

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 Committee on Agriculture

BILL: SB 450

INTRODUCER: Agriculture Committee and Senator Clemens

SUBJECT: Telephone Solicitation

DATE: January 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Halley</u>	<u>AG</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CU</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 450 revises the definition of “telephonic sales call” regarding the type of unsolicited telephone calls that are prohibited by the Florida Do Not Call (Florida DNC) program to include a telephone call or text message whereas the present definition covers only a “call made by a telephone solicitor.”

II. Present Situation:

Under the Florida DNC program, if a person notifies the Department of Agriculture and Consumer Services (DACS) of his or her desire to be placed on a list (the “Do Not Call” list) indicating that he or she does not wish to receive unsolicited telephonic sales calls, DACS places the person on the list for 5 years. Telephone solicitors are prohibited from calling phone numbers on the DNC list. However, some unsolicited phone calls do not meet the definition of a “telephonic sales call” as defined by statute, typically because the entity is not selling a product or service.¹ Because DACS received frequent complaints from individuals who were frustrated when they continued to receive calls after they subscribed to the DNC program, primarily from professional solicitors calling on behalf of charitable organizations, the 2013 Florida Legislature amended the Florida DNC statute to prohibit telephone solicitors seeking donations on behalf of

¹ Information contained in this portion of this bill analysis is from the analysis for CS/SB 1040 by the Senate Committee on Commerce and Tourism (March 11, 2013) see <http://flsenate.gov/Session/Bill/2013/1040/Analyses/2013s1040.ap.PDF> (Site last visited Jan. 6, 2014).

charities from contacting individuals who have previously communicated to the solicitor that he or she does not wish to receive telephone solicitations from that charitable organization.²

DACS reports that violations of the Do Not Call program topped the list of complaints made to the department's consumer assistance center in 2013, with the center having received more than 18,800 complaints. This is the fourth consecutive year that the Do Not Call program has resulted in the most complaints.³

Currently the definition of "telephonic sales call" does not include text messages.

On the national level, a Do Not Call Registry was implemented in 2003 to limit telemarketing calls and it permits a home and cell phone number to be registered and remain registered until a number is disconnected or reassigned.⁴ This national registry does not preempt a state Do Not Call law and Florida's telephone solicitation law, which preceded the federal law, provides that Florida's list will include listings in a national database if one is established.⁵ There are exceptions for political organizations, charities, telephone surveyors, and calls from companies with which there is an existing business relationship. The federal Telephone Consumer Protection Act [TCPA] bans many text messages sent to a mobile phone using an autodialer unless there was prior consent given in some form. And the federal Controlling the Assault of Non-Solicited Pornography and Marketing Act [CAN-SPAM] bans unwanted commercial email messages (commonly referred to as SPAM) unless there was a prior relationship. Commercial email sent to your mobile phone must provide an "Opt-Out" method to prevent future unwanted messages.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 501.059(1), F.S., to expand the type of unsolicited telephone calls prohibited by the Florida Do Not Call program by revising the definition of "Telephonic sales call" to mean a telephone call or text message to a consumer. It also makes technical changes that do not change its meaning.

Section 2 provides that the bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² Chapter 2013-251, s. 16, Laws of Fla. Effective July 1, 2013.

³ Florida Department of Agriculture and Consumer Services, <http://www.freshfromflorida.com/News-Events/Press-Releases/2013-Press-Releases/Top-10-Consumer-Complaints-for-2013> (Site last visited Jan. 6, 2014).

⁴ See <http://www.consumer.ftc.gov/articles/0108-national-do-not-call-registry>. (Site last visited Jan. 7, 2014)

⁵ Section 501.059(3)(d).

⁶ See <http://www.fcc.gov/print/node/31582>. (Site last visited Jan. 7, 2014)

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals and entities will be prohibited from sending unsolicited text messages as well as making unsolicited telephone calls to persons who register under the Florida Do Not Call program.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimates the fiscal impact arising from the implementation of this bill⁷ would be:

		FY 13-14	FY 14-15	FY 15-16
Recurring revenue		\$ -0-	\$ 30,725	\$30,725
Expenditures:				
Recurring:				
Salaries & Benefits				
	Regulatory consultant (2)	-0-	106,520	106,520
	Senior Clerk (1)	-0-	40,717	40,717
Expenses:				
	Prof exp pkg (2 @ 6,261)	-0-	12,522	12,522
	Support staff (1)	-0-	5,055	5,055
Special category	HR allocation (3 @ 344)	-0-	1,032	1,032
Total recurring cost		-0-	165,846	165,846
Non-recurring	General Inspection Tr Fd			
Expenses	Prof exp pkg (2 @ 3,773)	-0-	7,546	-0-
	Support staff (1)	-0-	3,557	-0-
Contracted Svcs				
	Software (62.5 hrs @ 80)	-0-	5,000	-0-
Total non-recurring cost		-0-	16,103	-0-
Total recurring and nonrecurring cost		-0-	181,949	165,846
Non-operating cost				
	Information tech support	-0-	7,268	7,268
	Admin/indirect cost	-0-	17,583	17,583
Total non-operating cost		-0-	24,851	24,851
Expenditures Grand Total (GITF)		-0-	206,800	190,697

⁷ DACS Analysis SB 450, Dec. 19, 2013. Copy available in committee files.

VI. Technical Deficiencies:

None.

VII. Related Issues:

An effect of this bill is that text messages for the purpose of soliciting a sale of, or extension of credit for, consumer goods and services to phone numbers placed on the Do Not Call list would be prohibited. As mentioned in Section II above, the TCPA and CAN-SPAM are federal laws that regulate text messages. A provision of the CAN-SPAM act dealing with the effect on other laws reads as follows:

“This chapter supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.”⁸

This bill could be determined to be inconsistent with federal laws regulating text messages if challenged.

VIII. Statutes Affected:

This bill substantially amends section 501.059 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on January 14, 2014:

The CS clarifies that only telephone calls and text messages are “telephonic sales calls” as that term is used in the administration of the “no sales solicitation calls” list maintained by DACS under the Florida Do Not Call program, which presently only applies to a “call made by a telephone solicitor”.

- B. **Amendments:**

None.

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

⁸ 15 U.S.C. s. 7707(b)(1).