

1 SB30
2 123333-1
3 By Senator Coleman
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 01-MAR-11
6 PFD: 02/10/2011

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8 SYNOPSIS: Under existing law, certain actions are
9 deemed to be deceptive or unlawful trade practices
10 and, as such, are prohibited.

11 This bill would include within the
12 definition of deceptive or unlawful trade practices
13 the advertising of the availability of a
14 manufacturer's rebate unless the amount of the
15 rebate is provided to the consumer by the retailer
16 at the time of purchase of the advertised item.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Sections 8-19-3 and 8-19-5, relating to
23 deceptive or unlawful trade practices, to include within the
24 definition of deceptive or unlawful trade practices the
25 advertising of the availability of a manufacturer's rebate
26 unless the amount of the rebate is provided to the consumer by
27 the retailer at the time of purchase of the advertised item.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§8-19-3.

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

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

9 "(2) CONSUMER. Any natural person who buys goods or
10 services for personal, family or household use.

11 "(3) GOODS. Includes but is not limited to any
12 property, tangible or intangible, real, personal, or any
13 combination thereof, and any franchise, license,
14 distributorship, or other similar right, privilege, or
15 interest.

16 "(4) KNOW, KNOWING, KNOWINGLY, KNOWLEDGE, and KNEW.
17 Either actual awareness or such awareness as a reasonable
18 person should have considering all the surrounding
19 circumstances.

20 "(5) PERSON. Includes but is not limited to natural
21 persons, corporations, trusts, partnerships, incorporated or
22 unincorporated associations and any other legal entity.

23 "(6) REBATE. The return of a payment or a partial
24 payment, which serves as a discount or reduction in price.

25 "~~(6)~~ (7) SALE, BUYING, and DISTRIBUTION. In addition
26 to their ordinary meanings, include but are not limited to the
27 act of leasing, renting, or consigning.

1 "~~(7)~~(8) SERVICES. Work, labor, and other services,
2 including but not limited to services furnished in connection
3 with the sale or repair of goods.

4 "~~(8)~~(9) TRADE or COMMERCE. Includes but is not
5 limited to the advertising, buying, offering for sale, sale or
6 distribution or performance of any service or goods, and any
7 other article, commodity or thing of value wherever situated
8 and shall include any trade or commerce affecting the people
9 of this state.

10 "§8-19-5.

11 "The following deceptive acts or practices in the
12 conduct of any trade or commerce are hereby declared to be
13 unlawful:

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

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

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

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

26 "(5) Representing that goods or services have
27 sponsorship, approval, characteristics, ingredients, uses,

1 benefits, or qualities that they do not have or that a person
2 has sponsorship, approval, status, affiliation, or connection
3 that he or she does not have.

4 "(6) Representing that goods are original or new if
5 they are deteriorated, reconditioned, reclaimed, used,
6 secondhand, or altered to the point of decreasing their value
7 or rendering the goods unfit for the ordinary purpose for
8 which they were purchased, provided that this subdivision
9 shall not apply to new goods which have been reconditioned,
10 reclaimed, or repaired and such fact is disclosed to the
11 purchaser.

12 "(7) Representing that goods or services are of a
13 particular standard, quality, or grade, or that goods are of a
14 particular style or model, if they are of another.

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

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

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

22 "(11) Making a false or misleading statement of fact
23 concerning the reasons for, existence of, or amounts of, price
24 reductions.

25 "(12) Knowingly failing to identify flood, water,
26 fire, or accidentally damaged goods as damaged goods if they
27 are damaged to the point of decreasing their value or

1 rendering the goods unfit for the ordinary purpose for which
2 they were purchased, provided, that this subdivision shall not
3 apply to accidentally damaged new goods where the goods are
4 reconditioned, reclaimed, or repaired to substantially their
5 original condition and such fact is disclosed to the
6 purchaser.

7 "(13) Knowingly making false or misleading
8 statements of fact concerning the need for parts, replacement,
9 or repair service.

10 "(14) Misrepresenting the authority of a
11 salesperson, representative, or agent to negotiate the final
12 terms of a transaction.

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

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

19 "(17) After receipt of payment for goods or
20 services, failing to ship the goods or furnish such services
21 within the time advertised or otherwise represented or, if no
22 specific time is advertised or represented, failing to ship
23 the goods or furnish such services within 30 days, unless
24 within the applicable time period the seller provides the
25 buyer with the option to either cancel the sales agreement and
26 receive a refund of all previous payments to the seller or to
27 extend the date to a specific date proposed by the seller. Any

1 refund shall be mailed or delivered to the buyer within 10
2 business days after the seller receives written notification
3 from the buyer of the buyer's option to cancel the sales
4 agreement and receive the refund.

5 "(18) Using or employing a chain referral sales plan
6 in connection with the sale or offering for sale of goods,
7 merchandise, or anything of value, involving a sales
8 technique, plan, arrangement, or agreement in which the buyer
9 or prospective buyer is offered the opportunity to purchase
10 merchandise or goods and in connection with the purchase
11 receives the seller's promise or representation that the buyer
12 shall have the right to receive compensation or consideration
13 in any form for furnishing to the seller the names of other
14 prospective buyers, if the receipt of the compensation or
15 consideration is contingent upon the occurrence of an event
16 subsequent to the time the buyer purchased the goods,
17 merchandise, or anything of value.

18 "(19) Selling or offering to sell, either directly
19 or associated with the sale of goods or services, a right to
20 participation in a pyramid sales structure. As used herein,
21 "pyramid sales structure" includes any plan or operation for
22 the sale or distribution of goods, services, or other property
23 wherein a person for consideration acquires the opportunity to
24 receive a pecuniary benefit, which is based primarily upon the
25 inducement of additional persons by that person, and others,
26 regardless of number, to participate in the same plan or
27 operation, and is not primarily contingent on the volume or

1 quantity of goods, services, or other property sold or
2 distributed. For purposes of this subdivision, "consideration"
3 shall not include payments made for sales demonstration
4 equipment and materials furnished on a nonprofit basis for use
5 in making sales and not for resale wherein such payments
6 amount to less than one hundred dollars (\$100) annually.

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

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

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

25 "a. Each manufacturer, importer, or distributor of
26 new motor vehicles sold or transferred to a motor vehicle
27 dealer in this state, shall notify the motor vehicle dealer in

1 writing prior to delivery of the vehicle of any material
2 damage to the vehicle which is known to the manufacturer,
3 importer, or distributor, and which was sustained or incurred
4 by the motor vehicle at any time after the manufacturing
5 process is complete but prior to delivery of the vehicle to
6 the dealer.

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

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

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

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

12 "e. The package in any way violates federal
13 trademark or copyright laws.

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

22 "(24) Engaging in the sale, distribution,
23 possession, acquisition, importation, or transportation of any
24 cigarettes that do not comply with all applicable requirements
25 imposed by or pursuant to federal law and federal implementing
26 regulations.

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

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

20 "(27) Advertising the availability of a
21 manufacturer's rebate by displaying the net price of the
22 advertised item, the price of the item after the rebate has
23 been deducted from the item's price, in the advertisement,
24 unless the amount of the manufacturer's rebate is provided to
25 the consumer by the retailer at the time of the purchase of
26 the advertised item. It shall be the retailer's burden to
27 redeem the rebate offered to the consumer by the manufacturer.

1 "(28) Refusing to accept a photocopy or other
2 reasonable facsimile of an original sales receipt when the
3 consumer is redeeming a rebate.

4 "~~(27)~~(29) Engaging in any other unconscionable,
5 false, misleading, or deceptive act or practice in the conduct
6 of trade or commerce."

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