

By the Committees on Judiciary; Commerce and Consumer Services; and Senator Lynn

590-1912-06

1 A bill to be entitled
2 An act relating to the Department of
3 Agriculture and Consumer Services; amending s.
4 493.6106, F.S.; clarifying that private
5 investigative, security, and repossession
6 services are licensed by the Department of
7 Agriculture and Consumer Services; amending s.
8 493.6121, F.S.; authorizing the department to
9 institute judicial proceedings to enforce ch.
10 493, F.S., or any rule or order of the
11 department; amending s. 493.6303, F.S.;
12 revising the requirements for a Class "D"
13 private security license; requiring that the
14 department establish the required hours of
15 training; providing for automatic suspension of
16 a license upon failure to submit documentation
17 of completing the required training; amending
18 s. 501.059, F.S.; requiring the provision of
19 telephone numbers and certain names of
20 telephone solicitors as part of telephonic
21 sales calls; providing an exception; defining
22 the term "caller identification service";
23 prohibiting alteration of a caller's voice
24 during a telephonic sales call under certain
25 circumstances and for certain purposes;
26 providing penalties; amending s. 525.01, F.S.;
27 defining the term "alternative fuel" for
28 purposes of ch. 525, F.S., relating to the
29 inspection of gasoline and oil; amending s.
30 527.11, F.S.; exempting the delivery of certain
31 amounts of propane gas for use with outdoor

1 equipment or appliances from provisions
2 governing the delivery of liquefied petroleum
3 gas; requiring that a person delivering
4 liquefied petroleum gas in bulk comply with
5 certain storage requirements; amending ss.
6 570.46 and 570.47, F.S.; authorizing the
7 Division of Standards within the department to
8 enforce ch. 527, F.S., relating to the sale of
9 liquefied petroleum gas; amending s. 570.544,
10 F.S.; deleting provisions requiring that an
11 office or agency receiving a complaint file
12 progress reports with the Division of Consumer
13 Services within the department; amending s.
14 616.242, F.S.; exempting certain governmental
15 entities from requirements that operators of
16 amusement rides maintain specified amounts of
17 insurance coverage; repealing s. 526.3135,
18 F.S., which provides for the Division of
19 Standards of the Department of Agriculture and
20 Consumer Services to report the complaints
21 received under the Motor Fuel Marketing
22 Practices Act; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Paragraph (c) of subsection (2) of section
27 493.6106, Florida Statutes, is amended to read:

28 493.6106 License requirements; posting.--

29 (2) Each agency shall have a minimum of one physical
30 location within this state from which the normal business of
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1 the agency is conducted, and this location shall be considered
2 the primary office for that agency in this state.

3 (c) Each Class "A," Class "B," Class "R," branch
4 office, or school licensee shall display, in a place that is
5 in clear and unobstructed public view, a notice on a form
6 prescribed by the department stating that the business
7 operating at this location is licensed and regulated by the
8 Department of Agriculture and Consumer Services State and that
9 any questions or complaints should be directed to the
10 department.

11 Section 2. Subsections (5) and (7) of section
12 493.6121, Florida Statutes, are amended to read:

13 493.6121 Enforcement; investigation.--

14 (5) In order to carry out the duties of the department
15 prescribed in this chapter, designated employees of the
16 Division of Licensing of the Department of Agriculture and
17 Consumer Services State may obtain access to the information
18 in criminal justice information systems and to criminal
19 justice information as defined in s. 943.045, on such terms
20 and conditions as are reasonably calculated to provide
21 necessary information and protect the confidentiality of the
22 information. Such criminal justice information submitted to
23 the division is confidential and exempt from the provisions of
24 s. 119.07(1).

25 (7) The department may institute ~~of Legal Affairs~~
26 ~~shall represent the Department of Agriculture and Consumer~~
27 ~~Services in~~ judicial proceedings in the appropriate circuit
28 court seeking enforcement of this chapter, or any rule or
29 order of the department ~~upon an action by any party seeking~~
30 ~~redress against the department, and shall coordinate with the~~
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1 ~~department in the conduct of any investigations incident to~~
2 ~~its legal responsibility.~~

3 Section 3. Subsection (4) of section 493.6303, Florida
4 Statutes, is amended to read:

5 493.6303 License requirements.--In addition to the
6 license requirements set forth elsewhere in this chapter, each
7 individual or agency shall comply with the following
8 additional requirements:

9 (4)(a) Effective January 1, 2007 ~~October 1, 1994~~, an
10 applicant for a Class "D" license must complete ~~have completed~~
11 a minimum of 40 hours of professional training at a school or
12 training facility licensed by the department. The department
13 shall by rule establish the general content and number of
14 hours of each subject area to be taught ~~the training~~.

15 (b) An applicant may fulfill the training requirement
16 prescribed in paragraph (a) by submitting proof of:

17 1. Successful completion of the total number of
18 required ~~40~~ hours of training before initial application for a
19 Class "D" license; or

20 2. Successful completion of 24 hours of training
21 before initial application ~~for~~, and the remaining 16 hours of
22 training within 180 days after the date that ~~upon~~ the first
23 application is submitted for renewal of, a Class "D" license.
24 If documentation of completion of the required training is not
25 submitted within the specified timeframe, the individual's
26 license is automatically suspended until such time as proof of
27 the required training is provided to the department. However,
28 Individuals licensed before October 1, 1994, or individuals
29 who have successfully completed 40 hours of professional
30 training before January 1, 2007, at a school or training
31 facility that is licensed by the department are exempt from

1 ~~the training requirement of paragraph (a) need not complete~~
2 ~~additional training hours in order to renew their licenses.~~

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4 However, any person whose license has been revoked, suspended
5 under subparagraph 2., or ~~whose license has been~~ expired for 1
6 year or longer is considered, upon reapplication for a
7 license, an initial applicant and must submit proof of
8 successful completion of 40 hours of professional training at
9 a school or training facility licensed by the department
10 before a license will be issued.

11 Section 4. 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 purposes,
26 including, without limitation, any such property intended to
27 be attached to or installed in any real property without
28 regard to whether it is so attached or installed, as well as
29 cemetery lots and timeshare estates, and any services related
30 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 person
4 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 person with whom the telephone solicitor has
9 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 an actual or prospective
21 purchaser, lessee, or recipient of consumer goods or services.

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

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

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

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

8 (3)(a) Any residential, mobile, or telephonic paging
9 device telephone subscriber desiring to be placed on a "no
10 sales solicitation calls" listing indicating that the
11 subscriber does not wish to receive unsolicited telephonic
12 sales calls may notify the department and be placed on that
13 listing upon receipt by the department of a \$10 initial
14 listing charge. This listing shall be renewed by the
15 department annually for each consumer upon receipt of a
16 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 pursuant to this section shall be
22 deposited in the General Inspection Trust Fund for the
23 administration of this section.

24 (4) No telephone solicitor shall make or cause to be
25 made any unsolicited telephonic sales call to any residential,
26 mobile, or telephonic paging device telephone number if the
27 number for that telephone appears in the then-current
28 quarterly listing published by the department. Any telephone
29 solicitor or person who offers for sale any consumer
30 information which includes residential, mobile, or telephonic
31 paging device telephone numbers, except directory assistance

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

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

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

15 1. Shall be reduced to writing and signed by the
16 consumer.

17 2. Shall comply with all other applicable laws and
18 rules.

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

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

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

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

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

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

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

20 (b) A merchant who conducts a credit card account
21 transaction pursuant to this section shall be subject to the
22 provisions of s. 817.62.

23 (c) The provisions of this subsection do not apply to
24 a transaction:

25 1. Made in accordance with prior negotiations in the
26 course of a visit by the consumer to a merchant operating a
27 retail business establishment which has a fixed permanent
28 location and where consumer goods are displayed or offered for
29 sale on a continuing basis;

30 2. In which the consumer may obtain a full refund for
31 the return of undamaged and unused goods or a cancellation of

1 services notice to the seller within 7 days after receipt by
2 the consumer, and the seller will process the refund within 30
3 days after receipt of the returned merchandise by the
4 consumer;

5 3. In which the consumer purchases goods or services
6 pursuant to an examination of a television, radio, or print
7 advertisement or a sample, brochure, or catalog of the
8 merchant that contains:

9 a. The name, address, and telephone number of the
10 merchant;

11 b. A description of the goods or services being sold;
12 and

13 c. Any limitations or restrictions that apply to the
14 offer; or

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

17 (7)(a) No person shall make or knowingly allow a
18 telephonic sales call to be made if such call involves an
19 automated system for the selection or dialing of telephone
20 numbers or the playing of a recorded message when a connection
21 is completed to a number called.

22 (b) Nothing herein prohibits the use of an automated
23 telephone dialing system with live messages if the calls are
24 made or messages given solely in response to calls initiated
25 by the persons to whom the automatic calls or live messages
26 are directed or if the telephone numbers selected for
27 automatic dialing have been screened to exclude any telephone
28 subscriber who is included on the department's then-current
29 "no sales solicitation calls" listing or any unlisted
30 telephone number, or if the calls made concern goods or
31 services that have been previously ordered or purchased.

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

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

27 (8) The department shall investigate any complaints
28 received concerning violations of this section. If, after
29 investigating any complaint, the department finds that there
30 has been a violation of this section, the department or the
31 Department of Legal Affairs may bring an action to impose a

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

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

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

26 (c) The trial judge shall award the prevailing party
27 the sum of reasonable costs incurred in the action plus a
28 reasonable legal fee for the hours actually spent on the case
29 as sworn to in an affidavit.
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1 (d) Any award of attorney's fees or costs shall become
2 a part of the judgment and subject to execution as the law
3 allows.

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

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

14 (a) Annual inserts in the billing statements mailed to
15 customers; and

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

18 Section 5. Subsection (1) of section 525.01, Florida
19 Statutes, is amended to read:

20 525.01 Gasoline and oil to be inspected.--

21 (1) For the purpose of this chapter:

22 (a) "Department" means the Department of Agriculture
23 and Consumer Services.

24 (b) "Petroleum fuel" means all gasoline, kerosene
25 (except when used as aviation turbine fuel), diesel fuel,
26 benzine, ~~or~~ other like products of petroleum under whatever
27 name designated, or an alternative fuel used for illuminating,
28 heating, cooking, or power purposes, sold, offered, or exposed
29 for sale in this state.

30 (c) "Alternative fuel" means:

31 1. Methanol, denatured ethanol, or other alcohols;

1 2. Mixtures containing 85 percent or more by volume of
2 methanol, denatured ethanol, or other alcohols with gasoline
3 or other fuels, or such other percentage, but not less than 70
4 percent, as determined by the department by rule, to provide
5 for requirements relating to cold start, safety, or vehicle
6 functions;

7 3. Hydrogen;

8 4. Coal-derived liquid fuels; and

9 5. Fuels, other than alcohol, derived from biological
10 materials.

11 Section 6. Section 527.11, Florida Statutes, is
12 amended to read:

13 527.11 Minimum storage.--

14 (1) Every person who engages in the distribution of
15 liquefied petroleum gas for resale to domestic, commercial, or
16 industrial consumers as a prerequisite to obtaining a
17 liquefied petroleum gas license shall install, own, or lease a
18 bulk storage filling plant of not less than 18,000 gallons
19 (water capacity) within the state and shall be located within
20 a 75-mile radius of the licensed company's business location.
21 This bulk storage filling plant must have loading and
22 unloading provisions solely for the licenseholder and be
23 operated and maintained in compliance with this chapter for
24 the duration of the license.

25 (2) A dealer in liquefied petroleum gas licensed as of
26 August 31, 2000, who has entered or who enters into a written
27 agreement with a wholesaler that the wholesaler will provide
28 liquefied petroleum gas to the dealer for a period of 12
29 continuous months is exempt from the requirements of
30 subsection (1), if the wholesaler has at least 18,000 gallons
31 (water capacity) of bulk storage within this state permanently

1 connected for storage, which is used as such for each dealer
2 to whom gas is sold, and if the wholesaler has loading and
3 unloading provisions. Such dealer must provide certification
4 of this agreement on a form provided by the department to the
5 department before her or his license may be issued. The form
6 must be signed by both the wholesaler or his or her agent and
7 the dealer or his or her agent and must be submitted annually
8 with the license renewal application. A dealer who does not
9 provide written proof of minimum storage may have her or his
10 license denied, suspended, or revoked. ~~A No~~ wholesaler may not
11 enter into written agreements that allocate an amount of
12 storage that exceeds the wholesaler's total storage capacity
13 minus 18,000 gallons (water capacity).

14 (3) A dealer in liquefied petroleum gas operating a
15 single dispensing unit for the sole purpose of direct product
16 sale to customers, including delivery of cylinders of 40 lbs.
17 or less of propane gas capacity for use with outdoor equipment
18 or appliances that are not connected to or part of the
19 permanent interior piping of a structure, (no deliveries) or
20 an operator of a cylinder exchange unit is exempt from the
21 requirements of this section. A person may not deliver
22 liquefied petroleum gas by cargo vehicle unless the person
23 complies with requirements for minimum storage.

24 Section 7. Subsection (5) is added to section 570.46,
25 Florida Statutes, to read:

26 570.46 Division of Standards; powers and duties.--The
27 duties of the Division of Standards include, but are not
28 limited to:

29 (5) Enforcing the provisions of chapter 527.

30 Section 8. Subsection (2) of section 570.47, Florida
31 Statutes, is amended to read:

1 570.47 Director; qualifications; duties.--

2 (2) The director shall supervise, direct, and
3 coordinate the activities of the division and to that end
4 shall, under the direction of the department, enforce the
5 provisions of chapters 501, 525, 526, 527, 531, and 616.

6 Section 9. Subsections (6) and (7) of section 570.544,
7 Florida Statutes, are amended to read:

8 570.544 Division of Consumer Services; director;
9 powers; processing of complaints; records.--

10 ~~(6)(a) The office or agency to which a complaint has~~
11 ~~been referred shall within 30 days acknowledge receipt of the~~
12 ~~complaint and report on the disposition made of the complaint.~~
13 ~~In the event a complaint has not been disposed of within 30~~
14 ~~days, the receiving office or agency shall file progress~~
15 ~~reports with the Division of Consumer Services no less~~
16 ~~frequently than 30 days until final disposition.~~

17 ~~(b) The report shall contain at least the following~~
18 ~~information:~~

19 ~~1. A finding of whether the receiving agency has~~
20 ~~jurisdiction of the subject matter involved in the complaint.~~

21 ~~2. Whether the complaint is deemed to be frivolous,~~
22 ~~sham, or without basis in fact or law.~~

23 ~~3. What action has been taken and a report on whether~~
24 ~~the original complainant was satisfied with the final~~
25 ~~disposition.~~

26 ~~4. Any recommendation regarding needed changes in law~~
27 ~~or procedure which in the opinion of the reporting agency or~~
28 ~~office will improve consumer protection in the area involved.~~

29 ~~(7)(a) If the office or agency receiving a complaint~~
30 ~~fails to file a report as contemplated in this section, that~~
31 ~~failure shall be construed as a denial by the receiving office~~

1 ~~or agency that it has jurisdiction of the subject matter~~
2 ~~contained in the complaint.~~

3 ~~(b)~~ If an office or agency receiving a complaint
4 determines that the matter presents a prima facie case for
5 criminal prosecution or if the complaint cannot be settled at
6 the administrative level, the complaint together with all
7 supporting evidence shall be transmitted to the Department of
8 Legal Affairs or other appropriate enforcement agency with a
9 recommendation for civil or criminal action warranted by the
10 evidence.

11 Section 10. Subsection (9) of section 616.242, Florida
12 Statutes, is amended to read:

13 616.242 Safety standards for amusement rides.--

14 (9) INSURANCE REQUIREMENTS.--

15 (a) An owner may not operate an amusement ride unless
16 the owner has in effect at all times of operation insurance
17 meeting the following requirements:

18 1. An insurance policy in an amount of not less than
19 \$1 million per occurrence, \$1 million in the aggregate, which
20 insures the owner of the amusement ride against liability for
21 injury to persons arising out of the use of the amusement
22 ride; or

23 2. A bond in a like amount; however, the aggregate
24 liability of the surety under the bond may not exceed the face
25 amount thereof.

26 (b) The policy or bond must be procured from an
27 insurer or surety that is licensed to transact business in
28 this state or that is approved as a surplus lines insurer.

29 (c) The insurance requirements imposed under this
30 subsection do not apply to a governmental entity that is
31 covered by the provisions of s. 768.28(16).

1 Section 11. Section 526.3135, Florida Statutes, is
2 repealed.

3 Section 12. This act shall take effect July 1, 2006.

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 CS for Senate Bill 660

8 The committee substitute:

- 9 -- Requires telephone solicitors to transmit accurate
10 telephone numbers and names to those call recipients with
11 caller-identification services;
12 -- Makes it unlawful for telephone solicitors to alter their
13 voices to defraud or otherwise injure call recipients or
14 to obtain personal information for use in an unlawful
15 manner; and
16 -- Repeals a requirement for the Division of Standards of
17 the Department of Agriculture and Consumer Services to
18 report on the status of complaints it receives relating
19 to the sale of motor fuels, in order to conform to other
20 changes made by the bill.
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