

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 Commerce and Tourism

BILL: SB 1120

INTRODUCER: Senator Gibson

SUBJECT: Commercial Telephone Solicitation

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RI</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1120 amends the Florida Telemarketing Act to prohibit a telephone seller or salesperson from calling consumers outside of the hours between 8 a.m. and 8 p.m. of the consumer’s time zone and prohibits telephone sellers and salespersons from contacting consumers on the same subject matter more than three times in a 24-hour period. The bill also clarifies that calls made through an automated dialer or recorded message are subject to the same prohibitions.

The bill takes effects on July 1, 2021.

II. Present Situation:

Unsolicited Phone Calls

Consumers are often inundated with unwanted calls. In fiscal year 2020, the Federal Trade Commission (FTC) received 293,071 complaints from Florida consumers about unwanted telephone calls.¹ The Federal Communications Commission (FCC) reports that unwanted calls constitute their top consumer complaint.² Unwanted calls can come in many forms, including robocalls, which use an autodialer³ and play a recorded message upon connection with the consumer; spoofed calls, which transmit falsified information to a consumer’s caller ID to disguise the solicitor’s identity; and unwanted telemarketing calls.

¹ Federal Trade Commission, *Do Not Call Data Book 2020*, (Oct. 2020), available at https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc_data_book_2020.pdf (last visited Mar. 8, 2020).

² Federal Communications Commission, *Stop Unwanted Calls and Texts*, (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 8, 2021).

³ An autodialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

State and federal action is limited to combat these issues because there are legitimate and legal uses of this technology. For example, a doctor's office may legally use a robocall to remind one of an upcoming appointment.⁴ Additionally, some solicitors act outside the scope of federal or state enforcement authority.

Federal Law

Telephone Consumer Protection Act⁵

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:

- Are made to residences before 8 am, and after 9 pm;
- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,⁶ and an opportunity to opt out of the current call, and all future calls made by that solicitor;
- Send artificial or pre-recorded messages to a residential line; and
- Use an autodialer, artificial message, or pre-recorded messages to a cellular, emergency, or hospital room line.

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.⁷ State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.⁸

The TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.⁹

Federal Do Not Call Program¹⁰

The FTC, in concert with the FCC, administers the National Do Not Call Program.¹¹ Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:¹²

⁴ Federal Communication Commission, Consumer and Governmental Affairs Bureau, *Report on Robocalls* (Feb. 2019), CG Docket No. 17-59, available at <https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls> (last visited Mar. 8, 2021). See also, Federal Communications Commission, *Stop Unwanted Calls and Texts--Spoofing*, (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 8, 2021).

⁵ 47 U.S.C. § 227. See also, 47 CFR § 64.1200 (2012).

⁶ 47 C.F.R. § 64.1601(e). See also, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf (last visited Mar. 8, 2021).

⁷ 47 U.S.C. § 227 (c)(5).

⁸ 47 U.S.C. § 227 (f).

⁹ Federal Communications Commission, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Mar. 8, 2021).

¹⁰ See, 15 U.S.C. § 6101.

¹¹ Federal Communications Commission, *Stop Unwanted Calls and Texts—The National Do Not Call List*, (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Mar. 8, 2021).

¹² 47 U.S.C. § 227(a)(4); See also, 47 C.F.R. § 64.1200 (2012).

- Made with a consumer’s prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.

Truth in Caller ID Act¹³

The Truth in Caller ID Act of 2009 protects consumers by making it unlawful for any person to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.¹⁴ The FCC has taken enforcement actions totaling \$450 million in recent years against telemarketers for call spoofing violations—of note, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.¹⁵

To protect individual privacy concerns, an individual caller may still request to hide his or her phone number when making a call.¹⁶

Florida Law

Florida Telemarketing Act

The Florida Telemarketing Act (Telemarketing Act), part IV of ch. 501, F.S., requires commercial telephone sellers (usually a business entity) and their individual salespersons to obtain a license from the Department of Agriculture and Consumer Services (Department). An applicant for licensure as a commercial telephone seller must submit, among other information:¹⁷

- Its criminal, civil, and administrative disciplinary background;
- All phone numbers from which the applicant will solicit business and the physical address at which the phones will be located;
- The script it will use during a solicitation, or any informational literature it will provide to a consumer; and
- A bond, letter of credit, or certificate of deposit to serve as security in any future case of fraud, breach of contract, financial failure, or violation by the licensee.

As part of their licensure, individual salespersons (who are hired by commercial telephone sellers to act as their salespersons) undergo a similar review of their criminal, civil, administrative or regulatory disciplinary history, but they are not required to post a bond, letter of credit, or certificate of deposit.¹⁸

¹³ 47 U.S.C. § 227 (e).

¹⁴ *See*, 47 CFR § 64.

¹⁵ Federal Communications Commission, *The FCC’s Push to Combat Robocalls & Spoofing: Major Fines Against Spoofers* <https://www.fcc.gov/spoofed-robocalls> (last visited Mar. 8, 2021). *See also*, Federal Communications Commission, *FCC Fines Massive Neighbor Spoofing Robocall Operation \$120 Million* (May 10, 2018) <https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million> (last visited Mar. 8, 2021).

¹⁶ 47 CFR § 64.1601

¹⁷ Section 501.605, F.S.

¹⁸ Section 501.607, F.S.

Many solicitors are exempt from licensure under the Telemarketing Act, including religious, charitable, political, or educational organizations that have a s. 501(c)(3) or (6) exemption from the Internal Revenue Code; licensed securities, commodities, or investment brokers and dealers; and newspaper or cable television sellers, among others.¹⁹

Licensed telephone sellers and solicitors must identify themselves to the consumer within 30 seconds of the beginning of the phone call.²⁰ To ensure that the Department can conduct thorough investigations, when needed, a licensed telephone seller must also maintain copies of their business records for at least 2 years—including all of the names and telephone numbers that they contacted.²¹

All telephone sellers and solicitors, whether exempt or not, are prohibited from calling consumers outside of the hours of 8:00 a.m. and 9:00 p.m. of the called person's local time.²² Additionally, all solicitors must allow their name or telephone number to be transmitted to the consumer if the equipment they use is capable. This prevents solicitors from 'spoofing' a different number or otherwise blocking their caller identification to induce a consumer to answer the phone.²³

Florida Do Not Call Act

The Department also administers the Florida Do Not Call Act (also called the "Do Not Call List"), which prohibits unsolicited phone calls and text messages.²⁴ Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the Department's list.²⁵

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer's request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher's business.

Section 501.059, F.S., further prohibits a telephone solicitor²⁶ from calling, text messaging, sending a direct voicemail transmission, or using automated telephone equipment to contact any consumer who has previously communicated to the solicitor that he or she does not wish to

¹⁹ See, s. 501.604, F.S.

²⁰ Section 501.613, F.S.

²¹ Section 501.6175, F.S.

²² Section 501.616(6); see also, s. 501.604, F.S., which provides a general exemption from the Telemarketing Act, "except ss. 501.608 and 501.616(6) and (7)."

²³ Section 501.616(7), F.S.

²⁴ See, s. 501.059, F.S. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Mar. 8, 2021).

²⁵ Section 501.059(3)-(4), F.S.

²⁶ Section 501.059(1)(f), defines a 'telephone solicitor' as a natural person or business that does business in this state by making or causing to be made a telephone sales call.

receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

A telephone solicitor who violates this provision is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney's fees and costs.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 501.616(6), F.S., to limit the activities of telephone sellers and salespersons by reducing the number of hours during which they may call consumers by one hour. Currently, telephone sellers and salespersons may solicit between 8 a.m. and 9 p.m. local time in the consumer's location. The bill permits solicitations during 8 a.m. and 8 p.m. in the consumer's time zone.

The bill further prohibits telephone sellers and salespersons from calling a consumer more than three times over a 24-hour period about the same subject matter. This prohibition applies, regardless of the phone number a telephone seller or salesperson uses to call the consumer.

The bill also applies these prohibitions to a commercial telephone seller or salesperson's use of an automated dialer or recorded message.

These changes will apply to licensed telephone sellers and salespersons, and those entities who solicit under the s. 501.604, F.S., licensure exemptions of the Telemarketing Act.

Sections 2 and 3 reenact ss. 501.604 and 648.44(1)(c), F.S., respectively, to incorporate the changes made to s. 501.616, F.S.

Section 4 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ Section 501.059(9), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill adds prohibited acts to the Florida Telemarketing Act. The department, as enforcing authority of the Act, estimates that it may see an increase in consumer complaints and prosecutions as a result; it also states that it will be required to expand its rulemaking to allow for implementation of these changes. The Department states that this may result in an indeterminate costs to the Department.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 501.616, F.S., and reenacts ss. 501.604 and 648.44, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

²⁸ Department of Agriculture and Consumer Services, *SB 1120 Agency Analysis* (Feb. 24, 2021) (on file with the Senate Committee on Commerce and Tourism).

B. Amendments:

None.

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