

By Senator Klein

28-1252-98

See HB

1 A bill to be entitled
 2 An act relating to telephonic solicitations;
 3 amending s. 501.059, F.S.; providing
 4 legislative intent; revising provisions
 5 relating to telephonic solicitations; revising
 6 definitions; revising procedures for limiting
 7 or prohibiting telephonic solicitations;
 8 revising certain fees; providing for
 9 notification of candidates for public office;
 10 revising requirements regulating telephonic
 11 solicitations; providing for legislative review
 12 of certain fees; providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 501.059, Florida Statutes, is
 17 amended to read:

18 501.059 Telephonic ~~Telephone~~ solicitation.--
 19 (1) The Legislature, while recognizing the right of
 20 persons and organizations to conduct telephonic solicitation
 21 activities, acknowledges an individual's basic right to
 22 privacy. It is the intent of the Legislature to protect this
 23 right to privacy in a way which does not restrict all
 24 telephonic solicitation activities but rather allows
 25 individuals who do not want to receive uninvited telephonic
 26 solicitations to make it known to the public by placing their
 27 telephone numbers on the "no telephonic solicitations" list
 28 provided in this section. Further, it is the intent of the
 29 Legislature to prohibit uninvited telephonic solicitations to
 30 such telephone numbers on the "no telephonic solicitations"
 31 list. The Legislature finds that the method provided in this

1 section for regulating uninvited telephonic solicitations is
2 drawn in such a manner so as to minimize the burden on
3 solicitation activities.

4 ~~(2)(1)~~ As used in this section:

5 (a) "Telephonic solicitation ~~sales call~~" means a call
6 made by a telephone solicitor to a residential, mobile, or
7 telephonic paging device telephone number consumer, for the
8 purpose of soliciting a sale of any consumer goods or
9 services, including calls made for the purpose of obtaining
10 information that will or may later be used for the
11 solicitation of a sale of consumer goods or services, or a
12 call made for the purpose of soliciting a contribution of
13 money, property, or financial assistance, or any other thing
14 of value, including requests on behalf of political parties,
15 candidates, or ballot proposals and requests for information
16 solicited for survey research purposes ~~or for the purpose of~~
17 ~~soliciting an extension of credit for consumer goods or~~
18 ~~services, or for the purpose of obtaining information that~~
19 ~~will or may be used for the direct solicitation of a sale of~~
20 ~~consumer goods or services or an extension of credit for such~~
21 ~~purposes.~~

22 (b) "Consumer goods or services" means any real
23 property or any tangible or intangible personal property which
24 is normally used for personal, family, or household purposes,
25 including, without limitation, cemetery lots, timeshare
26 estates, financial services, insurance, telecommunications
27 services, and any ~~such~~ property intended to be attached to or
28 installed in any real property without regard to whether it is
29 so attached or installed, as well as ~~cemetery lots and~~
30 timeshare estates, and any services related to real ~~such~~
31 property or any tangible or intangible personal property.

1 (c) "Uninvited ~~Unsolicited~~ telephonic solicitation
2 ~~sales call~~" means a telephonic solicitation to any
3 residential, mobile, or telephonic paging device telephone
4 number unless the telephonic solicitation is ~~sales call other~~
5 ~~than a call made~~:

6 1. Made in response to an express request of the
7 person called or made within 6 months after and in connection
8 with either a purchase of consumer goods or services by the
9 person called or the expiration of a written agreement for a
10 consumer service entered into by the person called; or

11 2. A call seeking payment of an existing debt or
12 contract for which payments are past due or has not been
13 satisfied within the specified time contained by the terms of
14 the contract ~~Primarily in connection with an existing debt or~~
15 ~~contract, payment or performance of which has not been~~
16 ~~completed at the time of such call;~~

17 3. ~~To any person with whom the telephone solicitor has~~
18 ~~a prior or existing business relationship; or~~

19 4. ~~By a newspaper publisher or his or her agent or~~
20 ~~employee in connection with his or her business.~~

21 (d) "Commission" means the Florida Public Service
22 Commission.

23 (e) "Telephone solicitor" means any ~~natural~~ person,
24 ~~firm, organization, partnership, association, or corporation,~~
25 ~~or a subsidiary or affiliate thereof, doing business in this~~
26 ~~state,~~ who makes or causes to be made a telephonic
27 solicitation ~~sales call~~, including, but not limited to, calls
28 made by use of automated dialing or recorded message devices
29 from a location in this state, or from other states or
30 nations, to residences, mobile telephones, or telephonic
31 paging devices in this state.

1 (f) "Subscriber" means any individual who requests
2 that the department place the individual's residential,
3 mobile, or telephonic paging device telephone number on the
4 department's no telephonic solicitation list and who pays the
5 applicable fee to the department. ~~"Consumer" means an actual~~
6 ~~or prospective purchaser, lessee, or recipient of consumer~~
7 ~~goods or services.~~

8 ~~(g) "Merchant" means a person who, directly or~~
9 ~~indirectly, offers or makes available to consumers any~~
10 ~~consumer goods or services.~~

11 ~~(h) "Doing business in this state" refers to~~
12 ~~businesses who conduct telephonic sales calls from a location~~
13 ~~in Florida or from other states or nations to consumers~~
14 ~~located in Florida.~~

15 (g)(i) "Department" means the Department of
16 Agriculture and Consumer Services.

17 (3)(2) Any telephone solicitor who calls ~~makes an~~
18 ~~unsolicited telephonic sales call to~~ a residential, mobile, or
19 telephonic paging device telephone number shall identify
20 himself or herself by his or her true first and last names and
21 the business or organization on whose behalf he or she is
22 soliciting immediately upon making contact by telephone with
23 the person who is the object of the telephonic ~~telephone~~
24 solicitation.

25 (4)(3)(a) Any residential, mobile, or telephonic
26 paging device telephone subscriber desiring to be placed on a
27 "no telephonic sales solicitation calls" listing indicating
28 that the subscriber does not wish to receive uninvited
29 ~~unsolicited telephonic solicitations sales calls~~ may notify
30 the department and be placed on that listing upon receipt by
31 the department of:

1 1. A nonrefundable \$10 initial listing fee for a
2 ~~charge. This listing which may shall~~ be renewed by the
3 department annually for ~~each consumer~~ upon receipt by the
4 department of a renewal notice and a \$5 listing fee; or

5 2. A nonrefundable \$15 listing fee for a listing which
6 shall remain in effect for 3 years and may be renewed upon
7 receipt by the department of a nonrefundable \$15 listing fee
8 assessment.

9 (b) The department shall update its "no telephonic
10 ~~sales solicitation calls~~" listing upon receipt of initial
11 consumer subscriptions or renewals. The department shall
12 compile such listings three times each year, by the first day
13 of April, August, and December, and shall provide this listing
14 for a fee to telephone solicitors upon request and upon
15 receipt by the department of:

16 1. A \$135 fee for a listing of the telephone number of
17 each subscriber in the state; or

18 2. A \$40 fee for a listing of the telephone number of
19 each subscriber in a particular area code of the state.

20 (c) All fees imposed pursuant to this section shall be
21 deposited in the General Inspection Trust Fund for the
22 administration of this section.

23 ~~(5)(4)~~ No telephone solicitor shall make or cause to
24 be made any uninvited unsolicited telephonic solicitation
25 ~~sales call~~ to any residential, mobile, or telephonic paging
26 device telephone number appearing on if the number for that
27 ~~telephone appears in~~ the then-current quarterly listing
28 published by the department. Any telephone solicitor or
29 person who offers for sale any consumer information which
30 includes residential, mobile, or telephonic paging device
31 telephone numbers, except directory assistance and telephone

1 directories sold by telephone companies ~~and organizations~~
2 ~~exempt under s. 501(c)(3) or (6) of the Internal Revenue Code,~~
3 shall screen and exclude those numbers which appear on the
4 department's division's then-current "no telephonic sales
5 solicitation calls" list. ~~This subsection does not apply to~~
6 ~~any person licensed pursuant to chapter 475 who calls an~~
7 ~~actual or prospective seller or lessor of real property when~~
8 ~~such call is made in response to a yard sign or other form of~~
9 ~~advertisement placed by the seller or lessor.~~
10 ~~(5)(a) A contract made pursuant to a telephonic sales~~
11 ~~call is not valid and enforceable against a consumer unless~~
12 ~~made in compliance with this subsection.~~
13 ~~(b) A contract made pursuant to a telephonic sales~~
14 ~~call:~~
15 1. ~~Shall be reduced to writing and signed by the~~
16 ~~consumer.~~
17 2. ~~Shall comply with all other applicable laws and~~
18 ~~rules.~~
19 3. ~~Shall match the description of goods or services as~~
20 ~~principally used in the telephone solicitations.~~
21 4. ~~Shall contain the name, address, and telephone~~
22 ~~number of the seller, the total price of the contract, and a~~
23 ~~detailed description of the goods or services being sold.~~
24 5. ~~Shall contain, in bold, conspicuous type,~~
25 ~~immediately preceding the signature, the following statement:~~
26 ~~"You are not obligated to pay any money unless you sign~~
27 ~~this contract and return it to the seller."~~
28 6. ~~May not exclude from its terms any oral or written~~
29 ~~representations made by the telephone solicitor to the~~
30 ~~consumer in connection with the transaction.~~
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1 ~~(c) The provisions of this subsection do not apply to~~
2 ~~contractual sales regulated under other sections of the~~
3 ~~Florida Statutes, or to the sale of financial services,~~
4 ~~security sales, or sales transacted by companies or their~~
5 ~~wholly owned subsidiaries or agents, which companies are~~
6 ~~regulated by chapter 364, or to the sale of cable television~~
7 ~~services to the duly franchised cable television operator's~~
8 ~~existing subscribers within that cable television operator's~~
9 ~~franchise area, or to any sales where no prior payment is made~~
10 ~~to the merchant and an invoice accompanies the goods or~~
11 ~~services allowing the consumer 7 days to cancel or return~~
12 ~~without obligation for any payment.~~

13 ~~(6)(a) The officer with whom a person qualifies as a~~
14 ~~candidate for public office pursuant to chapter 99 shall~~
15 ~~notify the qualifying candidate of the provisions of this~~
16 ~~section.~~ A merchant who engages a telephone solicitor to make
17 or cause to be made a telephonic sales call shall not make or
18 submit any charge to the consumer's credit card account or
19 make or cause to be made any electronic transfer of funds
20 until after the merchant receives from the consumer a copy of
21 the contract, signed by the purchaser, which complies with
22 this section.

23 ~~(b) A merchant who conducts a credit card account~~
24 ~~transaction pursuant to this section shall be subject to the~~
25 ~~provisions of s. 817.62.~~

26 ~~(c) The provisions of this subsection do not apply to~~
27 ~~a transaction.~~

28 ~~1. Made in accordance with prior negotiations in the~~
29 ~~course of a visit by the consumer to a merchant operating a~~
30 ~~retail business establishment which has a fixed permanent~~
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1 ~~location and where consumer goods are displayed or offered for~~
2 ~~sale on a continuing basis;~~

3 2. ~~In which the consumer may obtain a full refund for~~
4 ~~the return of undamaged and unused goods or a cancellation of~~
5 ~~services notice to the seller within 7 days after receipt by~~
6 ~~the consumer, and the seller will process the refund within 30~~
7 ~~days after receipt of the returned merchandise by the~~
8 ~~consumer;~~

9 3. ~~In which the consumer purchases goods or services~~
10 ~~pursuant to an examination of a television, radio, or print~~
11 ~~advertisement or a sample, brochure, or catalog of the~~
12 ~~merchant that contains:~~

13 a. ~~The name, address, and telephone number of the~~
14 ~~merchant;~~

15 b. ~~A description of the goods or services being sold;~~
16 ~~and~~

17 c. ~~Any limitations or restrictions that apply to the~~
18 ~~offer; or~~

19 4. ~~In which the merchant is a bona fide charitable~~
20 ~~organization or a newspaper as defined in chapter 50.~~

21 (7)(a) No person shall make or knowingly allow a
22 telephonic solicitation sales call to be made if such call
23 involves an automated system for the selection or dialing of
24 telephone numbers or the playing of a recorded message when a
25 connection is completed to a number called.

26 (b) Nothing herein prohibits the use of an automated
27 telephone dialing system with live messages if the calls are
28 made or messages given solely in response to calls initiated
29 by the persons to whom the automatic calls or live messages
30 are directed or if the telephone numbers selected for
31 automatic dialing have been screened to exclude any telephone

1 number that ~~subscriber who~~ is included on the department's
2 then-current "no telephonic sales solicitation calls" listing
3 or any unlisted telephone number, or if the calls made concern
4 goods or services that have been previously ordered or
5 purchased by the person called. However, all automatic
6 telephone dialing systems shall be equipped with a disconnect
7 feature which automatically clears the telephone line after
8 the person answering the telephone terminates the call.

9 (8) No telephone solicitor making telephonic
10 solicitations shall take any action that would prevent the
11 solicitor's telephone number from being passed on to the
12 called party.

13 (9)~~(8)~~ The department shall investigate any complaints
14 received concerning violations of this section. If, after
15 investigating any complaint, the department finds that there
16 has been a violation of this section, the department or the
17 Department of Legal Affairs may bring an action to impose a
18 civil penalty and to seek other relief, including injunctive
19 relief, as the court deems appropriate against the telephone
20 solicitor. The civil penalty shall not exceed \$10,000 per
21 violation and shall be deposited in the General Inspection
22 Trust Fund if the action or proceeding was brought by the
23 department, or the Consumer Frauds Trust Fund if the action or
24 proceeding was brought by the Department of Legal Affairs.
25 This civil penalty may be recovered in any action brought
26 under this part by the department, or the department may
27 terminate any investigation or action upon agreement by the
28 person to pay a stipulated civil penalty. The department or
29 the court may waive any civil penalty if the person has
30 previously made full restitution or reimbursement or has paid

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1 actual damages to the consumers who have been injured by the
2 violation.

3 (10)~~(9)~~(a) In any civil litigation resulting from a
4 transaction involving a violation of this section, the
5 prevailing party, after judgment in the trial court and
6 exhaustion of all appeals, if any, shall receive his or her
7 reasonable attorney's fees and costs from the nonprevailing
8 party.

9 (b) The attorney for the prevailing party shall submit
10 a sworn affidavit of his or her time spent on the case and his
11 or her costs incurred for all the motions, hearings, and
12 appeals to the trial judge who presided over the civil case.

13 (c) The trial judge shall award the prevailing party
14 the sum of reasonable costs incurred in the action plus a
15 reasonable legal fee for the hours actually spent on the case
16 as sworn to in an affidavit.

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

20 (e) In any civil litigation initiated by the
21 department or the Department of Legal Affairs, the court may
22 award to the prevailing party reasonable attorney's fees and
23 costs if the court finds that there was a complete absence of
24 a justiciable issue of either law or fact raised by the losing
25 party or if the court finds bad faith on the part of the
26 losing party.

27 (11)~~(10)~~ The commission shall by rule ensure that
28 telecommunications companies inform their customers of the
29 provisions of this section. The notification may be made by:

30 (a) Annual inserts in the billing statements mailed to
31 customers; and

1 (b) Conspicuous publication of the notice in the
2 consumer information pages of the local telephone directories.

3 Section 2. Prior to the convening of the 2001 Regular
4 Session of the Legislature, the Legislature shall review the
5 fees established in s. 501.059(4), Florida Statutes, as
6 amended by this act, to determine whether such fees are set a
7 level commensurate with the direct and indirect costs of the
8 "no telephonic solicitation" listing program.

9 Section 3. This act shall take effect January 1 of the
10 year after which enacted.

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13 HOUSE SUMMARY

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15 Revises provisions relating to telephonic solicitations,
16 procedures for limiting or prohibiting telephonic
17 solicitations, and requirements regulating telephonic
18 solicitations. See bill for details.

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