

By the Committee on Commerce, Economic Opportunities, and Consumer Services; and Senators Garcia and Lynn

310-2103-04

1 A bill to be entitled
2 An act relating to telephone solicitation;
3 requiring the Department of Agriculture and
4 Consumer Services to prepare a report and
5 submit recommendations to the Governor and
6 Legislature concerning the state's "no sales
7 solicitation calls" listing; prescribing items
8 to be included as part of the report; amending
9 s. 501.059, F.S.; revising the definition of
10 "telephonic sales call" to provide that the
11 term applies to sales of goods or services;
12 revising the definition of "consumer goods or
13 services" to remove the term "consumer" and
14 include property used for business purposes;
15 revising the definition of "unsolicited
16 telephonic sales call" to replace the word
17 person with consumer; revising the definition
18 of "consumer" to reflect the statutory
19 definition of person; revising the definition
20 of "merchant" to include the offering of goods
21 and services; requiring a telephone solicitor
22 to identify himself or herself when calling a
23 business; adding a business to those who may
24 subscribe to the "no sales solicitation calls"
25 listing of the Department of Agriculture and
26 Consumer Services; adding "business" to those
27 who may not be called if listed in the
28 department's published quarterly listing;
29 adding "business" to those whose numbers must
30 be screened out if the number is on the
31 department's "no sales solicitation calls"

1 listing and a telephone solicitor or person
2 intends to sell consumer information containing
3 that number; providing an effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. The Department of Agriculture and Consumer
8 Services shall prepare a report that evaluates the operation
9 of the state's "no sales solicitation calls" listing,
10 established under section 501.059, Florida Statutes, during
11 the period from November 1, 2003, to November 1, 2004, and
12 assesses the continued viability of the state listing as it
13 has been affected by, among other factors, the federal
14 Do-Not-Call program established through rules of the Federal
15 Trade Commission and the Federal Communications Commission
16 published at 68 Federal Register 4580 and 68 Federal Register
17 44144. The department shall submit the report to the Governor,
18 the President of the Senate, and the Speaker of the House of
19 Representatives by December 1, 2004.

20 (1) The report must include, at a minimum, the
21 following information, with comparable data for the same
22 period during the prior year:

23 (a) The number of initial consumer subscriptions and
24 renewal subscriptions to the state listing, and the associated
25 fees collected, per month, with an explanation of any factors
26 that affected consumer subscriptions during the evaluation
27 period.

28 (b) The number of purchases of the state listing by
29 solicitors and the amount of fees generated from the
30 purchases.
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1 (c) The number of complaints received by the
2 department related to the state listing per month.

3 (d) The number of enforcement actions taken by the
4 department per month, the amount of fines imposed per month,
5 and a description of any settlements reached.

6 (2) The report must also include:

7 (a) The number of listings of Florida consumers
8 registered with the federal Do-Not-Call program which have
9 been downloaded by the department and subscribed to the state
10 listing, as well as the number of listings uploaded to the
11 federal program, and a description of any impediments the
12 department experienced in this process.

13 (b) A description of any activities by the department
14 related to enforcement of the federal Do-Not-Call program.

15 (c) If telephone numbers of Florida consumers
16 registered with the federal Do-Not-Call program have been
17 downloaded to the state listing, an evaluation of whether
18 those consumers have filed complaints with the department,
19 and, if so, the nature of those complaints and what action, if
20 any, was taken by the department to address those complaints.

21 (d) The status of litigation involving the federal
22 program and an evaluation of the litigation's effect on the
23 department's management of the state listing.

24 (e) A recommendation of whether it is feasible to
25 continue operation of the state listing based upon, among
26 other factors, the effects of the federal program; the
27 associated litigation; and the amount of revenue collected
28 from subscriptions, renewals, solicitor fees, and enforcement
29 actions. If the report recommends the continued operation of
30 the state listing, the report must also include a
31 recommendation of, and rationale for, the resources necessary

1 for the department to continue to manage the listing at its
2 current level of consumer protection.

3 (f) A description of how the federal program's
4 preemption of less restrictive state exemptions affects any
5 exemptions allowed under the state's "no sales solicitation
6 calls" listing and a recommendation of legislative action, if
7 any, which may be necessary to address this issue.

8 (g) Any additional information that the department
9 believes will be useful to the Legislature in evaluating the
10 state listing and any potential changes to the state listing.

11 Section 2. Section 501.059, Florida Statutes, is
12 amended to read:

13 501.059 Telephone solicitation.--

14 (1) As used in this section:

15 (a) "Telephonic sales call" means a call made by a
16 telephone solicitor to a consumer, for the purpose of
17 soliciting a sale of any ~~consumer~~ goods or services, or for
18 the purpose of soliciting an extension of credit for ~~consumer~~
19 goods or services, or for the purpose of obtaining information
20 that will or may be used for the direct solicitation of a sale
21 of ~~consumer~~ goods or services or an extension of credit for
22 such purposes.

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

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1 (c) "Unsolicited telephonic sales call" means a
2 telephonic sales call other than a call made:

3 1. In response to an express request of the consumer
4 ~~person~~ called;

5 2. Primarily in connection with an existing debt or
6 contract, payment or performance of which has not been
7 completed at the time of such call;

8 3. To any consumer ~~person~~ with whom the telephone
9 solicitor has a prior or existing business relationship; or

10 4. By a newspaper publisher or his or her agent or
11 employee in connection with his or her business.

12 (d) "Commission" means the Florida Public Service
13 Commission.

14 (e) "Telephone solicitor" means any natural person,
15 firm, organization, partnership, association, or corporation,
16 or a subsidiary or affiliate thereof, doing business in this
17 state, who makes or causes to be made a telephonic sales call,
18 including, but not limited to, calls made by use of automated
19 dialing or recorded message devices.

20 (f) "Consumer" means a person as defined in s. 1.01
21 who is an actual or prospective purchaser, lessee, or
22 recipient of ~~consumer~~ goods or services.

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

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

30 (i) "Department" means the Department of Agriculture
31 and Consumer Services.

1 (2) Any telephone solicitor who makes an unsolicited
2 telephonic sales call to a residential, business,mobile, or
3 telephonic paging device telephone number must ~~shall~~ identify
4 himself or herself by his or her true first and last names and
5 the business on whose behalf he or she is soliciting
6 immediately upon making contact by telephone with the consumer
7 ~~person~~ who is the object of the telephone solicitation.

8 (3)(a) Any residential, business,mobile, or
9 telephonic paging device telephone subscriber desiring to be
10 placed on a "no sales solicitation calls" listing indicating
11 that the subscriber does not wish to receive unsolicited
12 telephonic sales calls may notify the department and be placed
13 on that listing upon receipt by the department of a \$10
14 initial listing charge. This listing shall be renewed by the
15 department annually for each subscriber ~~consumer~~ upon receipt
16 of a renewal notice and a \$5 assessment.

17 (b) The department shall update its "no sales
18 solicitation calls" listing upon receipt of initial consumer
19 subscriptions or renewals and provide this listing for a fee
20 to telephone solicitors upon request.

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

24 (4) A ~~No~~ telephone solicitor may not ~~shall~~ make or
25 cause to be made any unsolicited telephonic sales call to any
26 residential, business,mobile, or telephonic paging device
27 telephone number if the number for that telephone appears in
28 the then-current quarterly listing published by the
29 department. Any telephone solicitor or person who offers for
30 sale any consumer information which includes residential,
31 business,mobile, or telephonic paging device telephone

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

11 (5)~~(a)~~ A contract made through ~~pursuant to~~ a
12 telephonic sales call is not valid or ~~and~~ enforceable against
13 a consumer unless the ~~made in compliance with this subsection.~~

14 ~~(b)~~ A contract ~~made pursuant to a telephonic sales~~
15 ~~call:~~

16 (a)1. ~~Is~~ ~~shall be~~ reduced to writing and signed by the
17 consumer.

18 (b)2. Complies ~~shall comply~~ with all other applicable
19 laws and rules.

20 (c)3. Matches ~~shall match~~ the description of goods or
21 services as principally used in the telephone solicitations.

22 (d)4. Contains ~~shall contain~~ the name, address, and
23 telephone number of the seller, the total price of the
24 contract, and a detailed description of the goods or services
25 being sold.

26 (e)5. Contains ~~shall contain~~, in bold, conspicuous
27 type, immediately preceding the signature, the following
28 statement:

29 "You are not obligated to pay any money unless you sign
30 this contract and return it to the seller."
31

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

4 ~~(c) The provisions of~~

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

17 (6)(a) A merchant who engages a telephone solicitor to
18 make or cause to be made a telephonic sales call may ~~shall~~ not
19 make or submit any charge to the consumer's credit card
20 account or make or cause to be made any electronic transfer of
21 funds until after the merchant receives from the consumer a
22 copy of the contract, signed by the purchaser, which complies
23 with this section.

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

27 ~~(c) The provisions of~~ This subsection does ~~do~~ not
28 apply to a transaction:

29 1. Made in accordance with prior negotiations in the
30 course of a visit by the consumer to a merchant operating a
31 retail business establishment which has a fixed permanent

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 as part of ~~pursuant to~~ an examination of a television, radio,
11 or print advertisement or a sample, brochure, or catalog of
12 the 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) A ~~No~~ person may not ~~shall~~ make or knowingly
22 allow a telephonic sales call to be made if the ~~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) This section does not prohibit ~~Nothing herein~~
27 ~~prohibits~~ the use of an automated telephone dialing system
28 with live messages if the calls are made or messages given
29 solely in response to calls initiated by the persons to whom
30 the automatic calls or live messages are directed or if the
31 telephone numbers selected for automatic dialing have been

1 screened to exclude any telephone subscriber who is included
2 on the department's then-current "no sales solicitation calls"
3 listing or any unlisted telephone number, or if the calls made
4 concern goods or services that have been previously ordered or
5 purchased.

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

26 (9)(a) In any civil litigation resulting from a
27 transaction involving a violation of this section, the
28 prevailing party, after judgment in the trial court and
29 exhaustion of all appeals, if any, shall receive his or her
30 reasonable attorney's fees and costs from the nonprevailing
31 party.

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

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

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

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

19 (10) The commission shall by rule ensure that
20 telecommunications companies inform their customers of the
21 provisions of this section. The notification may be made by:

22 (a) Annual inserts in the billing statements mailed to
23 customers; and

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

26 Section 3. This act shall take effect July 1, 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1408

The committee substitute differs from the original bill by:
(1) amending s. 501.059, F.S., to provide a business the
option to subscribe a business telephone number to the state's
"no sales solicitation calls" listing; (2) adding businesses
to the definition of consumer for purposes of the listing; (3)
revising the definition of consumer goods or services to
remove the term "consumer" and include property used for
business purposes; (4) requiring a telephone solicitor to
identify himself or herself when calling a business telephone
number; (5) prohibiting a telephone solicitor from contacting
a business if the business's telephone number appears on the
quarterly listing of the Department of Agriculture and
Consumer Services; and (6) providing that a telephone
solicitor may not include a business telephone number as part
of a sale of consumer information if the business telephone
number appears on the department's listing.