

2019 Regular Session

HOUSE BILL NO. 305

BY REPRESENTATIVES FALCONER, AMEDEE, BACALA, BAGLEY, BAGNERIS, BERTHELOT, BILLIOT, BOURRIAQUE, CHAD BROWN, TERRY BROWN, CARMODY, CHANEY, CONNICK, COUSSAN, COX, DAVIS, DUBUISSON, EMERSON, GAINES, GAROFALO, GISCLAIR, GUINN, HILFERTY, HOLLIS, HORTON, HOWARD, HUVAL, IVEY, JACKSON, JEFFERSON, JORDAN, LACOMBE, NANCY LANDRY, LEBAS, LEOPOLD, LYONS, MARCELLE, MCMAHEN, MIGUEZ, GREGORY MILLER, JAY MORRIS, MOSS, NORTON, PEARSON, PIERRE, PUGH, PYLANT, SCHEXNAYDER, STAGNI, STOKES, THOMAS, TURNER, WHITE, WRIGHT, AND ZERINGUE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONSUMERS/PROTECTION: Provides relative to telemarketing to elder persons and persons with disabilities

1 AN ACT

2 To enact R.S. 51:1409.1, relative to unfair trade practices; to provide with respect to elder
3 persons and persons with disabilities; to provide for a private right of action; to
4 provide with respect to fraudulent marketing through telephone, electronic mail, or
5 text messaging; to provide for damages; to provide definitions; to provide for
6 limitation of liability; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 51:1409.1 is hereby enacted to read as follows:

9 §1409.1. Deceptive practices; telephone, electronic mail, or text messaging; elder
10 persons and persons with disabilities; private actions

11 A. For purposes of this Section, the following definitions apply:

12 (1) "Electronic mail" means an electronic message that is transmitted
13 between two or more telecommunications devices, computers, or other electronic
14 devices capable of sending and receiving electronic messages with a person
15 identified by a unique electronic address.

1 (2) "Telephone" means a system for transmitting voices over a distance using
2 wire, radio, cellular, or electric signals.

3 (3) "Text messaging" means using a wireless telecommunications device to
4 manually communicate with any person by using a text-based communication
5 referred to as a text message, instant message, or direct message.

6 B. In addition to any damages to which a person is entitled pursuant to R.S.
7 51:1409, the court may award damages not to exceed ten thousand dollars per
8 violation if a person knowingly sends deceptive information to any elder person or
9 person with a disability, as those terms are defined in R.S. 51:1402, who suffers
10 damage or injury as a result of an offense or violation described in this Chapter
11 through marketing by telephone, electronic mail, or text messaging.

12 C. Nothing in this Section shall be construed to extend liability for violations
13 of the provisions of this Section to telephone, electronic mail, internet, cable, or other
14 telecommunications service providers.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 305 Reengrossed

2019 Regular Session

Falconer

Abstract: Provides for heightened damages in a private right of action for unfair trade practices by telephone, electronic mail, or text messaging when the person who suffers loss is an elder person or a person with a disability.

Present law (R.S. 51:1405) prohibits unfair and deceptive acts or practices in the conduct of any trade or commerce.

Present law (R.S. 51:1409) creates a private right of action to recover damages sustained pursuant to unfair or deceptive acts or practices.

Present law (R.S. 51:1402) defines "elder person" as any person sixty-five years of age or older. Present law also defines "person with a disability" as a person with a mental, physical, or developmental disability that substantially impairs that person's ability to provide adequately for his own care or protection.

Proposed law retains present law.

Proposed law defines telephone to include cellular phones and further provides definitions for electronic mail and text messaging.

Proposed law provides for an increased potential for damages when the prohibited unfair or deceptive act was knowingly committed against an elder person or person with a disability using a telephone, electronic mail, or text messaging.

Proposed law provides that no telephone, electronic mail, internet, cable, or other telecommunications service provider shall be liable for any violation of proposed law.

(Adds R.S. 51:1409.1)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Require that a person provide knowingly deceptive information to an elder person or a person with a disability in order to be in violation of proposed law.
2. Limit the liability of any telephone, electronic mail, internet, cable, or other telecommunications service provider when a person uses the provider's services for deceptive and unfair marketing.
3. Make technical changes.