

1 SB270
2 173894-2
3 By Senator Williams
4 RFD: Judiciary
5 First Read: 18-FEB-16

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8 SYNOPSIS: This bill provides that the intent of the
9 Legislature is that a consumer may not bring an
10 action on behalf of a class under the Alabama
11 Deceptive Trade Practices Act, except through a
12 district attorney or the office of the Attorney
13 General.

14 This bill provides that this limitation is
15 substantive in nature.

16 This bill would require that any consumer
17 bringing a private claim under this chapter to
18 prove that he or she reasonably and detrimentally
19 relied on a practice declared unlawful under this
20 act.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

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26 To amend Section 8-19-10, Code of Alabama 1975,
27 relating to the Alabama Deceptive Trade Practices Act; to

1 provide that the limitation provided by the act that prevents
2 a consumer from bringing an action on behalf of a class,
3 except through a district attorney or the office of the
4 Attorney General is substantive in nature, and that to allow
5 such actions would abridge, enlarge, or modify the substantive
6 rights created by this chapter; to require that any consumer
7 or other person bringing a private claim under the act prove
8 that he or she reasonably and detrimentally relied on an act
9 or practice declared unlawful under the act.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 8-19-10, Code of Alabama 1975, is
12 amended to read as follows:

13 "§8-19-10.

14 "(a) (1) Any person who commits one or more of the
15 acts or practices declared unlawful under this chapter and
16 thereby causes monetary damage to a consumer because that
17 consumer reasonably and detrimentally relied on that act or
18 practice, and any person who commits one or more of the acts
19 or practices declared unlawful in subdivisions (19) and (20)
20 of Section 8-19-5 and thereby causes monetary damage to
21 another person because that other person reasonably and
22 detrimentally relied on that act or practice, shall be liable
23 to each consumer or other person for:

24 "(1) Any actual damages sustained by such consumer
25 or person, or the sum of \$100, whichever is greater; or

26 "(2) Up to three times any actual damages, in the
27 court's discretion. In making its determination under this

1 subsection, the court shall consider, among other relevant
2 factors, the amount of actual damages awarded, the frequency
3 of the unlawful acts or practices, the number of persons
4 adversely affected thereby, and the extent to which the
5 unlawful acts or practices were committed intentionally; and

6 "(3) In the case of any successful action or
7 counterclaim to enforce the foregoing liability or in which
8 injunctive relief is obtained, the costs of the action or
9 counterclaim, together with a reasonable attorney's fee. On a
10 finding by the court that an action or counterclaim under this
11 section was frivolous or brought in bad faith or for the
12 purpose of harassment, the court shall award to the defendant
13 (or counterclaim-defendant) reasonable attorney's fees and
14 costs.

15 "(4) The reliance required to be shown by this
16 section may not be presumed.

17 "(b) The liability provided in this section may be
18 enforced by counterclaim in an action arising from the same
19 transaction without regard to the statute of limitations
20 provided in Section 8-19-14.

21 "(c) Any action under this section may be brought in
22 the circuit court for the county in which the defendant
23 resides, has his/her principal place of business, is doing
24 business, or committed the unlawful act or practice.

25 "(d) Upon commencement of any action brought under
26 this section, the clerk of the court shall mail a copy of the
27 complaint or other initial pleading to the office of the

1 Attorney General and to the local district attorney and, upon
2 entry of any injunction, judgment, or decree in the action,
3 shall mail a copy of such injunction, judgment, or decree to
4 the office of the Attorney General and to the local district
5 attorney.

6 "(e) At least 15 days prior to the filing of any
7 action under this section, a written demand for relief,
8 identifying the claimant and reasonably describing the unfair
9 or deceptive act or practice relied upon and the injury
10 suffered, shall be communicated to any prospective respondent
11 by placing in the United States mail or otherwise. Any person
12 receiving such a demand for relief who, within 15 days of the
13 delivering of the demand for relief, makes a written tender of
14 settlement which is rejected by the claimant may, in any
15 subsequent action, file the written tender and an affidavit
16 concerning this rejection. If the court finds that the relief
17 tendered was sufficient to compensate the petitioner for his
18 or her actual damages, the court shall not award any
19 additional damages or attorney's fees or costs to the
20 petitioner. The demand requirements of this subsection shall
21 not apply if the prospective respondent does not maintain a
22 place of business or does not keep assets within the state,
23 but such respondent may otherwise employ the provisions of
24 this section by making a written offer of relief and paying
25 the rejected tender into court as soon as practicable after
26 receiving notice of an action commenced under this section.
27 All written tenders of settlement such as described in this

1 subsection shall be presumed to be offered without prejudice
2 in compromise of a disputed matter.

3 "(f) A consumer or other person bringing an action
4 under this chapter may not bring an action on behalf of a
5 class; provided, however, that the office of the Attorney
6 General or district attorney shall have the authority to bring
7 action in a representative capacity on behalf of any named
8 person or persons. The limitation in this subsection is a
9 substantive limitation and allowing a consumer or other person
10 to bring a class action or other representative action for a
11 violation of this chapter would abridge, enlarge, or modify
12 the substantive rights created by this chapter. In any such
13 action brought by the office of the Attorney General or a
14 district attorney the court shall not award minimum damages or
15 treble damages, but recovery shall be limited to actual
16 damages suffered by the person or persons, plus reasonable
17 attorney's fees and costs.

18 "(g) Any person who sells, distributes, or
19 manufactures cigarettes and sustains direct economic or
20 commercial injury as a result of a violation of subdivision
21 (23) of Section 8-19-5 may bring an action in good faith for
22 appropriate injunctive relief."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.