

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4015 Telemarketing
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** SB 1424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	12 Y, 0 N	Morton	Creamer
2) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 4015 repeals restrictions on the exemption applying to business-to-business sales under the Telemarketing Act.

The bill would have an indeterminate negative fiscal impact on state trust funds.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under Florida's Telemarketing Act,¹ commercial telephone sellers (telemarketers) must register with the Department of Agriculture and Consumer Services (DACS) annually. Such registration requires a completed 10-page application disclosing contact and background information and copies of scripts or other materials used in solicitations. Commercial telephone sellers must also pay an annual \$1500 application fee and post a security of at least \$50,000. The DACS issues a certificate of registration for registrants to display.

Salespersons employed by telemarketers must also register with the DACS annually. Such registration requires disclosure of contact and background information. The application fee per salesperson is \$50.

Several telemarketers and transactions are exempt from requirements of the Telemarketing Act, including certain business-to-business sales. To be exempt, a business-to-business sale must meet one of the following criteria:

- 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.

Telemarketers claiming exempt status must file with the DACS a 3-page notarized affidavit of exemption, disclosing contact information and the basis of the claimed exemption. The exempt telemarketer must display a copy of his or her affidavit of exemption at each place of business, and make the affidavit available for inspection by any governmental agency.²

Exempt telemarketers are also subject to prohibitions on making telephone solicitations before 8 a.m. or after 9 p.m. and prohibitions on intentionally concealing their identity as a telemarketer.³

The business-to-business exemption has been part of the Telemarketing Act since the Act's enactment in 1991.⁴ It has remained unchanged since 1992, when the first criterion was added and the second criterion was limited to resale of goods for advertising or promotional purposes.⁵

Proposed Changes

The bill repeals restrictions on the exemption applying to business-to-business sales under the Telemarketing Act, thereby exempting all business-to-business sales.

B. SECTION DIRECTORY:

Section 1 Deletes restrictions on the s. 501.604(10), F.S., exemption applicable to business-to-business sales.

Section 2 Provides an effective date of July 1, 2011.

¹ Sections 501.601 – 501.626, F.S.

² Section 501.608, F.S.

³ Section 501.616(6) and (7), F.S.

⁴ Chapter 91-237, L.O.F.

⁵ Chapter 92-186, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may reduce revenue by removing requirements for certain businesses to pay an application fee of \$1,500 and employees of such businesses to pay an application fee of \$50. It is uncertain how many businesses this would effect.

2. Expenditures:

The bill may reduce expenditures by reducing the number of businesses for which the DACS must process applications. However, the DACS would have to process affidavits of exemption for these businesses, so any impact may be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, commercial telephone sellers soliciting business-to-business sales who do not meet the current exemption requirements would no longer have to pay an annual \$1,500 application fee or post a \$50,000 security. Furthermore, employees of such businesses would no longer be required to pay an annual \$50 application fee for licensure as a salesperson.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the state by reducing revenues from application fees.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.