

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Commerce and Consumer Services Committee

BILL: SB 1318

INTRODUCER: Senator Crist

SUBJECT: Telephone Solicitation

DATE: March 7, 2006

REVISED: 3/8/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Fav/1 amendment
2.			CU	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill prohibits a telephone solicitor from making a sales call to any telephone number assigned to a cellular telephone service without the prior consent of the subscriber to the cellular telephone service. Additionally, this bill defines “cellular telephone,” “electronic serial number,” and “mobile identification number.”

This bill substantially amends sections 501.059, 501.603, and 648.44 of the Florida Statutes.

II. Present Situation:

State Law

The Florida Telemarketing Act requires non-exempt¹ businesses² and their salespersons³ that engage in the sale of consumer goods or services by telephone in Florida⁴ to be licensed by the Department of Agriculture and Consumer Services (DACCS). Along with an application, an

¹ Section 501.604, F.S., contains the list of exemptions.

² Section 501.605, F.S.

³ Section 501.607, F.S.

⁴ Section 501.605 (1), F.S., provides that doing business in Florida includes telephone solicitation from a location in Florida or solicitation from other states or nation of purchasers located in Florida.

applicant must post security (surety bond, certificate of deposit, or letter of credit) of no less than \$50,000.⁵ Each license issued is required to be renewed annually by paying a new fee and submitting a new application to DACS.⁶

DACS maintains the state's "Do Not Call" list.⁷ Florida residents who do not want to receive sales calls may have their residential, mobile or paging device telephone number included on this list (business numbers may not be included on the list).⁸ There is an initial fee of \$10 for each phone number and a \$5 annual renewal fee.⁹ If a residential number is on the list, a telephone solicitor may not make an unsolicited telephone call to that number.¹⁰ The following are not considered to be an unsolicited telephone call:

- In response to an express request of the person called;
- In connection with an existing debt;
- A prior or existing business relationship; or
- From a newspaper publisher.¹¹

DACS is permitted to pursue administrative¹² and civil¹³ remedies against persons who violate the Florida Telemarketing Act or rules adopted or orders issued pursuant to the Florida Telemarketing Act. Additionally, any commercial telephone seller or salesperson who solicits purchasers for a commercial telephone seller who is not licensed with DACS commits a third degree felony.¹⁴ Any subsequent violations are punishable as a second degree felony.¹⁵ Further, an injured individual may bring a civil action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees.¹⁶

Federal Law

The Telephone Consumer Protection Act (TCPA) prohibits autodialed calls to emergency phone lines, health care facilities, and any service for which the called party is charged for the call such as paging services and cellular phones.¹⁷ The TCPA also prohibits delivery of artificial or prerecorded message to residences without the prior express consent of the called party except for emergency purposes.¹⁸ The TCPA also provides a right of action allowing individuals, business, and state officials to bring suit.¹⁹

⁵ Section 501.611, F.S.

⁶ Section 501.609(1), F.S.

⁷ Section 501.059(3)(a), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 501.059(4), F.S.

¹¹ Section 501.059(c), F.S.

¹² Section 501.612, F.S.

¹³ Section 501.618, F.S.

¹⁴ Section 501.623, F.S.

¹⁵ Section 501.623(6), F.S.

¹⁶ Section 501.625, F.S.

¹⁷ 47 U.S.C. s. 227 (b)(1)(A)(i)-(iii).

¹⁸ 47 U.S.C. s. 227 (b)(1)(B).

¹⁹ 47 U.S.C. s. 227 (b)(3), (f)(1).

In addition to the TCPA, the federal government regulates how and when telemarketing occurs. The Telemarketing and Consumer Fraud Abuse Prevention Act empowers the Federal Trade Commission (FTC) to issue the Telemarketing Sales Rule,²⁰ which provides details on prohibited telemarketing practices.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 501.059, F.S., to define the following terms:

- “Electronic serial number” means the unique numerical algorithm that is programmed into the microchip of each cellular telephone by the manufacturer and is vital to the successful operation and billing of the telephone.
- “Mobile identification number” means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.
- “Cellular telephone” means a communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number, along with a mobile identification number that is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.

This section also prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service were the called party is charged for the call. There is an exception for those calls made with prior written consent of the called party.

Section 2 amends s. 501.603, F.S., to conform cross-references.

Section 3 amends s. 648.44, F.S., to conform cross-references.

Section 4 provides an effective date of July 1, 2006

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ 15 U.S.C. s. 6102.

²¹ 16 C.F.R. Part 310.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will prohibit telephone solicitors from making telephonic sales calls to cellular phones. The expenses involved with compliance are indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Barcode 234256 by the Commerce and Consumer Services Committee:

This amendment clarifies that a telephone solicitor may not make any unsolicited telephonic sales call.

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