

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1191 Telephone Solicitation

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Cruz

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N, As CS	Lolley	Massengale
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on Florida's "Do Not Call" list. Individuals or entities that wish to make unsolicited telephone calls must acquire the list from the Department of Agriculture and Consumer Services, and unless an exception applies, must not initiate an outbound sales call to a number on the list.

The bill expands the definition of the term "telephonic sales call" to include text messaging in the type of unsolicited telephone calls that are prohibited by the "Do Not Call" program. In addition, the bill prohibits a telephone solicitor from sending text messages to a consumer who has previously communicated that he or she does not wish to be contacted.

The bill has a significant negative fiscal impact on the Department of Agriculture and Consumer Services (see Fiscal Analysis & Economic Impact Statement). The bill appropriates one position and \$63,681 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services to implement the provisions of the bill.

The bill has no fiscal impact on local government. Individuals and entities that solicit through telephonic sales calls may acquire Florida's Do Not list from the department at a maximum cost of \$400 per year for the statewide listing.

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Department of Agriculture and Consumer Services maintains the state's "Do Not Call" list, also known as the "no sales solicitation calls" list. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.<sup>1</sup> A "telephonic sales call" is defined as a call made by a telephone solicitor to a consumer to solicit the sale of consumer goods or services. Florida's "Do No Call" regulations are codified in s. 501.059, F.S.

Telephone solicitors<sup>2</sup> are prohibited from making telephonic sales calls to consumers who register for the "Do Not Call" program. There are several exceptions to this prohibition, including calls made in response to an express request of the person called; primarily in connection with an existing debt or contact, payment or performance of which has not been completed at the time of the call; to any individual 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.

In addition to those consumers registered for the "Do Not Call" program, a telephone solicitor may not call a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted.

A telephone solicitor that contacts a person whose number is on the "Do Not Call" list, contacts a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted, or makes a call that does not fall into one of the four exceptions is subject to penalties. The penalty may include a civil penalty<sup>3</sup> with a maximum fine of \$10,000 per violation, or an administrative fine<sup>4</sup> with a maximum of \$1,000 per violation, in addition to payment of the consumer's attorney fees and costs.

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone. The state's language is consistent with the federal law.

##### **Effect of the Bill**

The bill expands the term "telephonic sales calls" to include text messages, and prohibits transmitting certain text messages to a consumer if the consumer is on the "no sales solicitation calls" or "Do Not Call" list maintained by the department.

The bill also prohibits a telephone solicitor from contacting by text message consumers who have previously communicated that they do not wish to be contacted.

#### B. SECTION DIRECTORY:

**Section 1** amends s. 501.059, F.S., prohibiting transmitting certain text messages to a consumer.

**Section 2** provides an appropriation to the Department of Agriculture and Consumer Services.

**Section 3** provides an effective date of July 1, 2014.

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<sup>1</sup> Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program*, <https://www.fldnc.com/About.aspx>

<sup>2</sup> "Telephone solicitor" means a 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, including, but not limited to, calls made by use of automated dialing or recorded message devices.

<sup>3</sup> Section 501.059(9)(a), F.S.

<sup>4</sup> Section 501.059(9)(b), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Because the bill prohibits sending unsolicited text messages to persons who register for the Do Not Call list, the department expects a 25 percent increase in administrative fines, resulting in an increase in recurring revenues of \$30,725 deposited into the General Inspection Trust Fund. The department does not expect an increase in revenues from individuals and entities acquiring the statewide Do Not Call list.

#### Expenditures:

The bill provides an appropriation of one full-time equivalent position with recurring expenditures of \$54,908 and nonrecurring expenditures of \$8,773 from the General Inspection Trust Fund. There would also be indirect costs of \$8,284. Therefore, the net loss for Fiscal Year 2014-2015 is (\$41,240) and for Fiscal Year 2015-2016 is (\$32,467).

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and entities will be prohibited from sending unsolicited text messages to persons who register for the "Do Not Call" program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted by a telephone solicitor. Individuals and entities that previously sent unsolicited text messages and did not acquire Florida's Do Not Call list may need to acquire the list from the department, at a maximum cost of \$400 per year for the statewide listing.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added an appropriation for the department to implement the bill.

The staff analysis is drafted to reflect the committee substitute.

On March 31, 2014, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment reduced the appropriation to the Department of Agriculture and Consumer Services from \$152,175 to \$54,908 in recurring funds and from \$16,103 to \$8,773 in nonrecurring funds from the General Inspection Trust Fund and eliminated two of the three positions.

The staff analysis is drafted to reflect the committee substitute.