

1 HB488  
2 192634-1  
3 By Representatives Sells and Ingram  
4 RFD: Transportation, Utilities and Infrastructure  
5 First Read: 06-MAR-18

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8 SYNOPSIS: Under existing law, charitable organizations  
9 are exempt from the Alabama Telemarketing Act.

10 This bill would provide that certain  
11 portions of the Alabama Telemarketing Act relating  
12 to the required disclosure of certain information  
13 apply to charitable organizations.

14 This bill would require a person who  
15 solicits a donation on behalf of a charitable  
16 organization to disclose his or her name, the  
17 organization on whose behalf he or she is  
18 soliciting a donation, and the percentage of any  
19 monetary donation that will actually be used for a  
20 charitable purpose.

21 Amendment 621 of the Constitution of Alabama  
22 of 1901, now appearing as Section 111.05 of the  
23 Official Recompilation of the Constitution of  
24 Alabama of 1901, as amended, prohibits a general  
25 law whose purpose or effect would be to require a  
26 new or increased expenditure of local funds from  
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote  
2 unless: it comes within one of a number of  
3 specified exceptions; it is approved by the  
4 affected entity; or the Legislature appropriates  
5 funds, or provides a local source of revenue, to  
6 the entity for the purpose.

7 The purpose or effect of this bill would be  
8 to require a new or increased expenditure of local  
9 funds within the meaning of the amendment. However,  
10 the bill does not require approval of a local  
11 governmental entity or enactment by a 2/3 vote to  
12 become effective because it comes within one of the  
13 specified exceptions contained in the amendment.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 Relating to consumer protection; to amend Sections  
20 8-19A-3, 8-19A-4, and 8-19A-12, Code of Alabama 1975, to  
21 require the disclosure of certain information by a person  
22 soliciting a donation on behalf of a charitable organization;  
23 and in connection therewith would have as its purpose or  
24 effect the requirement of a new or increased expenditure of  
25 local funds within the meaning of Amendment 621 of the  
26 Constitution of Alabama of 1901, now appearing as Section

1 111.05 of the Official ReCompilation of the Constitution of  
2 Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 8-19A-3, 8-19A-4, and 8-19A-12,  
5 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) CHARITABLE ORGANIZATION. Either of the  
14 following:

15 "a. A person determined by the Internal Revenue  
16 Service to be a tax exempt organization pursuant to Section  
17 501(c)(3) of the Internal Revenue Code.

18 "b. A person actually or purporting to be  
19 established for any voluntary health and welfare, benevolent,  
20 philanthropic, patriotic, educational, humane, scientific,  
21 public health, environmental conservation, or civic purpose or  
22 for the benefit of law enforcement personnel, firefighters, or  
23 other public safety organizations, or any person employing in  
24 any manner a charitable appeal as the basis of any  
25 solicitation.

26 "(3) CHARITABLE TELEPHONE SOLICITOR. A person who  
27 makes a charitable telephone solicitation for or on behalf of

1 a charitable organization. The term includes volunteers,  
2 employees, and contractors of the organization who make a  
3 charitable telephone solicitation.

4 "(4) CHARITABLE TELEPHONE SOLICITATION. A telephone  
5 call made by a charitable telephone solicitor to another  
6 person for the purpose of soliciting the donation of goods or  
7 services for a charitable purpose.

8 "~~(2)~~(5) COMMERCIAL TELEPHONE SELLER. Any person who  
9 engages in commercial telephone solicitation on his or her own  
10 behalf or through salespersons, except that a commercial  
11 telephone seller does not include any of the persons or  
12 entities exempted from this chapter by Section 8-19A-4. A  
13 commercial telephone seller does not include a salesperson as  
14 defined in subdivision ~~(15)~~(18). A commercial telephone seller  
15 includes, but is not limited to, owners, operators, officers,  
16 directors, partners, or other individuals engaged in the  
17 management activities of a business entity pursuant to this  
18 chapter.

19 "~~(3)~~(6) COMMERCIAL TELEPHONE SOLICITATION.

20 "a. An unsolicited telephone call to a person  
21 initiated by a commercial telephone seller or salesperson, or  
22 an automated dialing machine used in accordance with this  
23 chapter for the purpose of inducing the person to purchase or  
24 invest in consumer goods or services.

25 "b. Other communication with a person where:

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

4           "2. A telephone call response is invited.

5           "3. The salesperson intends to complete a sale or  
6 enter into an agreement to purchase during the course of the  
7 telephone call.

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

18           "~~(4)~~ (7) COMMISSION. The Alabama Public Service  
19 Commission.

20           "~~(5)~~ (8) CONSUMER. An actual or prospective  
21 purchaser, lessee, or recipient of consumer goods or services.

22           "~~(6)~~ (9) CONSUMER GOODS OR SERVICES. Any real  
23 property or any tangible or intangible personal property which  
24 is normally used for personal, family, or household purposes  
25 including, without limitation, any property intended to be  
26 attached to or installed in any real property, without regard  
27 to whether it is so attached or installed, as well as cemetery

1 lots, timeshare estates and licenses, and any services related  
2 to the property.

3 "~~(7)~~(10) DIVISION. The Consumer Division of the  
4 Office of the Attorney General.

5 "~~(8)~~(11) DOING BUSINESS IN THIS STATE. Businesses  
6 conducting telephonic sales calls from a location in Alabama  
7 or from other states or nations to consumers located in  
8 Alabama.

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

13 "~~(10)~~(13) GIFT, AWARD, or PRIZE. A gratuity which  
14 the purchaser believes to be of value.

15 "~~(11)~~(14) INDIVIDUAL. A single human being but does  
16 not mean a firm, association of individuals, corporation,  
17 partnership, joint venture, sole proprietorship, or any other  
18 entity.

19 "~~(12)~~(15) MERCHANT. A person who, directly or  
20 indirectly, offers or makes available to consumers any  
21 consumer goods or services.

22 "~~(13)~~(16) PERSON. Any individual, group of  
23 individuals, firm, association, corporation, partnership,  
24 joint venture, sole proprietorship, or any other business  
25 entity.

1           "~~(14)~~(17) PURCHASER. A person who is solicited to  
2 become or does become obligated to a commercial telephone  
3 seller.

4           "~~(15)~~(18) SALESPERSON. Any individual employed,  
5 appointed, or authorized by a commercial telephone seller,  
6 regardless of whether the commercial telephone seller refers  
7 to the individual as an agent, representative, or independent  
8 contractor, who attempts to solicit or solicits a sale on  
9 behalf of the commercial telephone seller. A salesperson,  
10 however, does not include individuals exempted from this  
11 chapter by Section 8-19A-4 or employees or agents of persons  
12 exempted from this chapter by Section 8-19A-4, or companies  
13 and individuals under contract with persons exempted from this  
14 chapter by Section 8-19A-4 when liability is assumed by the  
15 exempt entity.

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

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



1           "~~(18)~~ (21) TELEPHONE SOLICITATION CALL. A call made  
2 by a telephone solicitor to a consumer, for the purpose of  
3 soliciting a sale of consumer goods or services, or for the  
4 purpose of obtaining information that may be used for the  
5 direct solicitation of a sale of consumer goods or services or  
6 an extension of credit for consumer goods or services, or for  
7 the purpose of obtaining information that may be used for the  
8 direct solicitation of a sale of consumer goods or services or  
9 an extension of credit for such purposes.

10           "~~(19)~~ (22) UNSOLICITED SOLICITATION SALES CALL. A  
11 telephonic sales call other than a call made to a person with  
12 whom the telephone solicitor has a prior or existing business  
13 relationship; or by a newspaper publisher or his or her agent  
14 or employee in connection with his or her business; or any of  
15 the exempt persons in Section 8-19A-4.

16           "§8-19A-4.

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

18           "(1) A person engaging in commercial telephone  
19 solicitation where the solicitation is an isolated transaction  
20 and not done in the course of a pattern of repeated  
21 transactions of like nature.

22           "(2) ~~A~~ Except as provided in Section 8-19A-12, a  
23 person making calls for religious, charitable, political,  
24 educational, or other noncommercial purposes or a person  
25 soliciting for a nonprofit corporation if that corporation is  
26 properly registered with the Secretary of State and is  
27 included within the exemption of the Alabama Revenue Code or

1 Section 501(c) (3) of the Internal Revenue Code or rural  
2 electric cooperatives formed under Chapter 6 of Title 37 of  
3 the Code of Alabama or affiliates or subsidiaries thereof.

4 "(3) A person soliciting:

5 "a. Without the intent to complete or obtain  
6 provisional acceptance of a sale during the telephone  
7 solicitation.

8 "b. Who does not make the major sales presentation  
9 during the telephone solicitation.

10 "c. Without the intent to complete, and who does not  
11 complete, the sales presentation during the telephone  
12 solicitation, but who completes the sales presentation at a  
13 later face-to-face meeting between the seller and the  
14 prospective purchaser. However, if a seller, directly  
15 following a telephone solicitation, causes an individual whose  
16 primary purpose it is to go to the prospective purchaser to  
17 collect the payment or deliver any item purchased, this  
18 exemption does not apply.

19 "(4) Any licensed securities, commodities, or  
20 investment broker, dealer, or investment adviser, when  
21 soliciting within the scope of his or her license. As used in  
22 this section, "licensed securities, commodities, or investment  
23 broker, dealer, or investment adviser" means a person subject  
24 to license or registration by the Securities and Exchange  
25 Commission, by the National Association of Securities Dealers  
26 or other self-regulatory organization as defined by the  
27 Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by

1 an official or agency of this state or of any state,  
2 commonwealth or territory of the United States.

3 "(5) Any licensed associated person of a securities,  
4 commodities, or investment broker, dealer, or investment  
5 adviser, when soliciting within the scope of his or her  
6 license. As used in this section, "licensed associated person  
7 of a securities, commodities, or investment broker, dealer, or  
8 investment adviser" means any associated person registered or  
9 licensed by the National Association of Securities Dealers or  
10 other self-regulatory organization as defined by the  
11 Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by  
12 an official or agency of this state or of any state,  
13 commonwealth or territory of the United States.

14 "(6) A person primarily soliciting the sale of a  
15 newspaper, periodical of general circulation, or magazine.

16 "(7) A book, video, or record club or contractual  
17 plan or arrangement:

18 "a. Under which the seller provides the consumer  
19 with a form which the consumer may use to instruct the seller  
20 not to ship the offered merchandise.

21 "b. Which is regulated by the Federal Trade  
22 Commission trade regulation concerning "use of negative option  
23 plans by sellers in commerce."

24 "c. Which provides for the sale of books, records,  
25 or videos which are not covered under paragraph a. or  
26 paragraph b., including continuity plans, subscription  
27 arrangements, standing order arrangements, supplements, and

1 series arrangements under which the seller periodically ships  
2 merchandise to a consumer who has consented in advance to  
3 receive the merchandise on a periodic basis.

4 "(8) Any supervised financial institution or parent,  
5 subsidiary, or affiliate thereof. As used in this section,  
6 "supervised financial institution" means any commercial bank,  
7 trust company, savings and loan association, mutual savings  
8 bank, credit union, industrial loan company, consumer finance  
9 lender, commercial finance lender, or insurer, provided that  
10 the institution is subject to supervision by an official or  
11 agency of this state, of any state, or of the United States.

12 "(9) Any licensed insurance broker, agent, customer  
13 representative, or solicitor when soliciting within the scope  
14 of his or her license. As used in this section, "licensed  
15 insurance broker, agent, customer representative, or  
16 solicitor" means any insurance broker, agent, customer  
17 representative, or solicitor licensed by an official or agency  
18 of this state or of any state of the United States licensed in  
19 accordance with the Alabama Insurance Code (Title 27).

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

23 "(11) A business-to-business sale where:

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

1            "b. The purchaser business intends to resell or  
2 offer for purposes of advertisement or as a promotional item  
3 the property or goods purchased.

4            "c. The purchaser business intends to use the  
5 property or goods purchased in a recycling, reuse,  
6 remanufacturing, or manufacturing process.

7            "(12) A person who solicits sales or advertising by  
8 periodically publishing and delivering a catalog, periodical,  
9 or magazine of the seller's merchandise or ad purchasers,  
10 merchandise to prospective purchasers, if the catalog,  
11 periodical, or magazine:

12            "a. Contains a written description or illustration  
13 of each item or service offered for sale.

14            "b. Includes the physical, permanent business  
15 address or home address of the seller.

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

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

20            "(13) A person who solicits contracts for the  
21 maintenance or repair of goods previously purchased from the  
22 person making the solicitation or on whose behalf the  
23 solicitation is made.

24            "(14) A telephone company or utility company which  
25 is regulated by the Alabama Public Service Commission, or any  
26 employee, officer, director, or authorized sales  
27 representative of such telephone company or utility company

1 when soliciting products or services which would be subject to  
2 Public Service Commission regulation on behalf of such  
3 telephone company, utility company, or a Federal  
4 Communications Commission licensed cellular telephone company  
5 or affiliates or other bona fide radio telecommunication  
6 services provider. Provided, however, that such authorized  
7 sales representatives shall be subject to the same rules and  
8 regulations as the exempted company through the Public Service  
9 Commission.

10 "(15) A person who is licensed pursuant to Chapter  
11 13, Title 34, who is soliciting within the scope of the  
12 license.

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

15 "(17) An issuer or a subsidiary of an issuer that  
16 has a class of securities which is subject to Section 12 of  
17 the Securities Exchange Act of 1934 (15 U.S.C. Section 781)  
18 and which is either registered or exempt from registration  
19 under paragraph (A), paragraph (B), paragraph (C), paragraph  
20 (E), paragraph (F), paragraph (G), or paragraph (H) of  
21 subsection (g) (2) of that section.

22 "(18) A business soliciting exclusively the sale of  
23 telephone answering services provided that the telephone  
24 answering services will be supplied by the solicitor.

25 "(19) A person soliciting a transaction regulated by  
26 the Commodity Futures Trading Commission if the person is  
27 registered or temporarily licensed for this activity with the

1 Commodity Futures Trading Commission under the Commodity  
2 Exchange Act (7 U.S.C. Section 1 et seq.) and the registration  
3 or license has not expired, or been suspended or revoked.

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

8 "(21) A person soliciting business from prospective  
9 consumers who have an existing business relationship with or  
10 who have previously purchased from the business enterprise for  
11 which the solicitor is calling, if the solicitor is operating  
12 under the same exact business name.

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

17 "a. Either products are displayed and offered for  
18 sale or services are offered for sale and provided at the  
19 business establishment.

20 "b. A majority of the seller's business involves the  
21 buyer obtaining the products or services at the seller's  
22 location.

23 "(23) Any person who is duly licensed under Section  
24 34-27-66.

25 "(24) Any telephone marketing service company which  
26 provides telemarketing sales services under contract to  
27 sellers and has been operating continuously for at least five

1 years under the same business name and 75 percent of its  
2 contracts are performed on behalf of persons exempted from  
3 this chapter by this section.

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

7 "§8-19A-12.

8 "(a) Within the first 30 seconds of a telephone  
9 call, a commercial telephone seller or salesperson shall  
10 identify himself or herself by stating his or her true name,  
11 the company on whose behalf the solicitation is being made,  
12 and the consumer goods or services being sold.

13 "(b) If a sale or an agreement to purchase is  
14 completed, the commercial telephone seller shall inform the  
15 purchaser of his or her cancellation rights as provided in  
16 this chapter, state the license number issued by the division  
17 for both the commercial telephone seller and the salesperson,  
18 and give the street address of the commercial telephone  
19 seller.

20 "(c) Within the first 30 seconds of a charitable  
21 telephone solicitation, a charitable telephone solicitor shall  
22 identify himself or herself by stating his or her true name  
23 and the charitable organization on whose behalf the  
24 solicitation is being made. Before a donation or an agreement  
25 to donate is completed, the charitable telephone solicitor  
26 shall disclose to the donee the percentage of the donee's  
27 monetary contribution that will be used for a charitable



1 purpose and how much of the monetary contribution will be used  
2 for other purposes, including administrative costs.

3 "~~(c)~~(d) All oral disclosures required by this  
4 section shall be made in a clear and intelligible manner."

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

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