

1 SB164
2 209289-2
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 02-FEB-21

1 SB164

2
3
4 ENROLLED, An Act,

5 Relating to deceptive trade practices; to amend
6 Sections 8-19-3 and 8-19-5, Code of Alabama 1975, to provide
7 further for the prohibition against pyramid sales structures;
8 and in connection therewith would have as its purpose or
9 effect the requirement of a new or increased expenditure of
10 local funds within the meaning of Amendment 621 of the
11 Constitution of Alabama of 1901, now appearing as Section
12 111.05 of the Official Recompilation of the Constitution of
13 Alabama of 1901, as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 8-19-3 and 8-19-5, Code of
16 Alabama 1975, are amended to read as follows:

17 "§8-19-3.

18 "As used in this chapter, the following words and
19 phrases shall have the meanings hereinafter ascribed to them:

20 "(1) ATTORNEY GENERAL. The Attorney General of the
21 State of Alabama or his duly designated representatives.

22 "(2) BONA FIDE INVENTORY REPURCHASE PROGRAM. A
23 program by which an entity repurchases from a salesperson
24 current and marketable inventory in possession of the

1 salesperson, on request and on commercially reasonable terms,
2 when the salesperson's business relationship is terminated.

3 "(3) COMMERCIALLY REASONABLE TERMS. The repurchase
4 of current and marketable inventory within 12 months after the
5 date of purchase at not less than 90 percent of the original
6 net cost, less appropriate set-offs and legal claims, if any.

7 "~~(2)~~ (4) CONSUMER. Any natural person who buys goods
8 or services for personal, family, or household use.

9 "(5) CURRENT AND MARKETABLE. The term does not
10 include inventory to which any of the following apply:

11 "a. Is no longer within its commercially reasonable
12 use or shelf-life period.

13 "b. Was clearly described to salespersons prior to
14 purchase as seasonal, discontinued, or special promotion
15 products not subject to the plan or organization's inventory
16 repurpose program.

17 "c. Has been used or opened.

18 "~~(3)~~ (6) GOODS. Includes but is not limited to any
19 property, tangible or intangible, real, personal, or any
20 combination thereof, and any franchise, license,
21 distributorship, or other similar right, privilege, or
22 interest.

23 "(7) INVENTORY. Includes both goods and services,
24 including company-produced promotional materials, sales aids,

1 and sales kits that an entity requires independent
2 salespersons to purchase.

3 "(8) INVENTORY LOADING. The requirement or
4 encouragement by a plan or operation to have the independent
5 salesperson of the plan or operation purchase inventory in an
6 amount that exceeds the amount that the salesperson can expect
7 to resell for ultimate consumption or to use or consume in a
8 reasonable time period, or both.

9 "~~(4)~~ (9) KNOW, KNOWING, KNOWINGLY, KNOWLEDGE, and
10 KNEW. Either actual awareness or such awareness as a
11 reasonable person should have considering all the surrounding
12 circumstances.

13 "~~(5)~~ (10) PERSON. Includes, but is not limited to,
14 natural persons, corporations, trusts, partnerships,
15 incorporated or unincorporated associations, and any other
16 legal entity.

17 "(11) PYRAMID PROMOTIONAL SCHEME. A plan or
18 operation by which a person gives consideration for the
19 opportunity to receive compensation that is derived primarily
20 from the introduction of other persons into the plan or
21 operation rather than from the sale or consumption of goods,
22 services, or intangible property by a participant or other
23 persons introduced into the plan or operation. The term
24 includes any plan or operation under which the number of
25 people who may participate is limited either expressly or by

1 the application of conditions affecting the eligibility of a
2 person to receive compensation under the plan or operation.
3 The term also includes any plan or operation under which a
4 person, on giving consideration, obtains goods, services, or
5 intangible property in addition to the right to receive
6 compensation.

7 "~~(6)~~ (12) SALE, BUYING, and DISTRIBUTION. In
8 addition to their ordinary meanings, include_L but are not
9 limited to_L the act of leasing, renting, or consigning.

10 "~~(7)~~ (13) SERVICES. Work, labor, and other services,
11 including_L but not limited to_L services furnished in
12 connection with the sale or repair of goods.

13 "~~(8)~~ (14) TRADE or COMMERCE. Includes_L but is not
14 limited to_L the advertising, buying, offering for sale, sale
15 or distribution or performance of any service or goods, and
16 any other article, commodity_L or thing of value wherever
17 situated and shall include any trade or commerce affecting the
18 people of this state.

19 "§8-19-5.

20 "The following deceptive acts or practices in the
21 conduct of any trade or commerce are hereby declared to be
22 unlawful:

23 "(1) Passing off goods or services as those of
24 another, provided that this section shall not prohibit the
25 private labeling of goods or services.

1 "(2) Causing confusion or misunderstanding as to the
2 source, sponsorship, approval, or certification of goods or
3 services.

4 "(3) Causing confusion or misunderstanding as to the
5 affiliation, connection, or association with, or certification
6 by another, provided that this section shall not prohibit the
7 private labeling of goods or services.

8 "(4) Using deceptive representations or designations
9 of geographic origin in connection with goods or services.

10 "(5) Representing that goods or services have
11 sponsorship, approval, characteristics, ingredients, uses,
12 benefits, or qualities that they do not have or that a person
13 has sponsorship, approval, status, affiliation, or connection
14 that he or she does not have.

15 "(6) Representing that goods are original or new if
16 they are deteriorated, reconditioned, reclaimed, used,
17 secondhand, or altered to the point of decreasing their value
18 or rendering the goods unfit for the ordinary purpose for
19 which they were purchased, provided that this subdivision
20 shall not apply to new goods which have been reconditioned,
21 reclaimed, or repaired and such fact is disclosed to the
22 purchaser.

23 "(7) Representing that goods or services are of a
24 particular standard, quality, or grade, or that goods are of a
25 particular style or model, if they are of another.

1 "(8) Disparaging the goods, services, or business of
2 another by false or misleading representation of fact.

3 "(9) Advertising goods or services with intent not
4 to sell them as advertised.

5 "(10) Advertising goods or services with intent not
6 to supply reasonably expectable public demand unless the
7 advertisement discloses a limitation of quantity.

8 "(11) Making a false or misleading statement of fact
9 concerning the reasons for, existence of, or amounts of, price
10 reductions.

11 "(12) Knowingly failing to identify flood, water,
12 fire, or accidentally damaged goods as damaged goods if they
13 are damaged to the point of decreasing their value or
14 rendering the goods unfit for the ordinary purpose for which
15 they were purchased, provided, that this subdivision shall not
16 apply to accidentally damaged new goods where the goods are
17 reconditioned, reclaimed, or repaired to substantially their
18 original condition and such fact is disclosed to the
19 purchaser.

20 "(13) Knowingly making false or misleading
21 statements of fact concerning the need for parts, replacement,
22 or repair service.

23 "(14) Misrepresenting the authority of a
24 salesperson, representative, or agent to negotiate the final
25 terms of a transaction.

1 "(15) Disconnecting, turning back, replacing, or
2 resetting the odometer of any motor vehicle so as to reduce
3 the number of miles indicated on the odometer gauge with the
4 intent of deception.

5 "(16) Advertising of any sale by falsely
6 representing that a person is going out of business.

7 "(17) After receipt of payment for goods or
8 services, failing to ship the goods or furnish such services
9 within the time advertised or otherwise represented or, if no
10 specific time is advertised or represented, failing to ship
11 the goods or furnish such services within 30 days, unless
12 within the applicable time period the seller provides the
13 buyer with the option to either cancel the sales agreement and
14 receive a refund of all previous payments to the seller or to
15 extend the date to a specific date proposed by the seller. Any
16 refund shall be mailed or delivered to the buyer within 10
17 business days after the seller receives written notification
18 from the buyer of the buyer's option to cancel the sales
19 agreement and receive the refund.

20 "(18) Using or employing a chain referral sales plan
21 in connection with the sale or offering for sale of goods,
22 merchandise, or anything of value, involving a sales
23 technique, plan, arrangement, or agreement in which the buyer
24 or prospective buyer is offered the opportunity to purchase
25 merchandise or goods and in connection with the purchase

1 receives the seller's promise or representation that the buyer
2 shall have the right to receive compensation or consideration
3 in any form for furnishing to the seller the names of other
4 prospective buyers, if the receipt of the compensation or
5 consideration is contingent upon the occurrence of an event
6 subsequent to the time the buyer purchased the goods,
7 merchandise, or anything of value.

8 ~~"(19) Selling or offering to sell, either directly~~
9 ~~or associated with the sale of goods or services, a right to~~
10 ~~participation in a pyramid sales structure. As used herein,~~
11 ~~"pyramid sales structure" includes any plan or operation for~~
12 ~~the sale or distribution of goods, services, or other property~~
13 ~~wherein a person for consideration acquires the opportunity to~~
14 ~~receive a pecuniary benefit, which is based primarily upon the~~
15 ~~inducement of additional persons by that person, and others,~~
16 ~~regardless of number, to participate in the same plan or~~
17 ~~operation, and is not primarily contingent on the volume or~~
18 ~~quantity of goods, services, or other property sold or~~
19 ~~distributed. For purposes of this subdivision, "consideration"~~
20 ~~shall not include payments made for sales demonstration~~
21 ~~equipment and materials furnished on a nonprofit basis for use~~
22 ~~in making sales and not for resale wherein such payments~~
23 ~~amount to less than one hundred dollars (\$100) annually.~~
24 Establishing, promoting, or operating a pyramid promotional
25 scheme.

1 "a. Nothing in this subdivision may be construed to
2 prohibit a plan or operation, or to define a plan or
3 operation, where the participants in the plan or operation
4 give consideration in return for the right to receive
5 compensation based upon purchases of goods, services, or
6 intangible property for personal use, consumption, or resale
7 if the plan or operation does not cause inventory loading and
8 the plan or operation implements a bona fide inventory
9 repurchase program.

10 "b. A bona fide inventory repurchase program under
11 this subdivision is subject to the following requirements:

12 "1. The program shall be clearly described in its
13 recruiting literature, sales manual, or contracts.

14 "2. The recruiting literature, sales manual, or
15 contracts shall disclose any inventory that is not eligible
16 for repurchase under the program, including inventory that is
17 beyond the commercially reasonable use or shelf life period or
18 has been used or opened.

19 "c. Before a repurchase of inventory is made, the
20 entity operating the repurchase program shall clearly describe
21 the inventory that is excluded from the entity's bona fide
22 repurchase program as seasonal, discontinued, or special
23 promotion products and the inventory that is not subject to
24 the entity's bona fide inventory repurchase program.

1 "(20) In connection with any seller-assisted
2 marketing plan, either misrepresenting the amount or extent of
3 earnings to result therefrom, or misrepresenting the extent or
4 nature of the market for the goods or services, or both, sold
5 or delivered in connection with the plan, or misrepresenting
6 that the seller of the plan will repurchase all or part of the
7 goods or services, or both, sold or delivered in connection
8 with the plan, or failing to deliver goods or services, or
9 both, within the time represented. As used herein,
10 "seller-assisted marketing plan" includes any plan, scheme, or
11 system in which for a consideration a buyer acquires goods or
12 services, or both, together with a plan, scheme, or system for
13 the resale of said goods or services, or both.

14 "(21) Intentionally misrepresenting that a warranty
15 or guarantee confers or involves certain rights or remedies.

16 "(22) In selling a new motor vehicle, failing to
17 disclose material damage to the motor vehicle as prescribed
18 hereafter:

19 "a. Each manufacturer, importer, or distributor of
20 new motor vehicles sold or transferred to a motor vehicle
21 dealer in this state, shall notify the motor vehicle dealer in
22 writing prior to delivery of the vehicle of any material
23 damage to the vehicle which is known to the manufacturer,
24 importer, or distributor, and which was sustained or incurred
25 by the motor vehicle at any time after the manufacturing

1 process is complete but prior to delivery of the vehicle to
2 the dealer.

3 "b. In selling a new motor vehicle, each motor
4 vehicle dealer in this state shall notify the purchaser in
5 writing at the time of sale of any material damage to the
6 vehicle which is known to the motor vehicle dealer and which
7 was sustained or incurred by the motor vehicle at any time
8 after the manufacturing process is complete, but prior to
9 delivery of the vehicle to the purchaser.

10 "c. For purposes of this section, "material damage"
11 means damage sustained or incurred by a motor vehicle, whether
12 corrected or uncorrected, which cost to repair exceeds three
13 percent of the manufacturer's suggested retail price of the
14 vehicle based upon the dealer's retail repair cost or the sum
15 of five hundred dollars (\$500), whichever is greater. Damage
16 to tires, glass, bumpers, and in-dash audio equipment shall
17 not be considered in determining the cost of repair if those
18 components are replaced by identical manufacturer's original
19 equipment. The failure of a manufacturer, importer,
20 distributor, or motor vehicle dealer to give notice of damage
21 below the threshold constituting "material damage" shall not
22 provide grounds for revocation of the sale nor shall such
23 failure constitute a material misrepresentation or omission of
24 fact.

1 "d. Each manufacturer, importer, or distributor of
2 new motor vehicles shall indemnify and hold harmless the motor
3 vehicle dealer obtaining a vehicle from the manufacturer,
4 importer, or distributor from and against any liability,
5 including reasonable attorneys' fees, which the motor vehicle
6 dealer may have to the purchaser of the vehicle as a result of
7 damage to the new motor vehicle which was known to the
8 manufacturer, importer, or distributor, which occurred prior
9 to delivery of the vehicle to the dealer, and which was not
10 disclosed in writing to the dealer prior to delivery of the
11 vehicle. This indemnity obligation of the manufacturer,
12 importer, or distributor shall apply regardless of whether the
13 damage constitutes "material damage" as defined herein.

14 "(23) Affixing an Alabama revenue stamp, including
15 local municipal or county stamps, to, or upon, any package of
16 cigarettes, or selling or holding for sale any package of
17 cigarettes to which an Alabama revenue stamp, including local
18 municipal or county stamps, has been affixed, if:

19 "a. The package differs in any respect with the
20 requirements of the Federal Cigarette Labeling and Advertising
21 Act (15 U.S.C. Sec. 1331 and following), for the placement of
22 labels, warnings, or any other information upon a package of
23 cigarettes that is to be sold within the United States;

24 "b. The package is labeled "For Export Only," "U.S.
25 Tax Exempt," "For Use Outside U.S.," or similar wording

1 indicating that the manufacturer did not intend that the
2 product be sold in the United States;

3 "c. The package, or a package containing
4 individually stamped packages, has been altered by adding or
5 deleting the wording, labels, or warnings described in
6 paragraph a. or b. of this subdivision;

7 "d. With respect to the cigarettes, any person is
8 not in compliance with 15 U.S.C. Sec. 1335a (relating to
9 submission of ingredient information to federal authorities),
10 19 U.S.C. Sec. 1681-1681b (relating to imports of certain
11 cigarettes), 26 U.S.C. Sec. 5754 (relating to previously
12 exported tobacco products), or any other federal law or
13 implementing federal regulations; or

14 "e. The package in any way violates federal
15 trademark or copyright laws.

16 "For the purposes of this subdivision, the term
17 "package" means a pack, carton, or container of any kind in
18 which cigarettes are offered for sale, sold, or otherwise
19 distributed, or intended for distribution, to consumers. Also
20 for the purposes of this subdivision, the term "Alabama
21 revenue stamp" means the stamp or stamps by the use of which
22 the tax levied under Article 1 of Chapter 25 of Title 40, is
23 paid.

24 "(24) Engaging in the sale, distribution,
25 possession, acquisition, importation, or transportation of any

1 cigarettes that do not comply with all applicable requirements
2 imposed by or pursuant to federal law and federal implementing
3 regulations.

4 "(25) Engaging in a scheme or artifice to defraud by
5 telephone communication. For purposes of this subdivision, a
6 "scheme or artifice to defraud" means a systematic, ongoing
7 course of conduct with the specific intent to defraud one or
8 more persons in order to obtain property from that person by a
9 telephone communication; and "telephone communication" means
10 the transmission of information by the use of the telephone,
11 with the specific intent of defrauding a person by a material
12 misrepresentation and obtaining property from that person as a
13 result of the fraud. Puffing or puffery does not constitute a
14 scheme or artifice to defraud.

15 "(26) Making any communication by telephone directly
16 to another person which offers to the other person a gift,
17 award, or prize, where the person making the communication has
18 actual knowledge at the time of making the communication that
19 the communication was materially false and the person making
20 the communication specifically intended to deprive the other
21 person of real or personal property as a result of the false
22 communication.

23 "(27) Engaging in any other unconscionable, false,
24 misleading, or deceptive act or practice in the conduct of
25 trade or commerce."

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB164

Senate 25-FEB-21

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 27-APR-21

By: Senator Whatley