

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

29 certain circumstances; requiring the department to adopt
 30 rules; providing an effective date.

31

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

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34 Section 1. Section 501.0585, Florida Statutes, is created
 35 to read:

36 501.0585 Direct-mail marketing solicitations;
 37 establishment of a do not mail registry.--

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

39 (a) "Consumer" means an actual or prospective purchaser,
 40 lessee, or recipient of consumer goods or services who resides
 41 in the state.

42 (b) "Consumer goods or services" means any real property
 43 or any tangible or intangible personal property that is normally
 44 used for personal, family, or household purposes, including, but
 45 not limited to, any such property intended to be attached to or
 46 installed in any real property, whether or not it is attached or
 47 installed, as well as cemetery lots and timeshare estates, and
 48 any services related to such property.

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

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

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57 (e) "Direct-mail marketing" means any mailing that
58 contains solicitations for the sale of goods or services and is
59 directed to a consumer at the consumer's residence within this
60 state by personal mail delivery to the consumer at his or her
61 residence.

62 (f) "Doing business in this state" means mailing or
63 causing to be mailed any direct-mail marketing solicitation from
64 a location in this state or from another state or nation to a
65 consumer who resides in this state.

66 (g) "Solicitation" means any communication by 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 by mail:

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

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

78 3. From 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. From a newspaper publisher or his or her agent or
84 employee in connection with his or her business;

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85 5. From 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
88 or attempting to set an appointment for actions relating to the
89 licensed trade, occupation, or profession within this state or a
90 county contiguous to the state; or

91 6. From 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 fundraising
95 for political purposes.

96 (2) (a) The department shall establish and maintain a
97 statewide "do not mail" registry that 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 the 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. A consumer
108 who wishes to be included on the registry may notify the
109 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.

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113 (d) The department shall update the 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.

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 notify the department
122 upon any change in 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 corporations not for profit.

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

132 (4) A direct-mail marketer doing business in this state
133 may not mail or cause to be mailed any solicitation to any
134 consumer more than 30 days after the consumer's name and address
135 appear on the most recent quarterly statewide do not mail
136 registry 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 a complaint, the department finds a violation of
140 this section, the department or the Department of Legal Affairs

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141 may bring an action to impose a civil penalty and to seek other
142 relief, including injunctive relief, as the court deems
143 appropriate against the direct-mail marketer. The civil penalty
144 may not exceed \$10,000 per violation and shall be deposited in
145 the General Inspection Trust Fund if the action or proceeding is
146 brought by the department or the Legal Affairs Revolving Trust
147 Fund if the action or proceeding is brought by the Department of
148 Legal Affairs. The civil penalty may be recovered in an action
149 brought under this part by the department, or the department may
150 terminate an investigation or action upon agreement by the
151 person to pay a stipulated civil penalty. The department or the
152 court may waive any civil penalty if the person first makes full
153 restitution or reimbursement or pays actual damages to the
154 consumers who were injured by the violation.

155 (b) A person who violates this section commits a deceptive
156 or unfair trade practice and is subject to the penalties and
157 remedies provided in part II of this chapter. Each prohibited
158 solicitation constitutes a separate violation.

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

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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 costs and attorney's fees from the
173 nonprevailing party.

174 (b) The attorney for the prevailing party shall submit a
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 presides 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 the 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 costs and attorney's fees if the
187 court finds a complete absence of a justiciable issue of law or
188 fact raised by the nonprevailing party or if the court finds bad
189 faith on the part of the nonprevailing party.

190 (8) The department shall adopt rules under ss. 120.536(1)
191 and 120.54 to administer this section.

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