

STORAGE NAME: h3927.brc

DATE: March 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3927 (PCB BRCA 98-04)

RELATING TO: No Telephonic Solicitation List

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Representative Ogles

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 5 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill expands the "No Sales Solicitation Calls" law by deleting most of the current exemptions and renaming the list the "No Telephonic Solicitation" list. Those brought under the regulations include newspapers, charities, religious organizations, educational and governmental entities, and political candidates. Additionally, those telemarketers who have relied on a prior business relationship that existed in the distant past are barred from calling a telephone number on the list.

Consumers are given the new option of paying \$15 for a three-year subscription or paying at the current rate of \$10 for the first year and \$5 annually thereafter. The cost to solicitors purchasing the list is increased by \$5 annually and changed from a quarterly distribution to a trimester distribution. The bill takes effect January 1 after it is enacted.

The Department of Agriculture and Consumer Services anticipates increased revenues from existing fees due to the number of people who add their number to the list. The DACS estimates the increase will be \$2 M in FY 1998-99 and \$1 M in FY 1999-00. The increased expenditures are estimated at \$390,027 for the second half of FY 1998-99 and \$836,198 for FY 1999-00.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Current law allows individuals to assert their right to privacy by placing their home, mobile and pager telephone numbers on a "No Sales Calls" list with the Department of Agriculture and Consumer Services. Telemarketers (those selling consumer goods or services over the telephone) are then prohibited from calling those telephone numbers on the list.

However, certain solicitors are exempt from the law and, therefore, may continue to call the telephone numbers on the list. The exemptions include solicitors:

1. Exercising free speech that does NOT involve the sale of a good or service, i.e., charitable and religious organizations, educational institutions, and political candidates or parties.
2. Calling at the express invitation of the consumer.
3. Calling in connection with an existing debt.
4. Calling in connection with an existing or prior business relationship.
5. Calling on behalf of newspapers.
6. Calling as a realtor in response to a yard sign or advertisement placed by the consumer stating that real property is for sale.

Individuals file complaints with the DACS, their elected officials and generally, through letters to the editors of their newspapers about the increasing numbers of calls they receive from solicitors. These complaints include subscribers dissatisfied with the effectiveness of the list because of the number of calls they receive from entities with exempt status.

Even with these complaints, there are approximately 61,000 current subscribers who paid the DACS a \$10 initial fee and an annual \$5 fee, thereafter, to have their telephone number placed on the list. The DACS updates the list quarterly and sells it to telemarketers for \$100 per copy for all areas codes or for \$30 per copy per area code. Telemarketers are not required to buy the list, but it is the only way they can know the telephone numbers that are illegal for them to call.

The penalty section of the law tracks the penalty provisions in the Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, F.S., making each violation subject to a \$10,000 civil penalty and awarding the prevailing party attorney's fees and costs. The differences between the penalty provisions of the two laws are:

1. DACS may bring only an action under the "No Sales Calls" list where the Department of Legal Affairs may enforce both laws;
2. The Deceptive and Unfair Trade Practices Act makes violations against senior citizens subject to a \$15,000 civil penalty. The "No Sales Calls" list provisions make all violations subject to a \$10,000 civil penalty; and
3. The Deceptive and Unfair Trade Practices Act establishes a private cause of action which is not established in the No Sales Solicitation Calls law.

The federal telemarketing act (47 USC Sec. 227), which restricts solicitation sales calls, in addition to regulating telemarketing activities, establishes a private right of action if state law so permits. The state law does not provide for such an action. Establishing the authority for a citizen to sue under the no solicitation calls statute would create the

problem of determining an appropriate financial remedy since the consumer would have had their privacy invaded instead of suffering a financial loss.

Florida is the only state to have a "No Sales Calls" list which is a limited right to privacy act regarding telephone solicitations. Numerous other states are considering establishing such a list and have inquired about the construction of Florida's law. Additionally, the federal telemarketing act contemplates the establishment of such a list at the national level, though the Federal Communications Commission has yet to initiate development of a list.

B. EFFECT OF PROPOSED CHANGES:

This bill removes many of the exemptions to the current "no sales solicitation calls" list making it illegal for newspapers, charities, religious organizations, educational and governmental entities, and political candidates to place solicitation calls to any telephone number on the DACS "no call" list. The list is renamed the "No Telephonic Solicitation" list to make it clear that being on the list restricts all solicitation calls, not just sales solicitations. It establishes legislative intent recognizing not only the right to solicit, but also an individual's basic right to privacy. The language makes it explicit that the law is intended to provide an individual with a means of publicly declaring his or her wish to prohibit uninvited telephone solicitations without restricting all solicitation activities.

The law's definitions are expanded to provide that: (1) telephonic solicitations include all solicitations, except those made at the request of the person being called, made within 6 months of a purchase or the expiration of a warranty, or in connection with an existing debt, and (2) a subscriber is an individual who requests to have his or her telephone number placed on the no telephonic solicitation list and pays the applicable fee.

This bill gives subscribers the option of paying \$15 for a three-year subscription or paying at the current rate of \$10 for the first year and \$5 annually thereafter. The new option reduces the fee by \$5 over the three year period in addition to providing the convenience of a multi-year subscription. The cost to solicitors purchasing the list is increased \$5 annually, from \$100 quarterly to \$135 each trimester for all area codes or from \$30 quarterly to \$45 each trimester for each list of each area code.

The bill makes no changes to the current penalty provisions. The bill takes effect January 1 in the year after it passes to give the DACS and telephone solicitors coming under the regulations for the first time sufficient time to prepare for implementation.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Solicitors for newspapers, charities, religious organizations, educational and governmental entities, and political candidates will have to incorporate the telephone numbers on the no telephonic solicitation with their call list.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Yes. Some telemarketers will pay an additional \$5 per year to purchase a certain list, but the list will be updated 3 times each year instead of four times annually.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Consumers pay to have their telephone numbers placed on the list and solicitors pay for a copy of the list.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill allows individuals to assert their basic right to privacy and thereby prevent uninvited intrusion into their private lives.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Certain telephone solicitors would be prohibited from making some telephone solicitations that are now legal.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 501.059, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 501.059, F.S., relating to telephonic solicitations, to provide legislative intent, remove certain exemptions, offer a second fee option for subscriptions at a reduced rate, and decrease the number of times each year the "no telephonic solicitation" list is updated.

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Section 2. Makes the bill take effect January 1 of the year after the year in which it passes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Expenditures:</u>	1998-99	1999-00
Department of Agriculture & Consumer Services Expense		
13 Standard Pkgs @\$3,215	\$ 41,795	
Operating Capital Outlay		
Subscription Processing Machine w/software	200,000	
Technology upgrade/computer systems	405,000	
Computer upgrade AGMIC	<u>35,000</u>	
General Inspection Trust Fund	<u>\$681,795</u>	

2. Recurring Effects:

<u>Revenues:</u>	1998-99	1999-00
General Inspection Trust Fund	\$2 M	\$1 M
<u>Expenditures:</u>		
Department of Agriculture & Consumer Services		
Salaries and Benefits (13 FTE) General Inspection Trust Fund	\$390,027*	\$836,198

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Revenues:</u>	1998-99	1999-00
Department of Agriculture & Consumer Services		
General Inspection Trust Fund	\$2 M	\$1 M
<u>Expenditures:</u>		
Department of Agriculture & Consumer Services		
General Inspection Trust Fund	\$1,071,822	\$836,198

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Newspapers, charities, religious organizations, governmental entities, and political candidates that make telephonic solicitations will incur the expense of purchasing the list of telephone numbers they are prohibited from calling. Other telephone solicitors currently must purchase the list, so this bill places no new costs on them.

2. Direct Private Sector Benefits:

Consumers are given the new benefit of subscribing to the no telephonic solicitation list for three years at a cost of \$15 per three-year period, which is \$5 less than the current fee.

3. Effects on Competition, Private Enterprise and Employment Markets:

All solicitors will pay the same amount, so the bill should not effect competition.

D. FISCAL COMMENTS:

*The salaries and benefits for FY 1998-99 are for a six month period since the bill does not take effect until January 1, 1999. Additionally, the DACS calculated the beginning salaries at 10% above the minimum of each pay grade and included a 3% salary increase for the second year. The equipment purchase shown in this document is to make the implementation more effective and cost effective. Without the equipment, the DACS would need 8 additional FTE. Based on the salary projections of the DACS, the cost savings in salaries and benefits for those 8 FTE will pay for the equipment in three years.

The revenue projection is based on an expected increase of 200,000 list subscribers by December 31, 1998, at a rate of \$10 per subscription. The second year revenues are based on 200,000 renewals at \$5 each; no new subscriptions are estimated for FY 1999-00. No revenue is included from the sale of the list to telemarketers since they are not required to purchase the list.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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