,000 for
32 each violation.

33 This bill would authorize the Public Service
34 Commission to impose a civil penalty of up to \$20,000
35 for each violation.

36 Under existing law, a person who has received
37 more than one telephone solicitation in violation of
38 the law may seek damages of up to \$2,000 for each
39 violation.

40 This bill would authorize a person who has
41 received more than one telephone solicitation in
42 violation of the law to seek up to \$20,000 for each
43 violation.

44 This bill would also provide that a violation of
45 the law is a deceptive trade practice.

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A BILL

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TO BE ENTITLED

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AN ACT

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52 Relating to consumer protection; to amend Sections
53 8-19A-3, 8-19A-20, 8-19C-2, 8-19C-3, 8-19C-5, 8-19C-6,
54 8-19C-7, 8-19C-8, and 8-19C-11, Code of Alabama 1975; to
55 further provide for the state's telephone solicitation
56 database; and to further provide for telephone solicitation



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57 prohibitions, penalties, damages, and defenses.

58 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

59 Section 1. Sections 8-19A-3, 8-19A-20, 8-19C-2,
60 8-19C-3, 8-19C-5, 8-19C-6, 8-19C-7, 8-19C-8, and 8-19C-11,
61 Code of Alabama 1975, are amended to read as follows:

62 "§8-19A-3

63 ~~As used in~~ For the purposes of this chapter and Chapter
64 19C, the following terms ~~shall~~ have the following meanings
65 ~~unless the context clearly indicates otherwise~~:

66 (1) CALLER IDENTIFICATION SERVICE. A type of telephone
67 service which permits telephone subscribers to see the
68 telephone number of incoming telephone calls.

69 (2) COMMERCIAL TELEPHONE SELLER. Any person who engages
70 in commercial telephone solicitation on his or her own behalf
71 or through salespersons, except that a commercial telephone
72 seller does not include any of the persons or entities
73 exempted from this chapter by Section 8-19A-4. A commercial
74 telephone seller does not include a salesperson ~~as defined in~~
75 ~~subdivision (15)~~. A commercial telephone seller includes, but
76 is not limited to, owners, operators, officers, directors,
77 partners, or other individuals engaged in the management
78 activities of a business entity pursuant to this chapter.

79 (3) COMMERCIAL TELEPHONE SOLICITATION.

80 a. An unsolicited telephone call to a person initiated
81 by a commercial telephone seller or salesperson, or an
82 automated dialing machine used in accordance with this chapter
83 for the purpose of inducing the person to purchase or invest
84 in consumer goods or services.



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85 b. Other communication with a person where:

86 1. A gift, award, or prize is offered to a purchaser
87 who has not previously purchased from the person initiating
88 the communication.

89 2. A telephone call response is invited.

90 3. The salesperson intends to complete a sale or enter
91 into an agreement to purchase during the course of the
92 telephone call.

93 c. Other communication with a person ~~which~~ that
94 represents a price, quality, or availability of consumer goods
95 or services and ~~which~~ invites a response by telephone or ~~which~~
96 is followed by a call to the purchaser by a salesperson. For
97 purposes of this section, "other communication" means a
98 written or oral notification or advertisement transmitted
99 through any means. ~~Also, for purposes of this section,~~
100 ~~"invites a response by telephone" does not mean the mere~~
101 ~~listing or including of a telephone number in a notification~~
102 ~~or advertisement.~~

103 (4) COMMISSION. The Alabama Public Service Commission.

104 (5) CONSUMER. An actual or prospective purchaser,
105 lessee, or recipient of consumer goods or services.

106 (6) CONSUMER GOODS OR SERVICES. Any real property or
107 any tangible or intangible personal property which is normally
108 used for personal, family, or household purposes including,
109 without limitation, any property intended to be attached to or
110 installed in any real property, without regard to whether it
111 is so attached or installed, as well as cemetery lots,
112 timeshare estates and licenses, and any services related to



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113 the property.

114 (7) DIVISION. The Consumer Division of the Office of
115 the Attorney General.

116 (8) DOING BUSINESS IN THIS STATE. Businesses conducting
117 telephonic sales calls from a location in Alabama or from
118 other states or nations to consumers located in Alabama.

119 (9) ENFORCING AUTHORITY. The division or the office of
120 the district attorney if a violation of this chapter occurs in
121 or affects the judicial circuit under the jurisdiction of the
122 office of the district attorney.

123 (10) GIFT, AWARD, or PRIZE. A gratuity which the
124 purchaser believes to be of value.

125 (11) INDIVIDUAL. A single human being but does not mean
126 a firm, association of individuals, corporation, partnership,
127 joint venture, sole proprietorship, or any other entity.

128 (12) MERCHANT. A person who, directly or indirectly,
129 offers or makes available to consumers any consumer goods or
130 services.

131 (13) PERSON. Any individual, group of individuals,
132 firm, association, corporation, partnership, joint venture,
133 sole proprietorship, or any other business entity.

134 (14) PROVIDER. Any provider of wireless, voice over the
135 Internet protocol, or legacy-switched wireline voice service
136 provider doing business in this state, as well as any provider
137 of landline or cellular voice or text services doing business
138 in this state.

139 ~~(14)~~ (15) PURCHASER. A person who is solicited to become
140 or does become obligated to a commercial telephone seller.



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141 ~~(15)~~ (16) SALESPERSON. Any individual employed,
142 appointed, or authorized by a commercial telephone seller,
143 regardless of whether the commercial telephone seller refers
144 to the individual as an agent, representative, or independent
145 contractor, who attempts to solicit or solicits a sale on
146 behalf of the commercial telephone seller. A salesperson,
147 however, does not include individuals exempted from this
148 chapter by Section 8-19A-4 or employees or agents of persons
149 exempted from this chapter by Section 8-19A-4, or companies
150 and individuals under contract with persons exempted from this
151 chapter by Section 8-19A-4 when liability is assumed by the
152 exempt entity.

153 ~~(16)~~ (17) TELEMARKETER or TELEPHONE SOLICITOR. Any
154 natural person, firm, organization, partnership, association,
155 or corporation, or a subsidiary or affiliate thereof, doing
156 business in this state, who makes or causes to be made a
157 telephonic sales call.

158 ~~(17)~~ (18) TELEMARKETING or TELEPHONE SOLICITATION. A
159 voice communication over a telephone line for the purpose of
160 encouraging the purchase or rental of, or investment in
161 property, goods, or services, but does not include
162 communications by or on behalf of any of the exempt persons in
163 Section 8-19A-4.

164 ~~(18)~~ (19) TELEPHONE SOLICITATION CALL. A call made by a
165 telephone solicitor to a consumer, for the purpose of
166 soliciting a sale of consumer goods or services, or for the
167 purpose of obtaining information that may be used for the
168 direct solicitation of a sale of consumer goods or services or



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169 an extension of credit for consumer goods or services, or for
170 the purpose of obtaining information that may be used for the
171 direct solicitation of a sale of consumer goods or services or
172 an extension of credit for such purposes.

173 ~~(19)~~ (20) UNSOLICITED SOLICITATION SALES CALL. A
174 telephonic sales call other than a call made to a person with
175 whom the telephone solicitor has a prior or existing business
176 relationship; or by a newspaper publisher or his or her agent
177 or employee in connection with his or her business; or any of
178 the exempt persons in Section 8-19A-4."

179 "§8-19A-20

180 The division or other enforcing authority shall have
181 criminal prosecuting authority concerning the violations of
182 this chapter, Chapter 19C, or of any rule or order hereunder.
183 In addition to any other action, the division or other
184 enforcing authority may bring an action against any person to
185 enjoin, restrain, and prevent the doing of any act or practice
186 ~~herein~~ prohibited or declared unlawful by this chapter or
187 Chapter 19C."

188 "§8-19C-2

189 (a) No person or entity may make or cause to be made
190 any telephone solicitation to the telephone line of any
191 residential, commercial, or cellular telephone subscriber in
192 this state who has given notice to the commission of his or
193 her objection to receiving telephone solicitations.

194 (b) (1) The commission shall establish and operate a
195 database to compile a list of telephone numbers of
196 residential, commercial, or cellular telephone subscribers who



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197 object to receiving telephone solicitations. ~~The commission~~
198 ~~shall have the database in operation before July 1, 2000.~~

199 (2) The database may be operated by the commission or
200 by another entity under contract with the commission.

201 (3) ~~Before July 1, 2000, the~~ The commission shall
202 ~~promulgate regulations~~ adopt rules which ~~shall~~ include all of
203 the following:

204 a. 1. A requirement that each local exchange company and
205 each competing local exchange carrier and any provider of
206 cellular services shall inform on an annual basis its
207 residential, commercial, and cellular telephone subscribers of
208 the opportunity to provide notification to the commission or
209 its contractor that the subscriber objects to receiving
210 telephone solicitations.

211 2. The information shall be disseminated at the option
212 of the carrier by television, radio, or newspaper
213 advertisements; written correspondence; bill insert or
214 messages; telephone book subscription forms; or any other
215 method not expressly prohibited.

216 b. Methods by which each residential, commercial, or
217 cellular telephone subscriber may give notice to the
218 commission or its contractor of his or her objection to
219 receiving solicitations or revocation of the notice.

220 c. Methods by which a notice of objection becomes
221 effective and the effect of a change of telephone number on
222 the notice.

223 d. Methods by which objections and revocations are
224 collected and added to the database.



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225 e. Methods by which a person or entity desiring to make
226 telephone solicitations may obtain access to the database as
227 required to avoid calling the telephone numbers of
228 residential, commercial, and cellular telephone subscribers
229 included in the database.

230 f. All other matters relating to the database that the
231 commission deems necessary.

232 (4) If, pursuant to 47 U.S.C. ~~Section~~ § 227(c)(3), the
233 Federal Communications Commission establishes a single
234 national database of telephone numbers of subscribers who
235 object to receiving telephone solicitations, the commission
236 shall include the part of the single national database that
237 relates to Alabama in the database established under this
238 section."

239 "§8-19C-3

240 (a) The commission ~~shall have the authority to~~ may
241 charge a residential, commercial, or cellular telephone
242 subscriber a fee every two years payable to the commission for
243 each notice for inclusion on the database established pursuant
244 to this chapter. The commission ~~shall~~ may also ~~have the~~
245 ~~authority to~~ charge a person or entity desiring to make
246 telephone solicitations a fee per year payable to the
247 commission for access to, or for paper or electronic copies of
248 the database established pursuant to this chapter. Any fee
249 established by the commission shall be subject to the approval
250 of the Legislative Council.

251 (b) The commission shall update its "no sales
252 solicitation calls" listing upon receipt of initial consumer



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253 subscriptions or renewals and provide this listing for a fee,
254 pursuant to subsection (a).

255 (c) All fees collected under this chapter shall be
256 deposited into a separate fund in the State Treasury to be
257 expended by the commission for the implementation and
258 administration of this chapter. At the end of each fiscal
259 year, unexpended monies remaining in the fund shall not revert
260 to any other fund of the state, but shall remain available for
261 appropriation. The Legislature shall annually appropriate from
262 the fund the amount necessary for the administration of this
263 chapter to the commission subject to the provisions, terms,
264 conditions, and limitations of ~~the Budget and Financial~~
265 ~~Control Act, Sections 41-4-80 et seq., Sections 41-19-1 et~~
266 ~~seq.~~ Article 4 of Chapter 4 of Title 41, Chapter 19 of Title
267 41, and any other provisions of this chapter."

268 "§8-19C-5

269 (a) Any person or entity who makes a telephone
270 solicitation to the telephone line of a residential,
271 commercial, or cellular telephone subscriber in this state
272 shall identify himself or herself as provided under Section
273 8-19A-12.

274 (b) No person or entity who makes a telephone
275 solicitation to the telephone line of a residential,
276 commercial, or cellular telephone subscriber in this state may
277 knowingly utilize a method to block or otherwise circumvent
278 the use of a caller identification service by the subscriber,
279 or cause misleading caller identification information to be
280 displayed to a subscriber, with the intent to defraud, cause



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281 harm, or wrongfully obtain anything of value.

282 (c) A person or entity who makes a telephone
283 solicitation to the telephone line of a residential,
284 commercial, or cellular telephone subscriber in this state may
285 not make either of the following types of calls:

286 (1) A call before 8:00 a.m. or after 8:00 p.m. local
287 time in the called person's time zone.

288 (2) More than three solicitation calls from any number
289 to a person over a 24-hour period on the same subject matter
290 or issue, regardless of the phone number used to make the
291 call.

292 (d) This section does not apply to solicitations in
293 which the name and telephone number of the party on whose
294 behalf the call is made has been substituted for the name and
295 telephone number of the service used to make the call."

296 "§8-19C-6

297 The commission may commence proceedings in the circuit
298 court in the county relating to a ~~knowing~~-violation or
299 threatened ~~knowing~~-violation of ~~subsection (a) of~~ Section
300 8-19C-2 (a) or Section 8-19C-5. Proceedings which the
301 commission may commence, include, without limitation, issuance
302 of a cease and desist order or issuance of an order imposing a
303 civil penalty up to a maximum of ~~two thousand dollars (\$2,000)~~
304 twenty thousand dollars (\$20,000) for each violation. The
305 proceedings shall be brought in the name of the state. The
306 commission may issue investigative demands, issue subpoenas,
307 administer oaths, and conduct hearings in the course of
308 investigating a violation of ~~subsection (a) of~~ Section



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309 8-19C-2 (a) or Section 8-19C-5."

310 "§8-19C-7

311 (a) A person who has received more than one telephone
312 solicitation within a 12-month period by or on behalf of the
313 same person or entity in violation of ~~subsection (a) of~~
314 Section 8-19C-2 (a) or Section 8-19C-5 may bring an action ~~to~~
315 ~~enjoin~~ against the person or entity that made the telephone
316 solicitation or the person or entity that the telephone
317 solicitation was made on behalf of, or both.

318 (b) An action brought pursuant to this section may seek
319 to enjoin the violation~~;~~, bring an action to recover ~~for~~
320 reasonable attorney fees, or bring an action to recover
321 damages in the amount of actual monetary loss from the ~~knowing~~
322 violation or ~~to receive~~ up to ~~two thousand dollars (\$2,000)~~
323 twenty thousand dollars (\$20,000) in damages for each ~~knowing~~
324 violation, whichever is greater~~;~~ ~~or bring both actions.~~"

325 "§8-19C-8

326 (a) It shall not be a defense in any action or
327 proceeding brought under Section 8-19C-6 or Section 8-19C-7
328 that the defendant ~~has established and implemented, with due~~
329 ~~care, reasonable practices and procedures to effectively~~
330 ~~prevent telephone solicitations in violation of this~~
331 ~~chapter~~ did not make the telephone solicitation or was not
332 aware that the telephone solicitation was in violation of this
333 chapter, if the telephone solicitation was made on behalf of
334 the defendant as a result of a written or verbal agreement,
335 contract, request, or employment relationship. provided, that
336 it shall be a defense if the defendant has, with respect to



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337 the person or entity that made the telephone solicitation,
338 established policies and procedures to effectively prevent
339 telephone solicitations in violation of this chapter and
340 mandated and enforced compliance with those policies and
341 procedures.

342 (b) It shall also be a defense in any action or
343 proceeding brought under this chapter that the telephone
344 solicitation was made to a residential, commercial, or
345 cellular telephone subscriber whose telephone number was
346 provided in error by another subscriber so long as the
347 defendant did not know, or have reason to know, that the
348 telephone number was provided in error."

349 "§8-19C-11

350 (a) The remedies, duties, prohibitions, and penalties
351 of Sections 8-19C-2 to 8-19C-10, inclusive, of this chapter
352 shall not be exclusive and shall be in addition to all other
353 causes of action, remedies, and penalties provided by law.

354 (b) Any person who violates this chapter shall also be
355 guilty of a deceptive trade practice pursuant to Chapter 19."

356 Section 2. This act shall become effective on October
357 1, 2026.