

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 Communications, Energy, and Public Utilities

BILL: CS/SB 450

INTRODUCER: Agriculture Committee and Senator Clemens

SUBJECT: Telephone Solicitation

DATE: February 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Telotte/Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 450 expands the definition of the term “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 text message. Additionally, a telephone solicitor is prohibited from sending text messages to a consumer after the consumer communicates to the telephone solicitor that he or she does not wish to be contacted.

II. Present Situation:

The Florida Department of Agriculture and Consumer Services maintains the state's "Do Not Call" list, also known as the “no sales solicitation calls” list. Florida residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.¹ A “telephonic sales call” is defined as a call made by a telephone solicitor to a consumer for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

¹ <https://www.fldnc.com/About.aspx>

Telephone solicitors² are prohibited from making telephonic sales calls to consumers who register for the Do Not Call program. There are exceptions to this prohibition which include calls made:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contact, payment or performance of which has not been completed at the time of the call;
- To any person with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.

In addition to those consumers registered for the Do Not Call program, a telephone solicitor may not call a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted.

A telephone solicitor that contacts a person whose number is on the Do Not Call list, contacts a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted, or makes a call that does not fall into one of the four exceptions is subject to penalties. The penalty may include either a civil penalty³ with a maximum fine of \$10,000 per violation, or an administrative fine⁴ with a maximum of \$1000 per violation, in addition to payment of the consumer's attorney fees and costs.

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone. The state's language is consistent with the federal law.

III. Effect of Proposed Changes:

The bill expands the term "telephonic sales calls" to include text messages, made by a solicitor to a consumer, for the purpose of the Do Not Call prohibition.

The bill also prohibits a telephone solicitor from contacting by text message consumers who have previously communicated that they do not wish to be contacted.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

² "Telephone solicitor" means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

³ Section 501.059(9)(a), F.S.

⁴ Section 501.059(9)(b), F.S.

B. Public Records/Open Meetings Issues:

None.

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 to persons who register for the Florida Do Not Call program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted by a telephone solicitor.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimates the fiscal impact arising from the implementation of this bill⁵ 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:		-0-		
	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	-0-		
Expenses	Prof exp pkg (2 @ 3,773)	-0-	7,546	-0-
	Support staff (1)	-0-	3,557	-0-
Contracted Services		-0-		
	Software (62.5 hrs @ 80)	-0-	5,000	-0-
Total non-recurring cost		-0-	16,103	-0-

⁵ DACS Analysis SB 450, Dec. 19, 2013. Copy available in committee files.

		FY 13-14	FY 14-15	FY 15-16
Total recurring & non-recurring cost		-0-	181,949	165,846
Non-operating cost		-0-		
	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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.