

1 SB95  
2 197901-2  
3 By Senator Jones  
4 RFD: Judiciary  
5 First Read: 19-MAR-19

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 Also under existing law, the Public Service  
12 Commission (PSC) operates a database of residential  
13 telephone subscribers who object to receiving  
14 telephone solicitations. The PSC is authorized to  
15 charge a fee every two years for inclusion on the  
16 list. A person or entity is prohibited from making  
17 a telephone solicitation to any residential  
18 subscriber on the list. In addition, a person or  
19 entity making a telephone solicitation to a  
20 residential subscriber is required to identify  
21 himself or herself and is prohibited from  
22 circumventing caller identification. The PSC is  
23 authorized to assess a civil penalty up to \$2,000  
24 for violations and under certain conditions a  
25 person may bring a civil action for damages up to  
26 \$2,000.

1           This bill would prohibit the intentional  
2 misuse of misleading caller identification  
3 information by telephone solicitors, and would  
4 increase the civil penalty to \$5,000.

5           Violations of the prohibitions against  
6 caller ID spoofing would also be made violations of  
7 the Deceptive Trade Practices Act in order to  
8 provide for enforcement by the Attorney General.

9           This bill would provide that the Do Not Call  
10 Law would also apply to commercial telephone  
11 subscribers and to cellular telephone subscribers.  
12 The bill would also increase the civil penalty and  
13 the amount of damages that may be recovered for Do  
14 Not Call Law violations to \$5,000.

15           This bill would designate the Consumer  
16 Protection Division of the Office of the Attorney  
17 General as the criminal prosecuting authority for  
18 violations relating to unlawful telephone  
19 solicitations.

20           This bill would not apply to telephone  
21 solicitations made on behalf of charitable  
22 institutions.

23           This bill would also not apply to  
24 solicitations in which the telephone solicitor has  
25 substituted the proper caller identification  
26 information of the party on whose behalf the  
27 solicitation has been made.

1                   Amendment 621 of the Constitution of Alabama  
2                   of 1901, now appearing as Section 111.05 of the  
3                   Official Recompilation of the Constitution of  
4                   Alabama of 1901, as amended, prohibits a general  
5                   law whose purpose or effect would be to require a  
6                   new or increased expenditure of local funds from  
7                   becoming effective with regard to a local  
8                   governmental entity without enactment by a 2/3 vote  
9                   unless: it comes within one of a number of  
10                  specified exceptions; it is approved by the  
11                  affected entity; or the Legislature appropriates  
12                  funds, or provides a local source of revenue, to  
13                  the entity for the purpose.

14                  The purpose or effect of this bill would be  
15                  to require a new or increased expenditure of local  
16                  funds within the meaning of the amendment. However,  
17                  the bill does not require approval of a local  
18                  governmental entity or enactment by a 2/3 vote to  
19                  become effective because it comes within one of the  
20                  specified exceptions contained in the amendment.

21  
22                                   A BILL  
23                                   TO BE ENTITLED  
24                                   AN ACT

25  
26                   Relating to robocalling, caller ID spoofing, and the  
27                   do-not-call list; to amend Sections 8-19A-3, 8-19A-20,

1 8-19C-2, 8-19C-3, 8-19C-5, 8-19C-6, 8-19C-7, and 8-19C-11 of  
2 the Code of Alabama 1975; to provide that the do-not-call list  
3 laws would apply to commercial telephone subscribers and  
4 cellular telephone subscribers; to increase the amount of  
5 civil penalties that may be assessed by the commission for  
6 violations; to increase the amount of civil damages that may  
7 be recovered under certain conditions; and in connection  
8 therewith would have as its purpose or effect the requirement  
9 of a new or increased expenditure of local funds within the  
10 meaning of Amendment 621 of the Constitution of Alabama of  
11 1901.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 8-19A-3, 8-19A-20, 8-19C-2,  
14 8-19C-3, 8-19C-5, 8-19C-6, 8-19C-7, and 8-19C-11 of the Code  
15 of Alabama 1975, are amended to read as follows:

16 "§8-19A-3.

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

20 "(1) CALLER IDENTIFICATION SERVICE. A type of  
21 telephone service which permits telephone subscribers to see  
22 the telephone number of incoming telephone calls.

23 "(2) COMMERCIAL TELEPHONE SELLER. Any person who  
24 engages in commercial telephone solicitation on his or her own  
25 behalf or through salespersons, except that a commercial  
26 telephone seller does not include any of the persons or  
27 entities exempted from this chapter by Section 8-19A-4. A

1 commercial telephone seller does not include a salesperson as  
2 defined in subdivision (15). A commercial telephone seller  
3 includes, but is not limited to, owners, operators, officers,  
4 directors, partners, or other individuals engaged in the  
5 management activities of a business entity pursuant to this  
6 chapter.

7 "(3) COMMERCIAL TELEPHONE SOLICITATION.

8 "a. An unsolicited telephone call to a person  
9 initiated by a commercial telephone seller or salesperson, or  
10 an automated dialing machine used in accordance with this  
11 chapter for the purpose of inducing the person to purchase or  
12 invest in consumer goods or services.

13 "b. Other communication with a person where:

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

17 "2. A telephone call response is invited.

18 "3. The salesperson intends to complete a sale or  
19 enter into an agreement to purchase during the course of the  
20 telephone call.

21 "c. Other communication with a person which  
22 represents a price, quality, or availability of consumer goods  
23 or services and which invites a response by telephone or which  
24 is followed by a call to the purchaser by a salesperson. For  
25 purposes of this section, "other communication" means a  
26 written or oral notification or advertisement transmitted  
27 through any means. ~~Also, for purposes of this section,~~

1 ~~"invites a response by telephone" does not mean the mere~~  
2 ~~listing or including of a telephone number in a notification~~  
3 ~~or advertisement.~~

4           "(4) COMMISSION. The Alabama Public Service  
5 Commission.

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

8           "(6) CONSUMER GOODS OR SERVICES. Any real property  
9 or any tangible or intangible personal property which is  
10 normally used for personal, family, or household purposes  
11 including, without limitation, any property intended to be  
12 attached to or installed in any real property, without regard  
13 to whether it is so attached or installed, as well as cemetery  
14 lots, timeshare estates and licenses, and any services related  
15 to the property.

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

18           "(8) DOING BUSINESS IN THIS STATE. Businesses  
19 conducting telephonic sales calls from a location in Alabama  
20 or from other states or nations to consumers located in  
21 Alabama.

22           "(9) ENFORCING AUTHORITY. The division or the office  
23 of the district attorney if a violation of this chapter occurs  
24 in or affects the judicial circuit under the jurisdiction of  
25 the office of the district attorney.

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

1           "(11) INDIVIDUAL. A single human being but does not  
2 mean a firm, association of individuals, corporation,  
3 partnership, joint venture, sole proprietorship, or any other  
4 entity.

5           "(12) MERCHANT. A person who, directly or  
6 indirectly, offers or makes available to consumers any  
7 consumer goods or services.

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

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

13           "(15) PROVIDER. Any provider of wireless, voice over  
14 the Internet protocol, or legacy-switched wireline voice  
15 service provider doing business in this state, as well as any  
16 provider of landline or cellular voice or text services doing  
17 business in this state.

18           "(16) SALESPERSON. Any individual employed,  
19 appointed, or authorized by a commercial telephone seller,  
20 regardless of whether the commercial telephone seller refers  
21 to the individual as an agent, representative, or independent  
22 contractor, who attempts to solicit or solicits a sale on  
23 behalf of the commercial telephone seller. A salesperson,  
24 however, does not include individuals exempted from this  
25 chapter by Section 8-19A-4 or employees or agents of persons  
26 exempted from this chapter by Section 8-19A-4, or companies  
27 and individuals under contract with persons exempted from this



1 chapter by Section 8-19A-4 when liability is assumed by the  
2 exempt entity.

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

8 "(18) TELEMARKETING or TELEPHONE SOLICITATION. A  
9 voice communication over a telephone line for the purpose of  
10 encouraging the purchase or rental of, or investment in  
11 property, goods, or services, but does not include  
12 communications by or on behalf of any of the exempt persons in  
13 Section 8-19A-4.

14 "(19) TELEPHONE SOLICITATION CALL. A call made by a  
15 telephone solicitor to a consumer, for the purpose of  
16 soliciting a sale of consumer goods or services, or for the  
17 purpose of obtaining information that may be used for the  
18 direct solicitation of a sale of consumer goods or services or  
19 an extension of credit for consumer goods or services, or for  
20 the purpose of obtaining information that may be used for the  
21 direct solicitation of a sale of consumer goods or services or  
22 an extension of credit for such purposes.

23 "(20) UNSOLICITED SOLICITATION SALES CALL. A  
24 telephonic sales call other than a call made to a person with  
25 whom the telephone solicitor has a prior or existing business  
26 relationship; or by a newspaper publisher or his or her agent

1 or employee in connection with his or her business; or any of  
2 the exempt persons in Section 8-19A-4.

3 "§8-19A-20.

4 "The division or other enforcing authority shall  
5 have criminal prosecuting authority concerning the violations  
6 of this chapter, Chapter 19C, or of any rule or order  
7 hereunder. In addition to any other action, the division or  
8 other enforcing authority may bring an action against any  
9 person to enjoin, restrain, and prevent the doing of any act  
10 or practice ~~herein~~ prohibited or declared unlawful by this  
11 chapter or Chapter 19C.

12 "§8-19C-2.

13 "(a) No person or entity may make or cause to be  
14 made any telephone solicitation to the telephone line of any  
15 residential, commercial, or cellular telephone subscriber in  
16 this state who has given notice to the commission of his or  
17 her objection to receiving telephone solicitations.

18 "(b) (1) The commission shall establish and operate a  
19 database to compile a list of telephone numbers of  
20 residential, commercial, or cellular telephone subscribers who  
21 object to receiving telephone solicitations. The commission  
22 shall have the database in operation before July 1, 2000.

23 "(2) The database may be operated by the commission  
24 or by another entity under contract with the commission.

25 "(3) ~~Before July 1, 2000, the~~ The commission shall  
26 ~~promulgate regulations~~ adopt rules which shall include all of  
27 the following:

1            "a.1. A requirement that each local exchange company  
2 and each competing local exchange carrier and any provider of  
3 cellular services shall inform on an annual basis its  
4 residential, commercial, and cellular telephone subscribers of  
5 the opportunity to provide notification to the commission or  
6 its contractor that the subscriber objects to receiving  
7 telephone solicitations.

8            "2. The information shall be disseminated at the  
9 option of the carrier by television, radio, or newspaper  
10 advertisements; written correspondence; bill insert or  
11 messages; telephone book subscription forms; or any other  
12 method not expressly prohibited.

13            "b. Methods by which each residential, commercial,  
14 or cellular telephone subscriber may give notice to the  
15 commission or its contractor of his or her objection to  
16 receiving solicitations or revocation of the notice.

17            "c. Methods by which a notice of objection becomes  
18 effective and the effect of a change of telephone number on  
19 the notice.

20            "d. Methods by which objections and revocations are  
21 collected and added to the database.

22            "e. Methods by which a person or entity desiring to  
23 make telephone solicitations may obtain access to the database  
24 as required to avoid calling the telephone numbers of  
25 residential, commercial, and cellular telephone subscribers  
26 included in the database.

1            "f. All other matters relating to the database that  
2 the commission deems necessary.

3            "(4) If, pursuant to 47 U.S.C. Section 227(c)(3),  
4 the Federal Communications Commission establishes a single  
5 national database of telephone numbers of subscribers who  
6 object to receiving telephone solicitations, the commission  
7 shall include the part of the single national database that  
8 relates to Alabama in the database established under this  
9 section.

10            "§8-19C-3.

11            "(a) The commission shall have the authority to  
12 charge a residential, commercial, or cellular telephone  
13 subscriber a fee every two years payable to the commission for  
14 each notice for inclusion on the database established pursuant  
15 to this chapter. The commission shall also have the authority  
16 to charge a person or entity desiring to make telephone  
17 solicitations a fee per year payable to the commission for  
18 access to, or for paper or electronic copies of the database  
19 established pursuant to this chapter. Any fee established by  
20 the commission shall be subject to the approval of the  
21 Legislative Council.

22            "(b) The commission shall update its "no sales  
23 solicitation calls" listing upon receipt of initial consumer  
24 subscriptions or renewals and provide this listing for a fee,  
25 pursuant to subsection (a).

26            "(c) All fees collected under this chapter shall be  
27 deposited into a separate fund in the State Treasury to be

1 expended by the commission for the implementation and  
2 administration of this chapter. At the end of each fiscal  
3 year, unexpended monies remaining in the fund shall not revert  
4 to any other fund of the state, but shall remain available for  
5 appropriation. The Legislature shall annually appropriate from  
6 the fund the amount necessary for the administration of this  
7 chapter to the commission subject to the provisions, terms,  
8 conditions, and limitations of the Budget and Financial  
9 Control Act, Sections 41-4-80 et seq., Sections 41-19-1 et  
10 seq., and any other provisions of this chapter.

11 "§8-19C-5.

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

17 "(b) No person or entity who makes a telephone  
18 solicitation to the telephone line of a residential,  
19 commercial, or cellular telephone subscriber in this state may  
20 knowingly utilize a method to block or otherwise circumvent  
21 the use of a caller identification service by the subscriber,  
22 or cause misleading caller identification information to be  
23 displayed to a subscriber, with the intent to defraud, cause  
24 harm, or wrongfully obtain anything of value.

25 "(c) This section does not apply to solicitations in  
26 which the name and telephone number of the party on whose

1 behalf the call is made has been substituted for the name and  
2 telephone number of the service used to make the call

3 "§8-19C-6.

4 "The commission may commence proceedings in the  
5 circuit court in the county relating to a knowing violation or  
6 threatened knowing violation of subsection (a) of Section  
7 8-19C-2 or Section 8-19C-5. Proceedings which the commission  
8 may commence, include, without limitation, issuance of a cease  
9 and desist order or issuance of an order imposing a civil  
10 penalty up to a maximum of ~~two thousand dollars (\$2,000)~~ five  
11 thousand dollars (\$5,000) for each violation. The proceedings  
12 shall be brought in the name of the state. The commission may  
13 issue investigative demands, issue subpoenas, administer  
14 oaths, and conduct hearings in the course of investigating a  
15 violation of subsection (a) of Section 8-19C-2 or Section  
16 8-19C-5.

17 "§8-19C-7.

18 "A person who has received more than one telephone  
19 solicitation within a 12-month period by or on behalf of the  
20 same person or entity in violation of subsection (a) of  
21 Section 8-19C-2 or Section 8-19C-5 may bring an action to  
22 enjoin the violation; bring an action to recover for actual  
23 monetary loss from the knowing violation or to receive up to  
24 ~~two thousand dollars (\$2,000)~~ five thousand dollars (\$5,000)  
25 in damages for each knowing violation, whichever is greater;  
26 or bring both actions.

27 "§8-19C-11.

1           "The remedies, duties, prohibitions, and penalties  
2 of Sections 8-19C-2 to 8-19C-10, inclusive, of this chapter  
3 shall not be exclusive and shall be in addition to all other  
4 causes of action, remedies, and penalties provided by law. Any  
5 person who violates this chapter shall also be guilty of a  
6 violation of Sections 8-19-1 to 8-19-15, inclusive.

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

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