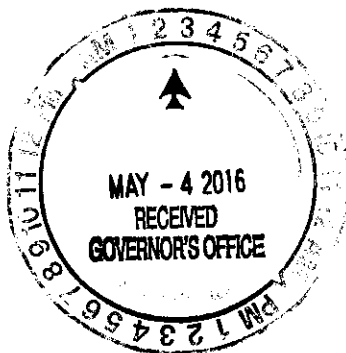


ACT #2016-407

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



SB270

ENROLLED, An Act,

To amend Section 8-19-10, Code of Alabama 1975, relating to the Alabama Deceptive Trade Practices Act; to provide that the limitation provided by the act that prevents a consumer from bringing an action on behalf of a class, except through a district attorney or the office of the Attorney General is substantive in nature, and that to allow such actions would abridge, enlarge, or modify the substantive rights created by this chapter.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§8-19-10.

"(a) Any person who commits one or more of the acts or practices declared unlawful under this chapter and thereby causes monetary damage to a consumer, and any person who commits one or more of the acts or practices declared unlawful in subdivisions (19) and (20) of Section 8-19-5 and thereby causes monetary damage to another person, shall be liable to each consumer or other person for:

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

"(2) Up to three times any actual damages, in the court's discretion. In making its determination under this subsection, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency of the unlawful acts or practices, the number of persons adversely affected thereby, and the extent to which the unlawful acts or practices were committed intentionally; and

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

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

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

"(d) Upon commencement of any action brought under this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the office of the Attorney General and to the local district attorney and, upon entry of any injunction, judgment, or decree in the action, shall mail a copy of such injunction, judgment, or decree to the office of the Attorney General and to the local district attorney.

"(e) At least 15 days prior to the filing of any action under this section, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be communicated to any prospective respondent by placing in the United States mail or otherwise. Any person receiving such a demand for relief who, within 15 days of the delivering of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning this rejection. If the court finds that the relief tendered was sufficient to compensate the petitioner for his or her actual damages, the court shall not award any additional damages or attorney's fees or costs to the petitioner. The demand requirements of this subsection shall not apply if the prospective respondent does not maintain a place of business or does not keep assets within the state,

1 but such respondent may otherwise employ the provisions of
2 this section by making a written offer of relief and paying
3 the rejected tender into court as soon as practicable after
4 receiving notice of an action commenced under this section.
5 All written tenders of settlement such as described in this
6 subsection shall be presumed to be offered without prejudice
7 in compromise of a disputed matter.

8 ~~"(f) A consumer or other person bringing an action~~
9 ~~under this chapter may not bring an action on behalf of a~~
10 ~~class, provided, however, that the office of the Attorney~~
11 ~~general or district attorney shall have the authority to bring~~
12 ~~action in a representative capacity on behalf of any named~~
13 ~~person or persons. In any such action brought by the office of~~
14 ~~the Attorney General or a district attorney the court shall~~
15 ~~not award minimum damages or treble damages, but recovery~~
16 ~~shall be limited to actual damages suffered by the person or~~
17 ~~persons, plus reasonable attorney's fees and costs.~~

18 "(f) A consumer or other person bringing an action
19 under this chapter may not bring an action on behalf of a
20 class. The limitation in this subsection is a substantive
21 limitation and allowing a consumer or other person to bring a
22 class action or other representative action for a violation of
23 this chapter would abridge, enlarge, or modify the substantive
24 rights created by this chapter. provided,

1 "(g) Notwithstanding the limitation in subsection
 2 (f), only the office of the Attorney General or district
 3 attorney shall have the right and authority to bring action in
 4 a representative capacity on behalf of any named person or
 5 persons. In any such representative action brought by the
 6 office of the Attorney General or a district attorney, the
 7 court shall not award minimum damages or treble damages, but
 8 recovery shall be limited to actual damages suffered by the
 9 person or persons, plus reasonable attorney's fees and costs.

10 "~~(g)~~ (h) Any person who sells, distributes, or
 11 manufactures cigarettes and sustains direct economic or
 12 commercial injury as a result of a violation of subdivision
 13 (23) of Section 8-19-5 may bring an action in good faith for
 14 appropriate injunctive relief."

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

Kay Ivey

President and Presiding Officer of the Senate

W. Brad

Speaker of the House of Representatives

SB270

Senate 22-MAR-16

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

Patrick Harris
Secretary

House of Representatives
Amended and passed 03-MAY-16

Senate concurred in House amendment 04-MAY-16

APPROVED

By: Senator Williams

TIME

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2016-407
Bill Num....: S-270

Recv'd 05/13/16 10:14a SLF

Williams
-SPONSORS

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I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 210

yeas 29 nays 0 abstain 0

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on judiciary was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be (Passed, w/amend(s) 1 w/sub 1) This 13 day of April, 2016.

Michael J. [Signature] Chairperson

DATE: 3-22 2016

RD 1 RFD body

DATE: 4-13 2016

RF Unamended RD 2 CAL

DATE: 20

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill SB _____

YEAS _____ NAYS _____

JEFF WOODARD,
Clerk

FURTHER HOUSE ACTION (OVER)