

By the Committees on Commerce and Economic Opportunities;  
Regulated Industries; and Senator Klein

310-2212-98

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 an  
9           affirmative defense; revising requirements  
10          regulating telephonic solicitations; requiring  
11          the Department of Agriculture and Consumer  
12          Services to provide certain notice of  
13          violations; providing for legislative review of  
14          certain fees; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

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

20           501.059 Telephonic ~~Telephone~~ solicitation.--

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

1 solicitations to such telephone numbers on the "no telephonic  
2 solicitations" list. The Legislature finds that the method  
3 provided in this section for regulating uninvited telephonic  
4 solicitations is drawn in such a manner so as to minimize the  
5 burden on solicitation activities.

6 (2)~~(1)~~ As used in this section:

7 (a) "Telephonic solicitation ~~sales call~~" means a call  
8 made by a telephone solicitor to a residential, mobile, or  
9 telephonic paging device telephone number in this state  
10 ~~consumer~~, for the purpose of soliciting a sale of any consumer  
11 goods or services, including calls made for the purpose of  
12 obtaining information that will or may later be used for the  
13 solicitation of a sale of consumer goods or services, or a  
14 call made for the purpose of soliciting a contribution of  
15 money, property, or financial assistance, or any other thing  
16 of value. The term does not include a call made to a  
17 subscriber for the sole purpose of soliciting attendance at a  
18 religious service or event or commitment to volunteer time or  
19 service, provided that such solicitation does not result in a  
20 later solicitation for a monetary donation or payment ~~or for~~  
21 ~~the purpose of soliciting an extension of credit for consumer~~  
22 ~~goods or services, or for the purpose of obtaining information~~  
23 ~~that will or may be used for the direct solicitation of a sale~~  
24 ~~of consumer goods or services or an extension of credit for~~  
25 ~~such purposes.~~

26 (b) "Consumer goods or services" means any real  
27 property or any tangible or intangible personal property which  
28 is normally used for personal, family, or household purposes,  
29 including, without limitation, cemetery lots, timeshare  
30 estates, financial services, insurance, telecommunications  
31 services, and any ~~such~~ property intended to be attached to or

1 installed in any real property without regard to whether it is  
2 so attached or installed, as well as ~~cemetery lots and~~  
3 ~~timeshare estates, and any services related to~~ real such  
4 property or any tangible or intangible personal property.

5 (c) "Uninvited Unsolicited telephonic solicitation  
6 sales call" means a telephonic solicitation to any  
7 residential, mobile, or telephonic paging device telephone  
8 number in this state unless the telephonic solicitation is  
9 sales call other than a call made:

10 1. in response to an express request of the person  
11 called, or in response to a sign or other form of  
12 advertisement placed by the person called, or is directed to a  
13 person with whom the telephone solicitor, its affiliates, or  
14 subsidiaries has a prior or an existing relationship. A  
15 telephonic solicitation made in connection with an existing  
16 relationship includes, but is not limited to, an inquiry  
17 regarding an existing debt, contract, or warranty, payment or  
18 performance of which has not been completed at the time of  
19 such call.

20 2. ~~Primarily in connection with an existing debt or~~  
21 ~~contract, payment or performance of which has not been~~  
22 ~~completed at the time of such call;~~

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

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

27 (d) "Commission" means the Florida Public Service  
28 Commission.

29 (e) "Telephone solicitor" means any natural person,  
30 firm, organization, partnership, association, or corporation,  
31 ~~or a subsidiary or affiliate thereof, doing business in this~~

1 ~~state,~~ who makes or causes to be made a telephonic  
2 solicitation sales call, including, but not limited to, calls  
3 made by use of automated dialing or recorded message devices  
4 from a location in this state, or from other states or  
5 nations, to residences, mobile telephones, or telephonic  
6 paging devices in this state.

7 (f) "Subscriber" means any individual who requests  
8 that the department place the individual's in-state  
9 residential, mobile, or telephonic paging device telephone  
10 number on the department's no telephonic solicitation list and  
11 who pays the applicable fee to the department. ~~"Consumer"~~  
12 ~~means an actual or prospective purchaser, lessee, or recipient~~  
13 ~~of consumer goods or services.~~

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

17 (h) ~~"Doing business in this state" refers to~~  
18 ~~businesses who conduct telephonic sales calls from a location~~  
19 ~~in Florida or from other states or nations to consumers~~  
20 ~~located in Florida.~~

21 (g)(i) "Department" means the Department of  
22 Agriculture and Consumer Services.

23 (3)(2) Any telephone solicitor who calls ~~makes an~~  
24 ~~unsolicited telephonic sales call to a residential, mobile, or~~  
25 ~~telephonic paging device telephone number in this state~~ shall  
26 identify himself or herself by his or her true first and last  
27 names and the business or organization on whose behalf he or  
28 she is soliciting immediately upon making contact by telephone  
29 with the person who is the object of the telephonic telephone  
30 solicitation.

31

1           ~~(4)(3)~~(a) Any ~~residential, mobile, or telephonic~~  
2 ~~paging device telephone~~ subscriber desiring to be placed on a  
3 "no telephonic sales solicitation ~~calls~~" listing indicating  
4 that the subscriber does not wish to receive uninvited  
5 ~~unsolicited~~ telephonic solicitations ~~sales calls~~ may notify  
6 the department and be placed on that listing upon receipt by  
7 the department of:

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

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

16           (b) The department shall update its "no telephonic  
17 ~~sales~~ solicitation ~~calls~~" listing upon receipt of initial  
18 consumer subscriptions or renewals. The department shall  
19 compile such listings three times each year and shall provide  
20 this listing at least 30 days prior to the first day of April,  
21 August, and December, when the listings shall be considered  
22 current, for a fee to telephone solicitors upon request.

23           (c) All fees imposed pursuant to this section shall be  
24 deposited in the General Inspection Trust Fund for the  
25 administration of this section.

26           ~~(5)(4)~~ No telephone solicitor shall make or cause to  
27 be made any uninvited ~~unsolicited~~ telephonic solicitation  
28 ~~sales call~~ to any residential, mobile, or telephonic paging  
29 device telephone number appearing on ~~if the number for that~~  
30 ~~telephone appears in~~ the then-current quarterly listing  
31 published by the department. Any telephone solicitor or

1 person who offers for sale any consumer information which  
2 includes residential, mobile, or telephonic paging device  
3 telephone numbers, except directory assistance and telephone  
4 directories sold by telephone companies ~~and organizations~~  
5 ~~exempt under s. 501(c)(3) or (6) of the Internal Revenue Code,~~  
6 shall screen and exclude those numbers which appear on the  
7 department's division's then-current "no telephonic sales  
8 solicitation calls" list. ~~This subsection does not apply to~~  
9 ~~any person licensed pursuant to chapter 475 who calls an~~  
10 ~~actual or prospective seller or lessor of real property when~~  
11 ~~such call is made in response to a yard sign or other form of~~  
12 ~~advertisement placed by the seller or lessor.~~

13 (6)(5)(a) A contract made pursuant to a telephonic  
14 solicitation sales call is not valid and enforceable against a  
15 consumer unless made in compliance with this subsection.

16 (b) A contract made pursuant to a telephonic  
17 solicitation sales call:

- 18 1. Shall be reduced to writing and signed by the  
19 consumer.
- 20 2. Shall comply with all other applicable laws and  
21 rules.
- 22 3. Shall match the description of goods or services as  
23 principally used in the telephonic telephone solicitations.
- 24 4. Shall contain the name, address, and telephone  
25 number of the seller, the total price of the contract, and a  
26 detailed description of the goods or services being sold.
- 27 5. Shall contain, in bold, conspicuous type,  
28 immediately preceding the signature, the following statement:  
29 "You are not obligated to pay any money unless you sign  
30 this contract and return it to the seller."  
31

1           6. May not exclude from its terms any oral or written  
2 representations made by the telephone solicitor to the  
3 consumer in connection with the transaction.

4           (c) The provisions of this subsection do not apply to  
5 contractual sales regulated under other sections of the  
6 Florida Statutes, or to the sale of financial services,  
7 security sales, or sales transacted by companies or their  
8 wholly owned subsidiaries or agents, which companies are  
9 regulated by chapter 364, or to the sale of cable television  
10 services to the duly franchised cable television operator's  
11 existing subscribers within that cable television operator's  
12 franchise area, or to any sales where no prior payment is made  
13 to the merchant and an invoice accompanies the goods or  
14 services allowing the consumer 7 days to cancel or return  
15 without obligation for any payment.

16           (7)(a) No telephone solicitor may make a subsequent  
17 call to a subscriber in connection with a prior or existing  
18 relationship when that subscriber has informed the telephone  
19 solicitor that the subscriber does not want to receive any  
20 more telephonic solicitations from, or on behalf of, that  
21 particular telephone solicitor.

22           (b) It shall be an affirmative defense in any action  
23 brought under this section that the telephone solicitor has:

24           1. Established and implemented written procedures to  
25 comply with this section;

26           2. Trained its personnel in such procedures;

27           3. Maintained and recorded current lists of persons  
28 who have requested to receive no more telephonic solicitations  
29 from the telephone solicitor in accordance with this  
30 subsection; and

31           4. Made any subsequent call as the result of an error.

1  
2 Nothing in this paragraph shall be construed to require the  
3 implementation of these procedures in order to comply with  
4 this subsection.

5 (c) This subsection does not apply to any telephonic  
6 solicitation made in connection with an existing debt or  
7 contract, payment, or performance of which has not been  
8 completed at the time of such call.

9 (d)(6)(a) A telephone solicitor, its affiliate, or its  
10 subsidiary may not be held liable in any action brought under  
11 this section for a violation of this section if the solicitor,  
12 affiliate, or subsidiary shows, by a preponderance of  
13 evidence, that the violation was not intentional and resulted  
14 from a bona fide error, notwithstanding the maintenance of  
15 procedures reasonably adopted to avoid such errors.~~A merchant~~  
16 ~~who engages a telephone solicitor to make or cause to be made~~  
17 ~~a telephonic sales call shall not make or submit any charge to~~  
18 ~~the consumer's credit card account or make or cause to be made~~  
19 ~~any electronic transfer of funds until after the merchant~~  
20 ~~receives from the consumer a copy of the contract, signed by~~  
21 ~~the purchaser, which complies with this section.~~

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

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

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



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

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

11           ~~a. The name, address, and telephone number of the~~  
12 ~~merchant;~~

13           ~~b. A description of the goods or services being sold;~~  
14 ~~and~~

15           ~~c. Any limitations or restrictions that apply to the~~  
16 ~~offer; or~~

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

19           ~~(8)(7)(a)~~ (8)(7)(a) No person shall make or knowingly allow a  
20 telephonic solicitation sales call to be made if such call  
21 involves an automated system for the selection or dialing of  
22 telephone numbers or the playing of a recorded message when a  
23 connection is completed to a number called.

24           (b) Nothing herein prohibits the use of an automated  
25 telephone dialing system with live messages if the calls are  
26 made or messages given solely in response to calls initiated  
27 by the persons to whom the automatic calls or live messages  
28 are directed or if the telephone numbers selected for  
29 automatic dialing have been screened to exclude any telephone  
30 number that subscriber who is included on the department's  
31 then-current "no telephonic sales solicitation calls" listing

1 or any unlisted telephone number, or if the calls are directed  
2 to a person with whom the telephone solicitor has a prior or  
3 an existing relationship ~~made concern goods or services that~~  
4 ~~have been previously ordered or purchased.~~ However, all  
5 automatic telephone dialing systems shall be equipped with a  
6 disconnect feature which automatically clears the telephone  
7 line after the person answering the telephone terminates the  
8 call.

9 (9)~~(8)~~ The department shall investigate any complaints  
10 received concerning violations of this section. If, after  
11 investigating any complaint, the department finds that there  
12 has been a violation of this section, the department shall  
13 notify the telephone solicitor of such violation. Upon a  
14 fourth violation within a 12-month period, the department or  
15 the Department of Legal Affairs may bring an action to impose  
16 a civil penalty and to seek other relief, including injunctive  
17 relief, as the court deems appropriate against the telephone  
18 solicitor. The civil penalty shall not exceed \$10,000 per  
19 violation and shall be deposited in the General Inspection  
20 Trust Fund if the action or proceeding was brought by the  
21 department, or the Consumer Frauds Trust Fund if the action or  
22 proceeding was brought by the Department of Legal Affairs.  
23 This civil penalty may be recovered in any action brought  
24 under this part by the department, or the department may  
25 terminate any investigation or action upon agreement by the  
26 person to pay a stipulated civil penalty. The department or  
27 the court may waive any civil penalty if the person has  
28 previously made full restitution or reimbursement or has paid  
29 actual damages to the consumers who have been injured by the  
30 violation.

31

1           (10)~~(9)~~(a) In any civil litigation resulting from a  
2 transaction involving a violation of this section, the  
3 prevailing party, after judgment in the trial court and  
4 exhaustion of all appeals, if any, shall receive his or her  
5 reasonable attorney's fees and costs from the nonprevailing  
6 party.

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

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

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

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

25           (11)~~(10)~~ The commission shall by rule ensure that  
26 telecommunications companies inform their customers of the  
27 provisions of this section. The notification may be made by:

28           (a) Annual inserts in the billing statements mailed to  
29 customers; and

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

1           (12) The provisions of this section regarding  
2 solicitation do not apply to solicitation principally for  
3 political purposes.

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

10           Section 3. This act shall take effect January 1, 1999.

11  
12                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13   COMMITTEE SUBSTITUTE FOR  
14   CS/SB 1594

15 The committee substitute for committee substitute for senate  
16 bill 1594 differs from the original committee substitute in  
the following ways:

17 Provides that telephonic solicitation does not mean a call  
18 made to a subscriber for the sole purpose of soliciting  
19 attendance at a religious service or event, or commitment to  
20 volunteer time or service, provided that such solicitation  
does not result in a later solicitation for a monetary  
donation or payment.

21 Extends the affirmative defense in any action that may be  
brought to the entire bill rather than to subsection (7).

22 Provides that the bill does not apply to a solicitation  
23 principally for political purposes.  
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