

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; providing for notification
10 of candidates for public office; revising
11 requirements regulating telephonic
12 solicitations; requiring the Department of
13 Agriculture and Consumer Services to provide
14 certain notice of violations; providing for
15 legislative review of certain fees; amending s.
16 98.097, F.S.; providing that the central voter
17 file shall indicate voters on "no telephonic
18 solicitation" list; providing appropriations;
19 providing effective dates.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 501.059, Florida Statutes, is
24 amended to read:

25 501.059 Telephonic ~~Telephone~~ solicitation.--

26 (1) The Legislature, while recognizing the right of
27 persons and organizations to conduct telephonic solicitation
28 activities, acknowledges an individual's basic right to
29 privacy. It is the intent of the Legislature to protect this
30 right to privacy in a way which does not restrict all
31 telephonic solicitation activities but rather allows

1 individuals in this state who do not want to receive uninvited
2 telephonic solicitations to make it known to the public by
3 placing their telephone numbers on the "no telephonic
4 solicitations" list provided in this section. Further, it is
5 the intent of the Legislature to prohibit uninvited telephonic
6 solicitations to such telephone numbers on the "no telephonic
7 solicitations" list. The Legislature finds that the method
8 provided in this section for regulating uninvited telephonic
9 solicitations is drawn in such a manner so as to minimize the
10 burden on solicitation activities.

11 (2)(1) As used in this section:

12 (a) "Telephonic solicitation ~~sales call~~" means a call
13 made by a telephone solicitor to a residential, mobile, or
14 telephonic paging device telephone number in this state
15 ~~consumer~~, for the purpose of soliciting a sale of any consumer
16 goods or services, including calls made for the purpose of
17 obtaining information that will or may later be used for the
18 solicitation of a sale of consumer goods or services, or a
19 call made for the purpose of soliciting a contribution of
20 money, property, or financial assistance, or any other thing
21 of value, including requests on behalf of political parties,
22 candidates, or ballot proposals. "Telephonic solicitation"
23 does not mean a call made to a subscriber for the sole purpose
24 of soliciting attendance at a religious service or event, or
25 soliciting a commitment to volunteer time or service, provided
26 that such telephonic solicitation does not result in a later
27 request for a monetary donation or payment. ~~or for the purpose~~
28 ~~of soliciting an extension of credit for consumer goods or~~
29 ~~services, or for the purpose of obtaining information that~~
30 ~~will or may be used for the direct solicitation of a sale of~~
31

1 ~~consumer goods or services or an extension of credit for such~~
2 ~~purposes.~~

3 (b) "Consumer goods or services" means any real
4 property or any tangible or intangible personal property which
5 is normally used for personal, family, or household purposes,
6 including, without limitation, cemetery lots, timeshare
7 estates, financial services, insurance, telecommunications
8 services, and any such property intended to be attached to or
9 installed in any real property without regard to whether it is
10 so attached or installed, as well as ~~cemetery lots and~~
11 ~~timeshare estates, and any services related to real such~~
12 property or any tangible or intangible personal property.

13 (c) "Uninvited Unsolicited telephonic solicitation
14 sales call" means a telephonic solicitation to any
15 residential, mobile, or telephonic paging device telephone
16 number unless the telephonic solicitation is sales call other
17 than a call made:

18 1. in response to an express request of the person
19 called, or in response to a sign or other form of
20 advertisement placed by the person called, or is directed to a
21 person with whom the telephone solicitor has a prior or an
22 existing relationship. A telephonic solicitation made in
23 connection with an existing relationship includes, but is not
24 limited to, an inquiry regarding an existing debt, contract,
25 or warranty, payment or performance of which has not been
26 completed at the time of such call.

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

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

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

3 (d) "Commission" means the Florida Public Service
4 Commission.

5 (e) "Telephone solicitor" means any natural person,
6 firm, organization, partnership, association, or corporation,
7 or a subsidiary or affiliate thereof, ~~doing business in this~~
8 ~~state,~~ who makes or causes to be made a telephonic
9 solicitation sales call, including, but not limited to, calls
10 made by use of automated dialing or recorded message devices
11 from a location in this state, or from other states or
12 nations, to residences, mobile telephones, or telephonic
13 paging devices in this state.

14 (f) "Subscriber" means any individual who requests
15 that the department place the individual's in-state
16 residential, mobile, or telephonic paging device telephone
17 number on the department's no telephonic solicitation list and
18 who pays the applicable fee to the department. ~~"Consumer"~~
19 ~~means an actual or prospective purchaser, lessee, or recipient~~
20 ~~of consumer goods or services.~~

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

24 (h) ~~"Doing business in this state" refers to~~
25 ~~businesses who conduct telephonic sales calls from a location~~
26 ~~in Florida or from other states or nations to consumers~~
27 ~~located in Florida.~~

28 (g)(i) "Department" means the Department of
29 Agriculture and Consumer Services.

30 (3)(2) Any telephone solicitor who calls ~~makes an~~
31 ~~unsolicited telephonic sales call to a~~ subscriber residential,

1 mobile, or telephonic paging device telephone number in this
2 state shall identify himself or herself by his or her true
3 first and last names and the business or organization on whose
4 behalf he or she is soliciting immediately upon making contact
5 by telephone with the person who is the object of the
6 telephonic telephone solicitation.

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

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

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

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

29 (c) All fees imposed pursuant to this section shall be
30 deposited in the General Inspection Trust Fund for the
31 administration of this section.

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

19 ~~(6)(5)(a)~~ A contract made pursuant to a telephonic
 20 solicitation sales call is not valid and enforceable against a
 21 consumer unless made in compliance with this subsection.

22 (b) A contract made pursuant to a telephonic
 23 solicitation sales call:

- 24 1. Shall be reduced to writing and signed by the
 25 consumer.
- 26 2. Shall comply with all other applicable laws and
 27 rules.
- 28 3. Shall match the description of goods or services as
 29 principally used in the telephonic ~~telephone~~ solicitations.

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1 4. Shall contain the name, address, and telephone
2 number of the seller, the total price of the contract, and a
3 detailed description of the goods or services being sold.

4 5. Shall contain, in bold, conspicuous type,
5 immediately preceding the signature, the following statement:

6 "You are not obligated to pay any money unless you sign
7 this contract and return it to the seller."

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

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

23 (7)(a) No telephone solicitor may make a subsequent
24 call to a subscriber in connection with a prior or existing
25 relationship when that subscriber has informed the telephone
26 solicitor that the subscriber does not want to receive any
27 more telephonic solicitations from, or on behalf of, that
28 particular telephone solicitor.

29 (b) It shall be an affirmative defense in any action
30 brought under this subsection that the telephone solicitor
31 has:

- 1 1. Established and implemented written procedures to
2 comply with this subsection;
- 3 2. Trained its personnel in such procedures;
- 4 3. Maintained and recorded current lists of persons
5 who have requested to receive no more telephonic solicitations
6 from the telephone solicitor in accordance with this
7 subsection; and
- 8 4. Made any subsequent call as the result of an error.
9

10 Nothing in this paragraph shall be construed to require the
11 implementation of these procedures in order to comply with
12 this subsection.

13 (c) This subsection does not apply to any telephonic
14 solicitation made 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 ~~(8)(6)(a)~~ The officer with whom a person qualifies as
18 a candidate for public office pursuant to chapter 99 shall
19 notify the qualifying candidate of the provisions of this
20 section.~~A merchant who engages a telephone solicitor to make~~
21 ~~or cause to be made a telephonic sales call shall not make or~~
22 ~~submit any charge to the consumer's credit card account or~~
23 ~~make or cause to be made any electronic transfer of funds~~
24 ~~until after the merchant receives from the consumer a copy of~~
25 ~~the contract, signed by the purchaser, which complies with~~
26 ~~this section.~~

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

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

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

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

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

16 ~~a. The name, address, and telephone number of the~~
17 ~~merchant;~~

18 ~~b. A description of the goods or services being sold;~~
19 ~~and~~

20 ~~c. Any limitations or restrictions that apply to the~~
21 ~~offer; or~~

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

24 ~~(9)(7)(a)~~ (9)(7)(a) No person shall make or knowingly allow a
25 telephonic solicitation sales call to be made if such call
26 involves an automated system for the selection or dialing of
27 telephone numbers or the playing of a recorded message when a
28 connection is completed to a number called.

29 (b) Nothing herein prohibits the use of an automated
30 telephone dialing system with live messages if the calls are
31 made or messages given solely in response to calls initiated

1 by the persons to whom the automatic calls or live messages
2 are directed or if the telephone numbers selected for
3 automatic dialing have been screened to exclude any telephone
4 number that ~~subscriber who~~ is included on the department's
5 then-current "no telephonic sales solicitation ~~calls~~" listing
6 or any unlisted telephone number, or if the calls are directed
7 to a person with whom the telephone solicitor has a prior or
8 an existing relationship ~~made concern goods or services that~~
9 ~~have been previously ordered or purchased.~~ However, all
10 automatic telephone dialing systems shall be equipped with a
11 disconnect feature which automatically clears the telephone
12 line after the person answering the telephone terminates the
13 call.

14 (10)(8) The department shall investigate any
15 complaints received concerning violations of this section.
16 If, after investigating any complaint, the department finds
17 that there has been a violation of this section, the
18 department shall notify the telephone solicitor of such
19 violation. Upon a fourth violation within a twelve month
20 period, the department or the Department of Legal Affairs may
21 bring an action to impose a civil penalty and to seek other
22 relief, including injunctive relief, as the court deems
23 appropriate against the telephone solicitor. The civil
24 penalty shall not exceed \$5,000~~\$10,000~~ per violation and
25 shall be deposited in the General Inspection Trust Fund if the
26 action or proceeding was brought by the department, or the
27 Consumer Frauds Trust Fund if the action or proceeding was
28 brought by the Department of Legal Affairs. This civil penalty
29 may be recovered in any action brought under this part by the
30 department, or the department may terminate any investigation
31 or action upon agreement by the person to pay a stipulated

1 civil penalty. The department or the court may waive any
2 civil penalty if the person has previously made full
3 restitution or reimbursement or has paid actual damages to the
4 consumers who have been injured by the violation.

5 (11)~~(9)~~(a) In any civil litigation resulting from a
6 transaction involving a violation of this section, the
7 prevailing party, after judgment in the trial court and
8 exhaustion of all appeals, if any, shall receive his or her
9 reasonable attorney's fees and costs from the nonprevailing
10 party.

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

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

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

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

29 (12)~~(10)~~ The commission shall by rule ensure that
30 telecommunications companies inform their customers of the
31 provisions of this section. The notification may be made by:

1 (a) Annual inserts in the billing statements mailed to
2 customers; and

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

5 Section 2. Prior to the convening of the 2001 Regular
6 Session of the Legislature, the Legislature shall review the
7 fees established in s. 501.059(4), Florida Statutes, as
8 amended by this act, to determine whether such fees are set at
9 a level commensurate with the direct and indirect costs of the
10 "no telephonic solicitation" listing program. The Legislature
11 shall also review the feasibility of eliminating all fees paid
12 by subscribers under such program and having the entire
13 program funded from fees paid by solicitors or from other
14 revenue sources.

15 Section 3. Subsections (2) and (3) of section 98.097,
16 Florida Statutes, are renumbered as subsections (3) and (4),
17 respectively, and a new subsection (2) is added to said
18 section to read:

19 98.097 Central voter file; administration by division;
20 public access.--

21 (2) The central voter file shall, in addition to other
22 information required by law, indicate if the voter is on the
23 "no telephonic solicitation" list as provided in s. 501.059.

24 Section 4. Effective July 1, 1998, there are hereby
25 appropriated for FY 1998-99 from the General Inspection Trust
26 Fund to the Department of Agriculture and Consumer Services
27 \$675,365 in operating capital outlay, and 5 FTE and \$417,610
28 for the purpose of carrying out the provisions of this act.
29 These appropriations shall depend upon sufficient funds being
30 available in the General Inspection Trust Fund solely from the
31 fees collected under s. 501.059, F.S. It is the intent of the

1 Legislature that if receipts are insufficient to fully fund
2 these appropriations, the first priority of the Department of
3 Agriculture and Consumer Services shall be the purchase of
4 necessary equipment and technology for the efficient and
5 effective implementation of this act.

6 Section 5. Effective January 1, 1999, there is hereby
7 appropriated for FY 1998-99 from the General Inspection Trust
8 Fund to the Department of Agriculture and Consumer Services 6
9 FTE and \$334,770 for the purpose of carrying out the
10 provisions of this act. This appropriation shall depend upon
11 sufficient funds being available in the General Inspection
12 Trust Fund solely from the fees collected under s. 501.059,
13 F.S.

14 Section 6. Except as otherwise provided herein, this
15 act shall take effect January 1 of the year after which
16 enacted.