

Bill No. CS for SB 660

Barcode 223592

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
. .
. .
. .
. .
. .

The Committee on Judiciary (Baker) recommended the following amendment:

Senate Amendment (with title amendment)

On page 4, between lines 27 and 28,

insert:

Section 4. Section 501.059, Florida Statutes, is amended to read:

501.059 Telephone solicitation.--

(1) As used in this section:

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

(b) "Consumer goods or services" means any real property or any tangible or intangible personal property which

Bill No. CS for SB 660

Barcode 223592

1 is normally used for personal, family, or household purposes,
 2 including, without limitation, any such property intended to
 3 be attached to or installed in any real property without
 4 regard to whether it is so attached or installed, as well as
 5 cemetery lots and timeshare estates, and any services related
 6 to such property.

7 (c) "Unsolicited telephonic sales call" means a
 8 telephonic sales call other than a call made:

9 1. In response to an express request of the person
 10 called;

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

14 3. To any person with whom the telephone solicitor has
 15 a prior or existing business relationship; or

16 4. By a newspaper publisher or his or her agent or
 17 employee in connection with his or her business.

18 (d) "Commission" means the Florida Public Service
 19 Commission.

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

26 (f) "Consumer" means an actual or prospective
 27 purchaser, lessee, or recipient of consumer goods or services.

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

31 (h) "Doing business in this state" refers to

Bill No. CS for SB 660

Barcode 223592

1 businesses who conduct telephonic sales calls from a location
2 in Florida or from other states or nations to consumers
3 located in Florida.

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

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

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

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

26 (c) All fees imposed pursuant to this section shall be
27 deposited in the General Inspection Trust Fund for the
28 administration of this section.

29 (4) No telephone solicitor shall make or cause to be
30 made any unsolicited telephonic sales call to any residential,
31 mobile, or telephonic paging device telephone number if the

Bill No. CS for SB 660

Barcode 223592

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

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

18 (b) A contract made pursuant to a telephonic sales
 19 call:

20 1. Shall be reduced to writing and signed by the
 21 consumer.

22 2. Shall comply with all other applicable laws and
 23 rules.

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

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

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

31 "You are not obligated to pay any money unless you sign

Bill No. CS for SB 660

Barcode 223592

1 this contract and return it to the seller."

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

5 (c) The provisions of this subsection do not apply to
6 contractual sales regulated under other sections of the
7 Florida Statutes, or to the sale of financial services,
8 security sales, or sales transacted by companies or their
9 wholly owned subsidiaries or agents, which companies are
10 regulated by chapter 364, or to the sale of cable television
11 services to the duly franchised cable television operator's
12 existing subscribers within that cable television operator's
13 franchise area, or to any sales where no prior payment is made
14 to the merchant and an invoice accompanies the goods or
15 services allowing the consumer 7 days to cancel or return
16 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 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 pursuant to this section shall be subject to the
26 provisions of s. 817.62.

27 (c) The provisions of this subsection do not apply to
28 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

Bill No. CS for SB 660

Barcode 223592

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 pursuant to an examination of a television, radio, or print
11 advertisement or a sample, brochure, or catalog of the
12 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) No person shall make or knowingly allow a
22 telephonic sales call to be made if such call involves an
23 automated system for the selection or dialing of telephone
24 numbers or the playing of a recorded message when a connection
25 is completed to a number called.

26 (b) Nothing herein prohibits the use of an automated
27 telephone dialing system with live messages if the calls are
28 made or messages given solely in response to calls initiated
29 by the persons to whom the automatic calls or live messages
30 are directed or if the telephone numbers selected for
31 automatic dialing have been screened to exclude any telephone

Bill No. CS for SB 660

Barcode 223592

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

5 (c) It shall be unlawful for any person who makes a
6 telephonic sales call or causes a telephonic sales call to be
7 made to fail to transmit or cause to be transmitted the
8 telephone number and, when made available by the telephone
9 solicitor's carrier, the name of the telephone solicitor to
10 any caller identification service in use by a recipient of a
11 telephonic sales call. However, it shall not be a violation
12 to substitute, for the name and telephone number used in or
13 billed for making the call, the name of the seller on behalf
14 of which a telephonic sales call is placed and the seller's
15 customer service telephone number, which is answered during
16 regular business hours. For purposes of this paragraph, the
17 term "caller identification service" means a service that
18 allows a telephone subscriber to have the telephone number
19 and, where available, the name of the calling party
20 transmitted contemporaneously with the telephone call and
21 displayed on a device in or connected to the subscriber's
22 telephone.

23 (d) It shall be unlawful for any person who makes a
24 telephonic sales call or causes a telephonic sales call to be
25 made to intentionally alter the voice of the caller in an
26 attempt to disguise or conceal the true gender, age, or other
27 physical or social characteristics of the caller in order to
28 defraud, confuse, or financially or otherwise injure the
29 recipient of a telephonic sales call, or in order to obtain
30 personal information from the recipient of a telephonic sales
31 call which may be used in a fraudulent or unlawful manner.

Bill No. CS for SB 660

Barcode 223592

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

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

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

31 (c) The trial judge shall award the prevailing party

Bill No. CS for SB 660

Barcode 223592

1 the sum of reasonable costs incurred in the action plus a
2 reasonable legal fee for the hours actually spent on the case
3 as sworn to in an affidavit.

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

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

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

17 (a) Annual inserts in the billing statements mailed to
18 customers; and

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

21
22 (Redesignate subsequent sections.)
23
24

25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 On page 1, line 17, after the semicolon

28
29 insert:

30
31 amending s. 501.059, F.S.; requiring the provision of

Bill No. CS for SB 660

Barcode 223592

1 telephone numbers and certain names of telephone solicitors as
2 part of telephonic sales calls; providing an exception;
3 defining the term "caller identification service"; prohibiting
4 alteration of a caller's voice during a telephonic sales call
5 under certain circumstances and for certain purposes;
6 providing penalties;

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31