

**Title 8 COMMERCIAL LAW AND CONSUMER PROTECTION.
Chapter 19A ALABAMA TELEMARKETING ACT.**

Section 8-19A-1

Short title.

This chapter may be cited as the "Alabama Telemarketing Act."

(Acts 1994, No. 94-650, p. 1220, §1.)

Section 8-19A-2

Liberal construction.

The provisions of this chapter shall be construed liberally to promote the general welfare of the public and the integrity of the telemarketing industry.

(Acts 1994, No. 94-650, p. 1220, §2.)

Section 8-19A-3

Definitions.

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

- (1) CALLER IDENTIFICATION SERVICE. A type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.
- (2) COMMERCIAL TELEPHONE SELLER. Any person who engages in commercial telephone solicitation on his or her own behalf or through salespersons, except that a commercial telephone seller does not include any of the persons or entities exempted from this chapter by Section 8-19A-4. A commercial telephone seller does not include a salesperson as defined in subdivision (15). A commercial telephone seller includes, but is not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity pursuant to this chapter.
- (3) COMMERCIAL TELEPHONE SOLICITATION.
 - a. An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with this chapter for the purpose of inducing the person to purchase or invest in consumer goods or services.
 - b. Other communication with a person where:

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

2. A telephone call response is invited.

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

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

(4) COMMISSION. The Alabama Public Service Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Acts 1994, No. 94-650, p. 1220, §3; Act 99-450, p. 1043, §2.)

Section 8-19A-4

Exemptions.

The provisions of this chapter do not apply to:

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

(2) A person making calls for religious, charitable, political, educational, or other noncommercial purposes or a person soliciting for a nonprofit corporation if that corporation is properly

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registered with the Secretary of State and is included within the exemption of the Alabama Revenue Code or Section 501(c)(3) of the Internal Revenue Code or rural electric cooperatives formed under Chapter 6 of Title 37 of the Code of Alabama or affiliates or subsidiaries thereof.

(3) A person soliciting:

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

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

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

(4) Any licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by an official or agency of this state or of any state, commonwealth or territory of the United States.

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

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

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

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

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

c. Which provides for the sale of books, records, or videos which are not covered under paragraph a. or paragraph b., including continuity plans, subscription arrangements, standing

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order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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(14) A telephone company or utility company which is regulated by the Alabama Public Service Commission, or any employee, officer, director, or authorized sales representative of such telephone company or utility company when soliciting products or services which would be subject to Public Service Commission regulation on behalf of such telephone company, utility company, or a Federal Communications Commission licensed cellular telephone company or affiliates or other bona fide radio telecommunication services provider. Provided, however, that such authorized sales representatives shall be subject to the same rules and regulations as the exempted company through the Public Service Commission.

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

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

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

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

(19) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.) and the registration or license has not expired, or been suspended or revoked.

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

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

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

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

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

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

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(24) Any telephone marketing service company which provides telemarketing sales services under contract to sellers and has been operating continuously for at least five years under the same business name and 75 percent of its contracts are performed on behalf of persons exempted from this chapter by this section.

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

(Acts 1994, No. 94-650, p. 1220, §4; Acts 1994, 1st Ex. Sess., No. 94-769, p. 54, §1.)

Section 8-19A-5

Licensing; application for license.

(a) Prior to doing business in this state, a commercial telephone seller shall obtain a license from the division. Doing business in this state includes both telephone solicitation from a location in Alabama and solicitation from other states or nations of purchasers located in Alabama.

(b) An applicant for a license as a commercial telephone seller shall submit to the division, in the form prescribed, a written application for the license. The application shall set forth the following information:

(1) The true name, date of birth, driver's license number, Social Security number, and home address of the applicant, including each name under which he or she intends to do business.

(2) Each business or occupation engaged in by the applicant during the three years immediately preceding the date of the application, and the location thereof.

(3) The previous experience of the applicant as a commercial telephone seller or salesperson.

(4) Whether the applicant has previously been arrested for, convicted of, or is under indictment or information for, a felony and, if so, the nature of the felony. Conviction includes a finding of guilt where adjudication has been withheld.

(5) Whether the applicant has previously been convicted of, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. Conviction includes a finding of guilt where adjudication has been withheld.

(6) Whether there has ever been a judicial or administrative finding that the applicant has previously been convicted of acting as a salesperson without a license, or whether a license has previously been refused, revoked, or suspended in any jurisdiction.

(7) Whether the applicant has worked for, or been affiliated with, a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a

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stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

(8) Whether the applicant has had entered against him or her an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice; and whether or not there is any litigation pending against the applicant.

(9) The name of any parent or affiliated entity that:

a. Will engage in a business transaction with the purchaser relating to any sale solicited by the applicant.

b. Accepts responsibility or is otherwise held out by the applicant as being responsible for any statement or act of the applicant relating to any sale solicited by the applicant.

(10) The complete street address of each location, designating the principal location, from which the applicant will be doing business. If any location is a mail drop, this shall be disclosed.

(11) A list of all telephone numbers currently used or to be used by the applicant, with the address where each telephone having these numbers will be located.

(12) The true name, current home address, date of birth, Social Security number, and all other names by which each person below is now known, or was previously known:

a. Principal officer, director, trustee, shareholder, owner, or partner of the applicant, and every other person responsible for the management of the business of the applicant.

b. Office manager or other person principally responsible for a location from which the applicant will do business.

c. Salesperson(s) or other person(s) to be employed by the applicant.

(c) The application shall be accompanied by a copy of any: Script, outline, or presentation the applicant will require or suggest a salesperson to use when soliciting, or, if no document is used, a statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

(d) When an application sets forth information regarding an applicant as described in subdivisions (4) to (8), inclusive, of subsection (b), the applicant shall:

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- (1) Identify the court or administrative agency rendering the conviction, judgment, or order against the person or pending litigation.
- (2) Provide the docket number of the matter; the date of the conviction, judgment, or order; and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. The applicant shall also include all pending civil or criminal litigation.
- (e) If the applicant is other than a natural person, or if any parent or affiliated entity is identified pursuant to subsection (b)(9), the applicant shall, for itself and any entity, identify its place of organization and:
 - (1) In the case of a partnership, provide a copy of any written partnership agreement.
 - (2) In the case of a corporation, provide a copy of its articles of incorporation and bylaws.
- (f) An application filed pursuant to this chapter shall be verified and accompanied by:
 - (1) A bond, letter of credit, or certificate of deposit satisfying the requirements of Section 8-19A-10.
 - (2) An annual license fee in the amount of \$500.00.
- (g) The division shall issue a license number to all commercial telephone sellers.
- (h) It is a violation of this chapter for a commercial telephone seller to:
 - (1) Fail to maintain a valid license.
 - (2) Advertise that one is licensed as a commercial seller or represent that the licensing constitutes approval or endorsement by any government or governmental office or agency.
 - (3) Provide inaccurate or incomplete information to the division when making a license application.
 - (4) Misrepresent that a person is registered or that a person has a valid license number.

(Acts 1994, No. 94-650, p. 1220, §5.)

Section 8-19A-6

Identification of certain affiliated sellers or salespersons.

- (a) With respect to any person identified pursuant to Section 8-19A-5, an applicant for a license as a commercial telephone seller shall state in his or her application the identity of any affiliated commercial seller or salesperson who:

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(1) Has been convicted of, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. Conviction includes a finding of guilt where adjudication has been withheld.

(2) Is involved in pending litigation or has had entered against him or her an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.

(3) Is, or ever has been, subject to any litigation, injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade.

(4) Has at any time during the previous seven years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency.

(5) Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed for bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within one year after the person held that position. The disclosures required in subdivision (4) shall be applicable insofar as they relate to the applicant commercial telephone seller, as well as any affiliated commercial seller or salesperson.

(b) (1) For any person described in subsection (a), the applicant shall:

a. Identify the court or administrative agency rendering the conviction, judgment, or order against the person or pending litigation.

b. Provide the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order.

(2) For any person described in subdivision (5), the applicant shall provide the name and address of the person filing for bankruptcy, adjudged bankrupt, or reorganized because of insolvency, the date of the action, the court which exercised jurisdiction, and the docket number of the matter.

(c) Each commercial telephone seller shall disclose to the division the name, address, and account number of each institution where banking or similar monetary transactions are done by the commercial telephone seller.

(Acts 1994, No. 94-650, p. 1220, §6.)

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Section 8-19A-7

Application form and contents; fee; license number; violations.

(a) An applicant for a license as a salesperson shall submit to the division, in the form prescribed, a written application for a license. The application shall set forth the following information:

- (1) The true name, date of birth, driver's license number, Social Security number, and home address of the applicant.
 - (2) Each business or occupation engaged in by the applicant during the three years immediately preceding the date of the application, and the location thereof.
 - (3) The previous experience of the applicant as a commercial telephone seller or salesperson.
 - (4) Whether the applicant has previously been arrested for, convicted of, or is under indictment or information for, a felony and, if so, the nature of the felony. Conviction includes a finding of guilt where adjudication has been withheld.
 - (5) Whether the applicant has previously been convicted of, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. Conviction includes a finding of guilt where adjudication has been withheld.
 - (6) Whether there has ever been a judicial or administrative finding that the applicant has previously been convicted of acting as a salesperson without a license, or whether a license has previously been refused, revoked, or suspended in any jurisdiction.
 - (7) Whether the applicant has worked for, or been affiliated with, a company that is involved in pending litigation or has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.
 - (8) Whether the applicant is involved in pending litigation or has had entered against him or her an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice.
- (b) An application filed pursuant to this section shall be verified and be accompanied by:

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(1) A verified statement of the commercial telephone seller with whom the salesperson will be associated, expressing the intention of the commercial telephone seller to associate the salesperson with him or her and to be responsible for the activities of the salesperson.

(2) An annual license fee for a salesperson in the amount of fifty dollars (\$50).

(c) The division shall issue a license number to all salespersons. The division shall adopt rules which allow certain salesperson applicants to operate on an interim basis until such time as a license is granted or denied.

(d) It is a violation of this chapter for a salesperson to:

(1) Fail to maintain a valid license.

(2) Advertise that one is licensed as a salesperson or to represent that the licensing constitutes approval or endorsement by any government or governmental office or agency.

(3) Provide inaccurate or incomplete information to the division when making a license application.

(4) Misrepresent that a person is registered or that a person has a valid license number.

(Acts 1994, No. 94-650, p. 1220, §7.)

Section 8-19A-8

Display of license required; penalty for failure to display license.

(a) The division shall issue to each approved applicant a license in the form and size as is prescribed by the division and, in the case of a commercial telephone seller, shall issue a license for each location at which the commercial telephone seller proposes to do business. Each license issued under this chapter shall show the name and address of the licensee.

(b) Each licensee shall prominently display his or her license at the location where he or she does business. Each licensee shall make the license available for inspection by any governmental agency upon request.

(c) Failure to display a license is sufficient grounds for the division to issue an immediate cease and desist order. The order shall remain in effect until the commercial telephone seller can show the authorities that he or she is licensed. The division shall order the business to cease operations and request the Public Service Commission to order the providers to disconnect any and all telecommunications services being provided to or used by the business. Defendants have the burden of petitioning the circuit court for relief from the cease and desist order. Failure of a salesperson to display a license may result in the salesperson being summarily ordered by the division to leave the office until such time as he or she can produce a license for the division.

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(Acts 1994, No. 94-650, p. 1220, §8.)

Section 8-19A-9

License renewal.

(a) Each person licensed under this chapter shall renew his or her license annually by paying the fee for licensing and submitting to the division the application required by this chapter.

(b) Except as otherwise provided in subsection (c), if any material change in the information submitted for licensing occurs before the date for renewal, a licensee shall submit that information to the division in the manner prescribed by the division, along with a fee in the amount of ten dollars (\$10).

(c) If any change is made to any script, outline, presentation, sales information, or literature used by a licensee in connection with any solicitation, the new or revised material shall be submitted by the licensee to the division within 10 days of the change.

(d) If any licensee has a change of address or status required to be disclosed pursuant to Sections 8-19A-5 to 8-19A-7, inclusive, notification shall be made to the division in writing within 10 days of the change.

(Acts 1994, No. 94-650, p. 1220, §9.)

Section 8-19A-10

Financial requirements.

(a) An application filed pursuant to Section 8-19A-5 shall be accompanied by:

(1) A bond executed by a corporate surety approved by the division and licensed to do business in this state.

(2) An irrevocable letter of credit issued for the benefit of the applicant by a bank whose deposits are insured by an agency of the federal government.

(3) A certificate of deposit in a financial institution insured by an agency of the federal government, which may be withdrawn only on the order of the division, except that the interest may accrue to the applicant.

(b) The amount of the bond, letter of credit, or certificate of deposit shall be a minimum of fifty thousand dollars (\$50,000), and the bond, letter of credit, or certificate of deposit shall be conditioned upon compliance by the applicant with this chapter. The division may establish a bond of a greater amount to ensure the general welfare of the public and the interests of the telemarketing industry.

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(c) The bond shall be posted with the division.

(d) The division or any governmental agency, on behalf of any injured purchaser or any purchaser himself or herself who is injured by the bankruptcy of the applicant or his or her breach of any agreement entered into in his or her capacity as a licensee, may bring and maintain an action to recover against the bond, letter of credit, or certificate of deposit.

(Acts 1994, No. 94-650, p. 1220, §10.)

Section 8-19A-11

Denial of license.

(a) The division may deny licensure to any applicant who:

(1) Has been convicted of racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude. Conviction includes a finding of guilt where adjudication has been withheld.

(2) Has had entered against him or her or any business for which he or she has worked or been affiliated, an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or the use of any unfair, unlawful, or deceptive trade practice.

(3) Is subject to or has worked or been affiliated with any company which is, or ever has been, subject to any injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade.

(4) Has at any time during the previous seven years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency.

(5) Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed the bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within one year after the person held that position.

(6) Has been previously convicted of or found to have been acting as a salesperson or commercial telephone seller without a license or whose licensure has previously been refused, revoked, or suspended in any jurisdiction.

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(7) Falsifies or willfully omits any material information asked for in the application.

(8) Otherwise violates this chapter.

(b) An applicant may appeal the denial or nonrenewal of a license by requesting in writing, within 30 days of receipt of the notice of denial or nonrenewal, a hearing. The hearing shall be conducted in accordance with Chapter 22, Title 41, and presided over by a hearing officer designated by the division. When any hearing officer conducts a hearing with respect to the issuance of a license by the division, the hearing officer shall submit his or her recommended order to the division, which shall issue a final order of the division in accordance with Chapter 22, Title 41.

(Acts 1994, No. 94-650, p. 1220, §11.)

Section 8-19A-12

Oral disclosures.

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

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

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

(Acts 1994, No. 94-650, p. 1220, §12.)

Section 8-19A-13

Gifts, premiums, bonuses, or prizes; disclosures.

If a commercial telephone seller expressly or impliedly represents to any prospective purchaser, directly or through a salesperson, that the purchaser is or may be eligible to receive any gift, premium, bonus, or prize, however denominated, the commercial telephone seller shall submit to the division a statement setting forth, for each item mentioned:

(1) A description of the item.

(2) The value or worth of the item and the basis for the valuation.

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(3) All terms and conditions a purchaser is required to satisfy in order to receive the item. The statement shall be accompanied by a copy of the written statement of terms and conditions provided to purchasers pursuant to this chapter.

(4) If they are ascertainable, the odds, for a given purchaser, of receiving the item.

(5) If a purchaser is to receive fewer than all the items described by the seller:

a. The manner in which the commercial telephone seller decides which item a given purchaser is to receive.

b. If they are ascertainable, the odds, for a given purchaser, of receiving each item described.

c. The name and address of each person who has, during the preceding 12 months or any portion thereof in which the commercial telephone seller has done business, received each gift, premium, bonus, or prize. The provisions of this section shall not apply if the item is unconditionally offered to a purchaser as part of a sale and the buyer has seven days to return the goods or cancel the services and the right to receive a full refund in 30 days and the right to keep the item in that case without cost.

(Acts 1994, No. 94-650, p. 1220, §13.)

Section 8-19A-14

Contract requirements; credit cards; notice of cancellation; returns; purchaser's rights.

(a) A purchase of consumer goods or services ordered as a result of a commercial telephone solicitation as defined in this chapter, if not followed by a signed written contract, is not final. If a contract is not made in compliance with this section, it is not valid and enforceable against the purchaser. The contract made pursuant to a commercial telephone solicitation shall:

(1) Be reduced to writing and be signed by the purchaser.

(2) Match the description of the goods or services as that principally used in the telephone solicitation.

(3) Contain the name, address, telephone number, and registration number of the commercial telephone seller and the salesperson, the total price of the contract, and a detailed description of the goods or services being sold.

(4) Contain the value or worth of any item, good, or service specified in Section 8-19A-13, and the basis for the valuation.

(5) Contain all terms and conditions a purchaser is required to satisfy in order to receive any item, good, or service specified in Section 8-19A-13.

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(6) Contain, if they are ascertainable, the odds, for a given purchaser, of receiving any item specified in Section 8-19A-13.

(7) Contain, if a purchaser is to receive fewer than all the items specified in Section 8-19A-13 described by the seller:

a. The manner in which the commercial telephone seller decides which item a given purchaser is to receive.

b. If they are ascertainable, the odds, for a given purchaser, of receiving each item described.

(8) Contain, in at least 12-point type, immediately preceding the signature, the following statement: "You are not obligated to pay any money unless you sign this contract and return it to the commercial telephone seller."

(9) Not exclude from its terms any oral or written representations made by the commercial telephone seller or salesperson to the purchaser in connection with the transaction.

(b) A commercial telephone seller who engages a salesperson to make, or cause to be made, a telephone sales call shall not make or submit any charge to the purchaser's credit card account until after the commercial telephone seller receives from the purchaser a copy of the contract which complies with this section. The commercial telephone seller shall then send the purchaser a written confirmation of the sale.

(c) The written contract shall contain an explanation of the purchaser's rights under this section and a statement indicating when notice of cancellation is required to be sent. The purchaser may give notice of cancellation to the commercial telephone seller in writing within three business days after receipt of the confirmation. If the commercial telephone seller has not provided an address for receipt of the notice, cancellation is effective by mailing the notice to the division.

(d) Notice of cancellation by the commercial telephone seller shall be given by certified mail, return receipt requested, and shall be effective when mailed. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates, by any form of written expression, the name and address of the purchaser and the purchaser's stated intention not to be bound by the sale.

(e) If a commercial telephone seller violates this act in making a sale, or fails to deliver an item within 30 calendar days, the contract is voidable by giving notice to the commercial telephone seller, and the purchaser is entitled to a return from the seller, within 14 days, of all consideration paid. Notice of cancellation given by the purchaser need not take a particular form and is sufficient given orally or in writing. Upon receipt by the purchaser of the consideration paid to the commercial telephone seller, the purchaser shall return to the commercial telephone seller the items received by the purchaser. Any cost of returning the items received by the purchaser shall be borne by the commercial telephone seller, by providing or guaranteeing payment for return shipping. If the payment is not provided or guaranteed, the purchaser may keep, without further obligation, the items received.

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(f) A person who purchases goods or services pursuant to a solicitation governed by this chapter shall be given a refund, credit, or replacement, at his or her option, if:

(1) The goods or services are defective, are not as represented, or if any item described pursuant to this chapter is not received as promised.

(2) He or she returns the goods or makes a written request for the refund, credit, or replacement within seven days after he or she receives the goods or services. A return or request is timely if shipment is made or the request is postmarked, properly addressed and postage prepaid, within the time provided by this section.

(g) If a purchaser of goods returns only a portion of the goods, the refund, credit, or replacement required by this section may be prorated accordingly.

(h) The refund, credit, or replacement required by this section shall be guaranteed by the commercial telephone seller who made the sale, regardless of whether payment for the goods or services is made to that person.

(i) Any contract, agreement to purchase, or written confirmation executed by a seller which purports to waive the purchaser's rights under this chapter is against public policy and shall be unenforceable, provided that an agreement between a purchaser and commercial telephone seller to extend the delivery time of an item to more than 30 days shall be enforceable if the commercial telephone seller has a reasonable basis to expect that he or she will be unable to ship the item within 30 days and if the agreement is included in the terms of the written confirmation.

(j) Where a contract or agreement to purchase confers on a purchaser greater rights to cancellation, refund, or return than those enumerated in this chapter, the contract shall be enforceable and not in violation of this chapter, provided that all rights under a contract or agreement to purchase shall be specifically stated in a written confirmation sent pursuant to this section.

(k) The provisions of this section shall not reduce, restrict, or eliminate any existing rights or remedies available to purchasers.

(l) Any sale in which the consumer is given a full refund or credit for the return of undamaged and unused goods, or a cancellation of services notice is given to the seller, within seven days after receipt of the goods or services by the consumer, is exempt from the requirements of subsections (a) to (e), inclusive, and the seller shall process the refund or credit to the consumer's credit card account within 30 days after receipt of the returned merchandise by the consumer or within 30 days after receipt of the cancellation notice from the consumer, process the refund or credit to the consumer's credit card account for any services not yet performed or a pro rata refund or credit to the consumer's credit card for any services not yet performed for the consumer.

(Acts 1994, No. 94-650, p. 1220, §14.)

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Section 8-19A-15

Violations.

- (a) It shall be unlawful for any commercial telephone seller or salesperson to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment.
- (b) It shall be unlawful for any commercial telephone seller to employ, or be affiliated with, any unlicensed salesperson.
- (c) It shall be unlawful for any salesperson to be employed by, or affiliated with, an unlicensed commercial telephone seller.
- (d) It shall be unlawful for any commercial telephone seller or salesperson to be unlicensed.
- (e) It shall be unlawful for any salesperson or commercial telephone seller to otherwise violate this chapter.

(Acts 1994, No. 94-650, p. 1220, §15.)

Section 8-19A-16

Enforcement procedures.

- (a) If, by his or her own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in a practice that violates this chapter, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 10 days after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of the subpoena in a civil action. The subpoena shall inform the party served of his or her rights under this subsection.
- (b) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his or her representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states.

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(c) Upon failure of a person, without lawful excuse, to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(Acts 1994, No. 94-650, p. 1220, §16.)

Section 8-19A-17

Actions by enforcing authority.

The division may bring:

- (1) An action to obtain a declaratory judgment that an act or practice violates this chapter.
- (2) An action to enjoin any person who has violated or is violating this chapter.
- (3) An action on behalf of one or more purchasers for the actual damages caused by an act or practice performed in violation of this chapter. This action may include, but is not limited to, an action to recover against a bond, letter of credit, or certificate of deposit as otherwise provided in this chapter. Upon motion of the enforcing authority in any action brought under this section, the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, to reimburse consumers found to have been damaged, to carry out a consumer transaction in accordance with the consumer's reasonable expectations, or to grant other appropriate relief. The court may assess the expenses of a master or receiver against a commercial telephone seller. Any injunctive order, whether temporary or permanent, issued by the court shall be effective throughout the state unless otherwise provided in the order.

(Acts 1994, No. 94-650, p. 1220, §17.)

Section 8-19A-18

Civil penalties; recovery of penalties.

- (a) Any person who engages in any act or practices that violate this chapter is liable for a civil penalty of up to ten thousand dollars (\$10,000) for each violation.
- (b) The civil penalty may be recovered by any of the following:
 - (1) Civil action against the person engaging in the violative act or practice.
 - (2) Agreement and settlement of a civil action filed by stipulation of terms by the person engaging in the violative act or practice and the director of the division by authority of the Attorney General, and by payment of any agreed upon amount by the person against whom the claim was filed.

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(3) The settlement of a claim against a person for violation of this chapter before civil action is filed by agreement upon terms and by the payment of any settlement amount agreed upon by the person and the director of the division by authority of the Attorney General.

(c) Upon ceasing the violative act or practice and agreeing to desist therefrom, and upon the payment of the settlement or stipulated amount to the office of the Attorney General by the person in violation, the director of the division may terminate the investigation or prosecution of any civil action or proposed action.

(d) The division or the court may waive any civil penalty or other claims, or costs if the person has previously made full restitution or reimbursement or has paid actual damages to the purchasers who have been injured by the act or practice in violation of this chapter.

(e) All amounts recovered and all monies paid under this chapter shall be deposited into the State General Fund and are appropriated as received hereby to the Attorney General's Special Revenue Account for implementing and enforcing this chapter.

Notwithstanding the provisions of this subsection (e), one half of the licensing fee collected under subdivision (2) of subsection (b) of Section 8-19A-7 shall be remitted to the treasury of the county within the State of Alabama in which the business is licensed.

(Acts 1994, No. 94-650, p. 1220, §18.)

Section 8-19A-19

Attorney's fees and costs.

(a) In any civil action or investigation resulting from a transaction involving a violation of this chapter, except as provided in subsection (c), the division shall receive reasonable attorney's fees and costs from the nonprevailing party. The amounts appropriated for those purposes in this chapter are in addition to all monies heretofore and hereafter appropriated in any special or general appropriation act to the Attorney General's Special Revenue Account which is a revolving fund in which the Attorney General is authorized to make deposits and withdrawals from time to time so that the account operates on a revolving basis for expenditure for administration and future civil and criminal investigation and prosecution, and all balances of revenue, income, and receipts remaining at the end of the fiscal year shall carry over to the next fiscal year and shall not revert to the State General Fund or any other fund under Section 41-4-93.

(b) Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

(c) In any civil litigation initiated by the division resulting in a judgment or administrative order, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds

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that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(d) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred.

(Acts 1994, No. 94-650, p. 1220, §19.)

Section 8-19A-20

Criminal prosecuting authority.

The division or other enforcing authority shall have criminal prosecuting authority concerning the violations of this chapter or of any rule or order hereunder. In addition to any other action, the division or other enforcing authority may bring an action against any person to enjoin, restrain, and prevent the doing of any act or practice herein prohibited or declared unlawful.

(Acts 1994, No. 94-650, p. 1220, §20.)

Section 8-19A-21

Criminal penalties.

(a) No salesperson shall solicit purchasers on behalf of a commercial telephone seller who is not currently licensed with the division pursuant to this chapter. Any person who violates this subsection commits a Class C felony punishable as provided in Section 13A-5-6 and Section 13A-5-11.

(b) No commercial telephone seller shall employ or be affiliated with a salesman who is soliciting purchasers and who is not currently licensed with the division pursuant to this chapter. Any person who violates this subsection commits a Class C felony punishable as provided in Section 13A-5-6 and Section 13A-5-11.

(c) No commercial telephone seller or salesperson shall solicit without a license. Any person who violates this subsection commits a Class C felony punishable as provided in Section 13A-5-6 and Section 13A-5-11.

(d) Any commercial telephone seller or salesperson who falsifies information on an application commits a Class C felony punishable as provided in Section 13A-5-6 and Section 13A-5-11.

(e) Except as provided in subsections (a), (b), (c), or (d), any person who otherwise violates any provision of this chapter or who directly or indirectly employs any device, scheme, or artifice to deceive in connection with the offer or sale by any commercial telephone seller commits a Class C felony punishable as provided in Section 13A-5-6 and Section 13A-5-11.

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(f) Any person who is convicted of a second or subsequent violation of this chapter commits a Class B felony punishable as provided in Section 13A-5-6 and Section 13A-5-11. A conviction shall include a finding of guilt where adjudication has been withheld.

(g) Any person who violates this chapter shall also be guilty of a violation of Sections 8-19-1 to 8-19-15, inclusive.

(Acts 1994, No. 94-650, p. 1220, §21.)

Section 8-19A-22

Civil proceeding burden of proof; criminal proceeding burden of producing evidence.

In any civil proceeding alleging a violation of this chapter, the burden of proving an exemption specified in Section 8-19A-4 or that the person or entity is not otherwise subject to this chapter is upon the person or entity claiming the exemption. In any criminal proceeding alleging a violation of this chapter, the burden of producing evidence to support a defense based upon an exemption specified in Section 8-19A-4 or that the person or entity is not subject to this chapter is upon the person or entity claiming the defense.

(Acts 1994, No. 94-650, p. 1220, §22.)

Section 8-19A-23

Injured person's right of recovery; Deceptive Trade Practices Act.

In addition to any other penalties or remedies provided under law, a person who is injured by a violation of this chapter may bring a civil action for recovery of actual damages and any damages that would be available at common law or by statute, including actual costs, court costs, and attorney's fees. No provision in this chapter shall be construed to limit any right or remedy provided under law. Any violation of this chapter shall also be considered a violation of the Deceptive Trade Practices Act, Section 8-19-1, et seq.

(Acts 1994, No. 94-650, p. 1220, §23.)

Section 8-19A-24

Rules.

The division shall promulgate rules to implement and administer this chapter.

(Acts 1994, No. 94-650, p. 1220, §24.)