

By Senator Baker

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1 A bill to be entitled
2 An act relating to telephone solicitation; amending s.
3 501.059, F.S.; defining the term "prior or existing
4 business relationship"; deleting provisions that
5 exempt not-for-profit organizations from certain
6 screening requirements of the "no sales solicitation
7 list"; deleting provisions exempting charitable
8 organizations and newspapers from certain requirements
9 for initiating credit card charges by telephone
10 solicitors; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Subsections (1), (4), and (6) of section
15 501.059, Florida Statutes, are amended to read:

16 501.059 Telephone solicitation.—

17 (1) As used in this section:

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

25 (b) "Consumer goods or services" means any real property or
26 any tangible or intangible personal property which is normally
27 used for personal, family, or household purposes, including,
28 without limitation, any such property intended to be attached to
29 or installed in any real property without regard to whether it

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30 is so attached or installed, as well as cemetery lots and
31 timeshare estates, and any services related to such property.

32 (c) "Unsolicited telephonic sales call" means a telephonic
33 sales call other than a call made:

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

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

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

40 4. By a newspaper publisher or his or her agent or employee
41 in connection with his or her business.

42 (d) "Commission" means the Florida Public Service
43 Commission.

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

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

52 (g) "Merchant" means a person who, directly or indirectly,
53 offers or makes available to consumers any consumer goods or
54 services.

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

58 (i) "Department" means the Department of Agriculture and

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59 Consumer Services.

60 (j) "Prior or existing business relationship" means a
61 "course of performance" as defined in s. 671.205, which the
62 business or telephone solicitor has the evidentiary burden of
63 establishing.

64 (4) No telephone solicitor shall make or cause to be made
65 any unsolicited telephonic sales call to any residential,
66 mobile, or telephonic paging device telephone number if the
67 number for that telephone appears in the then-current quarterly
68 listing published by the department. Any telephone solicitor or
69 person who offers for sale any consumer information which
70 includes residential, mobile, or telephonic paging device
71 telephone numbers, except directory assistance and telephone
72 directories sold by telephone companies ~~and organizations exempt~~
73 ~~under s. 501(c)(3) or (6) of the Internal Revenue Code~~, shall
74 screen and exclude those numbers which appear on the division's
75 then-current "no sales solicitation calls" list. This subsection
76 does not apply to any person licensed pursuant to chapter 475
77 who calls an actual or prospective seller or lessor of real
78 property when such call is made in response to a yard sign or
79 other form of advertisement placed by the seller or lessor.

80 (6) (a) A merchant who engages a telephone solicitor to make
81 or cause to be made a telephonic sales call shall not make or
82 submit any charge to the consumer's credit card account or make
83 or cause to be made any electronic transfer of funds until after
84 the merchant receives from the consumer a copy of the contract,
85 signed by the purchaser, which complies with this section.

86 (b) A merchant who conducts a credit card account
87 transaction pursuant to this section shall be subject to the

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88 provisions of s. 817.62.

89 (c) The provisions of this subsection do not apply to a
90 transaction:

91 1. Made in accordance with prior negotiations in the course
92 of a visit by the consumer to a merchant operating a retail
93 business establishment which has a fixed permanent location and
94 where consumer goods are displayed or offered for sale on a
95 continuing basis;

96 2. In which the consumer may obtain a full refund for the
97 return of undamaged and unused goods or a cancellation of
98 services notice to the seller within 7 days after receipt by the
99 consumer, and the seller will process the refund within 30 days
100 after receipt of the returned merchandise by the consumer; or

101 3. In which the consumer purchases goods or services
102 pursuant to an examination of a television, radio, or print
103 advertisement or a sample, brochure, or catalog of the merchant
104 that contains:

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

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

107 c. Any limitations or restrictions that apply to the

108 offer. ~~;~~ ~~or~~

109 ~~4. In which the merchant is a bona fide charitable~~
110 ~~organization or a newspaper as defined in chapter 50.~~

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