

By Senator Aronberg

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1                   A bill to be entitled  
2           An act relating to direct-mail marketing  
3           solicitations; creating s. 501.0585, F.S.; defining  
4           terms; requiring the Department of Agriculture and  
5           Consumer Services to establish and maintain by a  
6           specified date a "do-not-mail" statewide registry to  
7           contain a list of consumers who do not wish to receive  
8           direct-mail marketing solicitations; providing  
9           procedures by which a person may place his or her name  
10          on the registry; requiring the department to provide  
11          the registry to any direct-mail marketer upon request;  
12          requiring the marketer to provide certain information  
13          and to pay a fee established by rule of the  
14          department; prohibiting a direct-mail marketer from  
15          mailing solicitations to persons on the do-not-mail  
16          registry; requiring the department to investigate  
17          complaints; providing that the department or the  
18          Department of Legal Affairs may bring an action to  
19          impose a civil penalty and to seek other relief,  
20          including injunctive relief, as the court deems  
21          appropriate against a direct-mail marketer; limiting  
22          the civil penalty imposed; providing that a violation  
23          of the act constitutes a deceptive and unfair  
24          practice; providing that a person who has received  
25          more than one solicitation within any 12-month period  
26          by or on behalf of the same direct-mail marketer in  
27          violation of the law may bring a civil action in  
28          circuit court for damages, injunctive relief, punitive  
29          damages, and reasonable costs and attorney's fees;

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30 providing for attorney's fees under certain  
31 circumstances; requiring the department to adopt  
32 rules; providing an effective date.  
33

34 Be It Enacted by the Legislature of the State of Florida:  
35

36 Section 1. Section 501.0585, Florida Statutes, is created  
37 to read:

38 501.0585 Direct-mail marketing solicitations; establishment  
39 of a do-not-mail registry.-

40 (1) As used in this section, the term:

41 (a) "Consumer" means an actual or prospective purchaser,  
42 lessee, or recipient of consumer goods or services.

43 (b) "Consumer goods or services" means any real property or  
44 any tangible or intangible personal property that is normally  
45 used for personal, family, or household purposes, including,  
46 without limitation, any such property intended to be attached to  
47 or installed in any real property without regard to whether it  
48 is so attached or installed, as well as cemetery lots and  
49 timeshare estates, and any services related to such property.

50 (c) "Department" means the Department of Agriculture and  
51 Consumer Services.

52 (d) "Direct-mail marketer" means any person who, for  
53 commercial purposes in connection with direct-mail marketing,  
54 mails solicitations for the sale of goods or services to a  
55 consumer when the consumer is in this state. The term includes  
56 any person who directly controls or supervises the conduct of a  
57 direct-mail marketer.

58 (e) "Direct-mail marketing" means any mailing that contains

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59 solicitations for the sale of goods or services and is directed  
60 to a consumer at the consumer's residence within this state by  
61 personal mail delivery to a consumer at his or her residence.

62 (f) "Doing business in this state" means mailing or causing  
63 to be mailed any direct-mail marketing solicitation from a  
64 location in this state or from other states or nations to  
65 consumers located in this state.

66 (g) "Solicitation" means any communication via mail for the  
67 purpose of encouraging the purchase or rental of, or investment  
68 in, property, goods, or services. The term does not include  
69 communications via mail:

70 1. To any resident with that resident's prior express  
71 invitation or permission;

72 2. By or on behalf of any person with whom a resident has  
73 had a business contact within the past 180 days or a current  
74 business or personal relationship, unless the consumer has  
75 expressed to the direct-mail marketer that the consumer no  
76 longer wishes to receive any more direct-mail marketing from  
77 that direct-mail marketer;

78 3. By or on behalf of an entity organized under s.  
79 501(c)(3) of the Internal Revenue Code, as amended, while the  
80 entity is engaged in fundraising to support the charitable  
81 purpose for which the entity was established if a bona fide  
82 member of the exempt organization makes the communication;

83 4. By a newspaper publisher or his or her agent or employee  
84 in connection with his or her business;

85 5. By a person responding to a referral, or working from  
86 his or her primary residence, or a person licensed by this state  
87 to carry out a trade, occupation, or profession who is setting

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88 or attempting to set an appointment for actions relating to that  
89 licensed trade, occupation, or profession within this state or  
90 counties contiguous to the state; or

91 6. By or on behalf of a political party, political  
92 committee, campaign committee, candidate committee, or entity  
93 organized under s. 527 of the Internal Revenue Code, as amended,  
94 while the entity is engaged in political speech or fund raising  
95 for political purposes.

96 (2) (a) The department shall establish and maintain a "do-  
97 not-mail" statewide registry which shall contain a list of  
98 consumers who do not wish to receive direct-mail marketing  
99 solicitations. The department shall have the registry in  
100 operation by July 1, 2010.

101 (b) Any consumer desiring to be placed on the do-not-mail  
102 registry indicating that the consumer does not wish to receive  
103 any direct-mail marketing solicitations may notify the  
104 department and be placed on that registry upon receipt by the  
105 department of a \$10 initial listing charge. This registry  
106 listing shall be renewed by the department for each consumer  
107 upon receipt of a renewal notice and a \$5 assessment. Any  
108 consumer who wishes to be included on the registry may notify  
109 the department by calling a toll-free number provided by the  
110 department or by using the department's Internet website.

111 (c) A consumer on the registry must be deleted from the  
112 registry upon the consumer's written request.

113 (d) The department shall update its do-not-mail registry  
114 using initial consumer subscriptions and renewals. The  
115 department shall update the do-not-mail registry at least  
116 quarterly.

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117 (e)1. The department shall provide the registry to any  
118 direct-mail marketer upon request. Each direct-mail marketer  
119 shall provide a current business name, business address, e-mail  
120 address if available, and telephone number when initially  
121 registering for access to the database and upon any change in  
122 that information.

123 2. Direct-mail marketers who wish to send solicitations or  
124 otherwise access the database established in this subsection,  
125 shall pay to the department an annual registration fee of not  
126 more than \$500. Fees shall be determined by a sliding fee scale  
127 established in rule by the department. A fee may not be charged  
128 to nonprofit corporations.

129 (3) All fees imposed under this section shall be deposited  
130 in the General Inspection Trust Fund and used for administering  
131 this section.

132 (4) A direct-mail marketer doing business in this state may  
133 not mail or cause to be mailed any solicitation to any consumer  
134 more than 30 days after the consumer's name and address appears  
135 on the then-current quarterly do-not-mail statewide registry  
136 made available by the department under subsection (2).

137 (5) (a) The department shall investigate any complaints  
138 received concerning violations of this section. If, after  
139 investigating any complaint, the department finds that there has  
140 been a violation of this section, the department or the  
141 Department of Legal Affairs may bring an action to impose a  
142 civil penalty and to seek other relief, including injunctive  
143 relief, as the court deems appropriate against the direct-mail  
144 marketer. The civil penalty may not exceed \$10,000 per violation  
145 and shall be deposited in the General Inspection Trust Fund if

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146 the action or proceeding was brought by the department, or the  
147 Legal Affairs Revolving Trust Fund if the action or proceeding  
148 was brought by the Department of Legal Affairs. The civil  
149 penalty may be recovered in any action brought under this part  
150 by the department, or the department may terminate any  
151 investigation or action upon agreement by the person to pay a  
152 stipulated civil penalty. The department or the court may waive  
153 any civil penalty if the person has previously made full  
154 restitution or reimbursement or has paid actual damages to the  
155 consumers who have been injured by the violation.

156 (b) A violation of this section constitutes a deceptive and  
157 unfair practice. Each prohibited solicitation constitutes a  
158 separate violation.

159 (6) A consumer who receives more than one solicitation  
160 within any 12-month period by or on behalf of the same direct-  
161 mail marketer in violation of this section may bring a civil  
162 action in circuit court for damages, injunctive relief, punitive  
163 damages in the case of a willful violation, and reasonable costs  
164 and attorney's fees. The court may issue an award for the  
165 person's actual damages or \$500 for a first violation, or \$1,000  
166 for each subsequent violation, whichever is greater. This  
167 subsection does not limit a direct-mail marketer's liability  
168 under any other civil or criminal law.

169 (7) (a) In any civil litigation resulting from a violation  
170 of this section, the prevailing party, after judgment in the  
171 trial court and exhaustion of all appeals, if any, shall receive  
172 his or her reasonable attorney's fees and costs from the  
173 nonprevailing party.

174 (b) The attorney for the prevailing party shall submit a

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175 sworn affidavit of his or her time spent on the case and his or  
176 her costs incurred for all the motions, hearings, and appeals to  
177 the trial judge who presided over the civil case.

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

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

184 (e) In any civil litigation initiated by the department or  
185 the Department of Legal Affairs, the court may award to the  
186 prevailing party reasonable attorney's fees and costs if the  
187 court finds that there was a complete absence of a justiciable  
188 issue of law or fact raised by the losing party or if the court  
189 finds bad faith on the part of the losing party.

190 (8) The department shall adopt rules to administer this  
191 section.

192 Section 2. This act shall take effect July 1, 2009.