

By Senator Crist

12-406A-06

1 A bill to be entitled
2 An act relating to telephone solicitation;
3 amending s. 501.059, F.S.; defining the terms
4 "cellular telephone," "electronic serial
5 number," and "mobile identification number";
6 prohibiting a telephone solicitor from making a
7 telephonic sales call to any telephone number
8 assigned to a cellular telephone service
9 without the prior consent of the subscriber to
10 the cellular telephone service; amending ss.
11 501.603 and 648.44, F.S., conforming
12 cross-references; 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 Telephone solicitation.--

19 (1) As used in this section:

20 (a) "Telephonic sales call" means a call made by a
21 telephone solicitor to a consumer, for the purpose of
22 soliciting a sale of any consumer goods or services, or for
23 the purpose of soliciting an extension of credit for consumer
24 goods or services, or for the purpose of obtaining information
25 that will or may be used for the direct solicitation of a sale
26 of consumer goods or services or an extension of credit for
27 such purposes.

28 (b) "Consumer goods or services" means any real
29 property or any tangible or intangible personal property which
30 is normally used for personal, family, or household purposes,
31 including, without limitation, any such property intended to

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

5 | (c) "Unsolicited telephonic sales call" means a
6 | telephonic sales call other than a call made:

7 | 1. In response to an express request of the person
8 | called;

9 | 2. Primarily in connection with an existing debt or
10 | contract, payment or performance of which has not been
11 | completed at the time of such call;

12 | 3. To any person with whom the telephone solicitor has
13 | a prior or existing business relationship; or

14 | 4. By a newspaper publisher or his or her agent or
15 | employee in connection with his or her business.

16 | (d) "Commission" means the Florida Public Service
17 | Commission.

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

24 | (f) "Consumer" means an actual or prospective
25 | purchaser, lessee, or recipient of consumer goods or services.

26 | (g) "Merchant" means a person who, directly or
27 | indirectly, offers or makes available to consumers any
28 | consumer goods or services.

29 | (h) "Doing business in this state" refers to
30 | businesses who conduct telephonic sales calls from a location
31 |

1 in Florida or from other states or nations to consumers
2 located in Florida.

3 (i) "Department" means the Department of Agriculture
4 and Consumer Services.

5 (j) "Electronic serial number" means the unique
6 numerical algorithm that is programmed into the microchip of
7 each cellular telephone by the manufacturer and is vital to
8 the successful operation and billing of the telephone.

9 (k) "Mobile identification number" means the cellular
10 telephone number assigned to the cellular telephone by the
11 cellular telephone carrier.

12 (l) "Cellular telephone" means a communication device
13 containing a unique electronic serial number that is
14 programmed into its computer chip by its manufacturer and
15 whose operation is dependent on the transmission of that
16 electronic serial number, along with a mobile identification
17 number that is assigned by the cellular telephone carrier, in
18 the form of radio signals through cell sites and mobile
19 switching stations.

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

27 (3) A telephone solicitor may not make any telephonic
28 sales call, other than a call made with the prior written
29 express consent of the called party, to any telephone number
30 assigned to a cellular telephone service or any service for
31 which the called party is charged for the call.

1 ~~(4)(3)~~(a) Any residential, mobile, or telephonic
2 paging device telephone subscriber desiring to be placed on a
3 "no sales solicitation calls" listing indicating that the
4 subscriber does not wish to receive unsolicited telephonic
5 sales calls may notify the department and be placed on that
6 listing upon receipt by the department of a \$10 initial
7 listing charge. This listing shall be renewed by the
8 department annually for each consumer upon receipt of a
9 renewal notice and a \$5 assessment.

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

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

17 ~~(5)(4)~~ A ~~No~~ telephone solicitor may not ~~shall~~ make or
18 cause to be made any unsolicited telephonic sales call to any
19 residential, mobile, or telephonic paging device telephone
20 number if the number for that telephone appears in the
21 then-current quarterly listing published by the department.
22 Any telephone solicitor or person who offers for sale any
23 consumer information which includes residential, mobile, or
24 telephonic paging device telephone numbers, except directory
25 assistance and telephone directories sold by telephone
26 companies and organizations exempt under s. 501(c)(3) or (6)
27 of the Internal Revenue Code, shall screen and exclude those
28 numbers which appear on the division's then-current "no sales
29 solicitation calls" list. This subsection does not apply to
30 any person licensed pursuant to chapter 475 who calls an
31 actual or prospective seller or lessor of real property when

1 such call is made in response to a yard sign or other form of
2 advertisement placed by the seller or lessor.

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

6 (b) A contract made pursuant to a telephonic sales
7 call:

8 1. Shall be reduced to writing and signed by the
9 consumer.

10 2. Shall comply with all other applicable laws and
11 rules.

12 3. Shall match the description of goods or services as
13 principally used in the telephone solicitations.

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

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

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

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

24 (c) ~~The provisions of~~ This subsection does ~~do~~ not
25 apply to contractual sales regulated under other sections of
26 the Florida Statutes, or to the sale of financial services,
27 security sales, or sales transacted by companies or their
28 wholly owned subsidiaries or agents, which companies are
29 regulated by chapter 364, or to the sale of cable television
30 services to the duly franchised cable television operator's
31 existing subscribers within that cable television operator's

1 franchise area, or to any sales where no prior payment is made
2 to the merchant and an invoice accompanies the goods or
3 services allowing the consumer 7 days to cancel or return
4 without obligation for any payment.

5 ~~(7)(6)~~(a) A merchant who engages a telephone solicitor
6 to make or cause to be made a telephonic sales call may ~~shall~~
7 not make or submit any charge to the consumer's credit card
8 account or make or cause to be made any electronic transfer of
9 funds until after the merchant receives from the consumer a
10 copy of the contract, signed by the purchaser, which complies
11 with this section.

12 (b) A merchant who conducts a credit card account
13 transaction under ~~pursuant to~~ this section shall be subject to
14 the provisions of s. 817.62.

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

17 1. Made in accordance with prior negotiations in the
18 course of a visit by the consumer to a merchant operating a
19 retail business establishment which has a fixed permanent
20 location and where consumer goods are displayed or offered for
21 sale on a continuing basis;

22 2. In which the consumer may obtain a full refund for
23 the return of undamaged and unused goods or a cancellation of
24 services notice to the seller within 7 days after receipt by
25 the consumer, and the seller will process the refund within 30
26 days after receipt of the returned merchandise by the
27 consumer;

28 3. In which the consumer purchases goods or services
29 pursuant to an examination of a television, radio, or print
30 advertisement or a sample, brochure, or catalog of the
31 merchant that contains:

1 a. The name, address, and telephone number of the
2 merchant;

3 b. A description of the goods or services being sold;
4 and

5 c. Any limitations or restrictions that apply to the
6 offer; or

7 4. In which the merchant is a bona fide charitable
8 organization or a newspaper as defined in chapter 50.

9 ~~(8)(7)~~(a) A No person may not shall make or knowingly
10 allow a telephonic sales call to be made if the such call
11 involves an automated system for the selection or dialing of
12 telephone numbers or the playing of a recorded message when a
13 connection is completed to a number called.

14 (b) This subsection does not prohibit ~~Nothing herein~~
15 ~~prohibits~~ the use of an automated telephone dialing system
16 with live messages if the calls are made or messages given
17 solely in response to calls initiated by the persons to whom
18 the automatic calls or live messages are directed or if the
19 telephone numbers selected for automatic dialing have been
20 screened to exclude any telephone subscriber who is included
21 on the department's then-current "no sales solicitation calls"
22 listing or any unlisted telephone number, or if the calls made
23 concern goods or services that have been previously ordered or
24 purchased.

25 ~~(9)(8)~~ The department shall investigate any complaints
26 received concerning violations of this section. If, after
27 investigating any complaint, the department finds that there
28 has been a violation of this section, the department or the
29 Department of Legal Affairs may bring an action to impose a
30 civil penalty and to seek other relief, including injunctive
31 relief, as the court deems appropriate against the telephone

1 | solicitor. The civil penalty ~~may shall~~ not exceed \$10,000 per
2 | violation and shall be deposited in the General Inspection
3 | Trust Fund if the action or proceeding was brought by the
4 | department, or the Legal Affairs Revolving Trust Fund if the
5 | action or proceeding was brought by the Department of Legal
6 | Affairs. This civil penalty may be recovered in any action
7 | brought under this part by the department, or the department
8 | may terminate any investigation or action upon agreement by
9 | the person to pay a stipulated civil penalty. The department
10 | or the court may waive any civil penalty if the person has
11 | previously made full restitution or reimbursement or has paid
12 | actual damages to the consumers who have been injured by the
13 | violation.

14 | ~~(10)~~(9)(a) In any civil litigation resulting from a
15 | transaction involving a violation of this section, the
16 | prevailing party, after judgment in the trial court and
17 | exhaustion of all appeals, if any, shall receive his or her
18 | reasonable attorney's fees and costs from the nonprevailing
19 | party.

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

24 | (c) The trial judge shall award the prevailing party
25 | the sum of reasonable costs incurred in the action plus a
26 | reasonable legal fee for the hours actually spent on the case
27 | as sworn to in an affidavit.

28 | (d) Any award of attorney's fees or costs shall become
29 | a part of the judgment and subject to execution as the law
30 | allows.

31 |

1 (e) In any civil litigation initiated by the
2 department or the Department of Legal Affairs, the court may
3 award to the prevailing party reasonable attorney's fees and
4 costs if the court finds that there was a complete absence of
5 a justiciable issue of either law or fact raised by the losing
6 party or if the court finds bad faith on the part of the
7 losing party.

8 ~~(11)~~~~(10)~~ The commission shall by rule ensure that
9 telecommunications companies inform their customers of ~~the~~
10 ~~provisions of~~ this section. The notification may be made by:

11 (a) Annual inserts in the billing statements mailed to
12 customers; and

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

15 Section 2. Subsection (1) of section 501.603, Florida
16 Statutes, is amended to read:

17 501.603 Definitions.--As used in this part, unless the
18 context otherwise requires, the term:

19 (1) "Commercial telephone solicitation" means:

20 (a) An unsolicited telephone call to a person
21 initiated by a commercial telephone seller or salesperson, or
22 an automated dialing machine used in accordance with the
23 provisions of s. 501.059(8) ~~s. 501.059(7)~~ for the purpose of
24 inducing the person to purchase or invest in consumer goods or
25 services;

26 (b) Other communication with a person where:

- 27 1. A gift, award, or prize is offered; or
28 2. A telephone call response is invited; and
29 3. The salesperson intends to complete a sale or enter
30 into an agreement to purchase during the course of the
31 telephone call; or

1 (c) Other communication with a person which represents
2 a price, quality, or availability of consumer goods or
3 services and which invites a response by telephone or which is
4 followed by a call to the person by a salesperson.

5
6 For purposes of this section, "other communication" means a
7 written or oral notification or advertisement transmitted
8 through any means. Also, for purposes of this section,
9 "invites a response by telephone" does not mean the mere
10 listing or including of a telephone number in a notification
11 or advertisement.

12 Section 3. Paragraph (c) of subsection (1) of section
13 648.44, Florida Statutes, is amended to read:

14 648.44 Prohibitions; penalty.--

15 (1) A bail bond agent or temporary bail bond agent may
16 not:

17 (c) Initiate in-person or telephone solicitation after
18 9:00 p.m. or before 8:00 a.m., in the case of domestic
19 violence cases, at the residence of the detainee or the
20 detainee's family. Any solicitation not prohibited by this
21 chapter must comply with the telephone solicitation
22 requirements in ss. 501.059(2) and (5)~~(4)~~, 501.613, and
23 501.616(6).

24 Section 4. This act shall take effect July 1, 2006.

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27 SENATE SUMMARY

28 Defines the terms "cellular telephone," "electronic
29 serial number," and "mobile identification number."
30 Prohibits a telephone solicitor from making a telephonic
31 sales call to any telephone number assigned to a cellular
telephone service without the prior consent of the
subscriber to the cellular telephone service.