

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

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

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

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

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

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

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

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

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

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

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

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 unsolicited
28 telephonic sales call, other than a call made with the prior
29 written express consent of the called party, to any telephone
30 number assigned to a cellular telephone service or any service
31 for 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 (c) It shall be unlawful for any person who makes a
26 telephonic sales call or causes a telephonic sales call to be
27 made to fail to transmit or cause not to be transmitted the
28 telephone number and, when made available by the telephone
29 solicitor's carrier, the name of the telephone solicitor to
30 any caller identification service in use by a recipient of a
31 telephonic sales call. However, it shall not be a violation to

1 substitute, for the name and telephone number used in or
2 billed for making the call, the name of the seller on behalf
3 of which a telephonic sales call is placed and the seller's
4 customer service telephone number, which is answered during
5 regular business hours. For purposes of this section, the term
6 "caller identification service" means a service that allows a
7 telephone subscriber to have the telephone number and, where
8 available, the name of the calling party transmitted
9 contemporaneously with the telephone call and displayed on a
10 device in or connected to the subscriber's telephone.

11 (d) It shall be unlawful for any person who makes a
12 telephonic sales call or causes a telephonic sales call to be
13 made to intentionally alter the voice of the caller in an
14 attempt to disguise or conceal the identity of the caller in
15 order to defraud, confuse, or financially or otherwise injure
16 the recipient of a telephonic sales call or in order to obtain
17 personal information from the recipient of a telephonic sales
18 call which may be used in a fraudulent or unlawful manner.

19 ~~(9)(8)~~ The department shall investigate any complaints
20 received concerning violations of this section. If, after
21 investigating any complaint, the department finds that there
22 has been a violation of this section, the department or the
23 Department of Legal Affairs may bring an action to impose a
24 civil penalty and to seek other relief, including injunctive
25 relief, as the court deems appropriate against the telephone
26 solicitor. The civil penalty may ~~shall~~ not exceed \$10,000 per
27 violation and shall be deposited in the General Inspection
28 Trust Fund if the action or proceeding was brought by the
29 department, or the Legal Affairs Revolving Trust Fund if the
30 action or proceeding was brought by the Department of Legal
31 Affairs. This civil penalty may be recovered in any action

1 brought under this part by the department, or the department
2 may terminate any investigation or action upon agreement by
3 the person to pay a stipulated civil penalty. The department
4 or the court may waive any civil penalty if the person has
5 previously made full restitution or reimbursement or has paid
6 actual damages to the consumers who have been injured by the
7 violation.

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

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

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

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

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

1 ~~(11)~~~~(10)~~ The commission shall by rule ensure that
2 telecommunications companies inform their customers of ~~the~~
3 ~~provisions of~~ this section. The notification may be made by:

4 (a) Annual inserts in the billing statements mailed to
5 customers; and

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

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

10 501.603 Definitions.--As used in this part, unless the
11 context otherwise requires, the term:

12 (1) "Commercial telephone solicitation" means:

13 (a) An unsolicited telephone call to a person
14 initiated by a commercial telephone seller or salesperson, or
15 an automated dialing machine used in accordance with the
16 provisions of s. 501.059(8) ~~s. 501.059(7)~~ for the purpose of
17 inducing the person to purchase or invest in consumer goods or
18 services;

19 (b) Other communication with a person where:

20 1. A gift, award, or prize is offered; or

21 2. A telephone call response is invited; and

22 3. The salesperson intends to complete a sale or enter
23 into an agreement to purchase during the course of the
24 telephone call; or

25 (c) Other communication with a person which represents
26 a price, quality, or availability of consumer goods or
27 services and which invites a response by telephone or which is
28 followed by a call to the person by a salesperson.

29
30 For purposes of this section, "other communication" means a
31 written or oral notification or advertisement transmitted

1 through any means. Also, for purposes of this section,
2 "invites a response by telephone" does not mean the mere
3 listing or including of a telephone number in a notification
4 or advertisement.

5 Section 3. Paragraph (c) of subsection (1) of section
6 648.44, Florida Statutes, is amended to read:

7 648.44 Prohibitions; penalty.--

8 (1) A bail bond agent or temporary bail bond agent may
9 not:

10 (c) Initiate in-person or telephone solicitation after
11 9:00 p.m. or before 8:00 a.m., in the case of domestic
12 violence cases, at the residence of the detainee or the
13 detainee's family. Any solicitation not prohibited by this
14 chapter must comply with the telephone solicitation
15 requirements in ss. 501.059(2) and (5)~~(4)~~, 501.613, and
16 501.616(6).

17 Section 4. This act shall take effect July 1, 2007.

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19
20 SENATE SUMMARY

21 Defines the terms "electronic serial number," "mobile
22 identification number," and "cellular telephone."
23 Prohibits a telephone solicitor from making an
24 unsolicited telephonic sales call to any telephone number
25 assigned to a cellular telephone service without the
26 prior consent of the subscriber to the cellular telephone
27 service.
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