

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 1424

INTRODUCER: Senator Benacquisto

SUBJECT: Telemarketing

DATE: April 11, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | McCarthy | Cooper | CM | Pre-meeting |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

Section 501.604(10), F.S., exempts business-to-business sales, where:

- The commercial telephone seller has been operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;
- The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or
- The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

This bill deletes these conditions, thereby exempting all business-to-business sales from the Florida Telemarketing Act with the exceptions noted in the act relating to filing a notarized affidavit of exemption with the Department of Agriculture and Consumer Services (DACCS), displaying the affidavit of exemption at its business location, regulations regarding the timing of calls, and blocking of the seller identity.

This bill substantially amends the following sections of the Florida Statutes: 501.604.

II. Present Situation:

The Florida Telemarketing Act requires non-exempt businesses and their salespersons that engage in the sale of consumer goods or services by telephone in Florida to register with DACCS and pay a fee. A commercial telephone seller is a person who engages in commercial telephone solicitation on his or her own behalf or through salespersons. A salesperson is any individual employed, appointed, or authorized by a commercial telephone seller, regardless of whether the

commercial telephone seller refers to the individual as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone seller.

Section 501.604(10), F.S., exempts business-to-business sales, where:

- The commercial telephone seller has been operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;
- The purchaser business intends to resell, or offer for purposes of advertisement or as a promotional item, the property or goods purchased; or
- The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

However, exempt businesses must:

- file an affidavit of exemption with DACS;¹
- must display the affidavit of exemption at its business location;²
- comply with regulations regarding the timing of calls which prohibit commercial calls before 8 a.m. or after 9:00 p.m.;³ and
- avoid the intentional blocking of the seller identity - commercial telephone caller may not take any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment is capable to providing the information.⁴

III. Effect of Proposed Changes:

Section 1 amends s. 501.604(10), F.S., to exempt all business-to-business sales from complying with the Florida Telemarketing Act. However, these exempt businesses will still be required to comply with filing a notarized affidavit of exemption with DACS, display the affidavit of exemption at its business location, and comply with regulations regarding the timing of calls and blocking of the seller identity.

Section 2 provides an effective date July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹ Section 501.608(1)(b), F.S.

² Section 501.608(2), F.S.

³ Section 501.616(6), F.S.

⁴ Section 501.616(7), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill has the potential to reduce fees to DACS depending on how many individuals it would effect. In its analysis of this bill, DACS has not shown any decrease in revenue based on this bill.⁵

B. Private Sector Impact:

Currently an applicant for licensure as a commercial telephone seller must pay a \$1,500 fee, and post a bond, letter of credit, or certificate of deposit in a minimum amount of \$50,000.⁶⁷ A salesperson must also pay a \$50 licensing fee if he is working for a non-exempt entity that falls under the telemarketing act.

This bill could eliminate the costs associated with registering with DACS under the Telemarketing Statute for those companies who would not currently have qualified under existing law. This bill would also eliminate the \$50 licensing fee per salesman.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

⁵ DACS analysis on file with the Senate Commerce and Tourism Committee dated March 3, 2011.

⁶ Section 501.605(5)(b), F.S.

⁷ Section 501.611(2), F.S.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
