

**SB 194** by **Latvala**; (Similar to H 0047) Crustaceans

263502 D S RCS AG, Grimsley Delete everything befor 01/14 12:09 PM

**SB 450** by **Clemens**; Telephone Solicitation

660798 D S RCS AG, Bullard Delete everything after 01/14 12:11 PM

**SB 534** by **Latvala**; (Similar to H 0257) Tax Exemptions

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**AGRICULTURE**  
**Senator Montford, Chair**  
**Senator Bullard, Vice Chair**

**MEETING DATE:** Monday, January 13, 2014  
**TIME:** 4:00 —6:00 p.m.  
**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Montford, Chair; Senator Bullard, Vice Chair; Senators Brandes, Galvano, Garcia, Grimsley, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 194</b> Latvala (Similar H 47)	Crustaceans; Providing that certain violations relating to spiny lobsters and stone crabs are separate and distinct offenses, etc.  AG 01/13/2014 Fav/CS EP CJ	Fav/CS Yeas 7 Nays 0
2	<b>SB 450</b> Clemens	Telephone Solicitation; Redefining the term "telephonic sales call" as used in the administration of the "no sales solicitation calls" list by the Department of Agriculture and Consumer Services to include voice, text, or electronic communication through a landline, mobile, or internet telephone service for the purpose of prohibiting certain communications from telephone solicitors to consumers, etc.  AG 01/13/2014 Fav/CS CU	Fav/CS Yeas 7 Nays 0
3	<b>SB 534</b> Latvala (Similar H 257)	Tax Exemptions; Exempting medical products and special diet food items used to treat animals from the state tax on sales, use, and other transactions, etc.  AG 01/13/2014 Favorable CA AFT AP	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

**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.)

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: CS/SB 194

INTRODUCER: Agriculture Committee and Senator Latvala

SUBJECT: Spiny Lobster

DATE: January 14, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Halley	AG	Fav/CS
2.			EP	
3.			CJ	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 194 prohibits the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been wrung from the body. Any exception would be granted by Fish and Wildlife Conservation Commission (FWC) rules. The bill provides penalties for violations of this act.

**II. Present Situation:**

The spiny lobster fishery is one of the most valuable fisheries in Florida. For the past 5 years, the dockside values of this fishery has totaled \$133.6 million. Trap theft, illegal sales, and poaching of spiny lobster results in a direct loss to legitimate commercial fishermen.

**Spiny Lobster (Panulirus agrus)**

One hundred percent of the spiny lobster that is commercially harvested in the United States comes from Florida. Florida's commercial spiny lobster fishery is concentrated mainly in South Florida, with approximately 90 percent of lobster harvested in the Florida Keys.

The spiny lobster fishery is jointly managed in federal waters by the Gulf of Mexico and the South Atlantic Fishery Management Councils. Most spiny lobster harvest, however, occurs in state waters, which are managed by FWC. Regulations that have been implemented to ensure the

long-term sustainability of the spiny lobster fishery include: minimum size limits; closed seasons/areas; gear restrictions; and a trap limitation and permitting program.

In Florida, in order to commercially harvest spiny lobster, a person must possess a valid Saltwater Products License (SPL), which is Florida’s commercial fishing license. Florida offers three types of SPLs depending on the needs of the fisherman. An “Individual SPL” authorizes one individual person to engage in commercial fishing activities from the shore or a vessel. This SPL is not tied to any one vessel and is issued in the individual’s name. A “Crew SPL” is also issued in an individual’s name and it authorizes the named individual to engage in commercial fishing activities from the shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This means the license holder can take a crew out on any vessel to harvest saltwater fish and the SPL covers the crew, as well. The final type of SPL is a “Vessel SPL.” This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This license differs from the two previous SPLs because it is not issued in an individual’s name, but is rather tied to a specific vessel.

Below is a table showing the costs to purchase the various SPLs:

<b>Saltwater Products Licenses</b>	<b>Cost</b>
Saltwater Products License Individual Resident	\$50.00
Saltwater Products License Individual Nonresident	\$200.00
Saltwater Products License Individual Alien	\$300.00
Saltwater Products License Crew Resident	\$150.00
Saltwater Products License Crew Nonresident	\$600.00
Saltwater Products License Crew Alien	\$900.00
Saltwater Products License Vessel Resident	\$100.00
Saltwater Products License Vessel Nonresident	\$400.00
Saltwater Products License Vessel Alien	\$600.00

In addition to an SPL, a Restricted Species Endorsement (RS) is required to commercially harvest spiny lobster. There is no cost to acquire an RS. In order to acquire an RS, however, licensed commercial fishermen must qualify, or show proof of landings (actual saltwater products harvested, brought to shore, and sold) reported under their SPL providing that a specified amount or percentage of their total annual income (\$5,000 or 25 percent) during one of the past three years is attributable to reported landings and sales of saltwater products to a Florida wholesale dealer, unless they qualify under a statutory exemption from this proof of income requirement.

Finally, a commercial spiny lobster fisherman must also possess either a spiny lobster endorsement (C) or a lobster dive endorsement (CD) to harvest lobster commercially. The spiny

lobster endorsement (C) allows fishers to harvest lobsters with traps or bully nets. The use of traps requires trap certificates (which may be purchased or transferred from another harvester) and the purchase of current year trap tags from the FWC (a current year trap tag must be permanently affixed to each trap that is used on or in state waters). There is no daily bag limit for lobsters harvested commercially with traps under the C endorsement. A daily vessel limit of 250 spiny lobsters applies when lobsters are harvested using bully nets under the C endorsement. A lobster dive endorsement (CD) is required to harvest lobster in commercial quantities by diving, and can only be issued on a single vessel SPL. A 250 lobster per day vessel limit applies in Broward, Dade, Monroe, Collier, and Lee counties and adjoining federal waters when lobsters are harvested by diving under the CD endorsement. Trap certificates cannot be held by a person with a CD. CDs are currently only being issued to those who held a CD for 2004-2005. The cost of a spiny lobster endorsement for applicants who hold trap certificates is \$125, and \$100 for applicants who do not hold trap certificates (applies to persons harvesting lobsters with only a bully net or by diving pursuant to a CD endorsement).

Below are the numbers of commercial fishermen possessing a valid SPL, RS, and lobster endorsement in the past five years:

- FY 2008-2009 – 1,472
- FY 2009-2010 – 1,388
- FY 2010-2011 – 1,412
- FY 2011-2012 – 1,465
- FY 2012-2013 – 1,510

The commercial spiny lobster season runs August 6th through March 31st. Typically a large proportion of landings occur in the first several months of the season followed by a steady decline the rest of the season. Fishing effort, in many cases, also follow this trend. For example, in October many fishermen shift to harvesting stone crab, which contributes to decreased effort in the spiny lobster commercial fishery.

Spiny lobsters may be harvested recreationally during the recreational 2-day “sport season”, which occurs on the last consecutive Wednesday and Thursday of July each year, as well as during the regular open season which begins on August 6<sup>th</sup> and ends on March 31<sup>st</sup> of the following year. During the 2-day sport season, the following recreational bag limits apply: in Monroe County, up to 6 lobsters per harvester, per day; in all other state waters, up to 12 lobsters per harvester, per day. During the regular recreational spiny lobster season, the statewide recreational bag limit is 6 lobsters per harvester per day. Recreational harvesters are not permitted to use traps to harvest spiny lobsters. In addition to a recreational saltwater fishing license, a spiny lobster permit (also called a lobster stamp) is required to harvest lobster recreationally in all state waters. The costs of recreational saltwater fishing licenses as well as the spiny lobster permit are listed below:

<b>Resident Recreational Saltwater Fishing Licenses</b>	
<b>Annual Saltwater Fishing</b>	\$17.00
<b>Youth Saltwater Fishing</b> (Optional for children under the age of 16 and valid until 17th birthday - <b>a fishing license is not required until age 16</b> )	\$17.00
<b>5-Year Saltwater Fishing</b>	\$79.00
<b>Saltwater/Freshwater Fishing Combo</b>	\$32.50
<b>Saltwater/Freshwater Fishing/Hunting Combo</b>	\$48.00
<b>Saltwater Shoreline License</b> (not valid from a vessel, a shore reached by vessel or if swimming or diving and not required if you have any other valid resident saltwater fishing license listed here)	Free
<b>Gold Sportsman's License</b> (includes Saltwater Fishing, Hunting Freshwater Fishing licenses; and Snook, Lobster, Wildlife Management Area, Archery, Muzzleloading Gun, Crossbow, Deer, Turkey, and Florida Waterfowl permits)	\$100.00
<b>Youth Gold Sportsman's License</b> (Optional for children under the age of 16 and valid until 17th birthday - <b>a fishing license is not required until age 16</b> - hunter safety certificate required - includes same licenses and permits as Gold Sportsman's License)	\$100.00
<b>5-Year Gold Sportsman's License</b> (includes Saltwater Fishing, Hunting and Freshwater Fishing licenses; and Snook, Lobster, Wildlife Management Area, Archery, Muzzleloading Gun, Crossbow, Deer, Turkey, and Florida Waterfowl permits)	\$494.00
<b>Military Gold Sportsman's License</b> (includes Saltwater Fishing, Hunting and Freshwater Fishing licenses; and Snook, Lobster, Wildlife Management Area, Archery, Muzzleloading Gun, Crossbow, Deer, Turkey, and Florida Waterfowl permits) (sold only at tax collector's office) (not available as 5-year) (only available to resident retired, and resident active duty, military)	\$20.00
<b>Nonresident Saltwater Fishing Licenses</b>	
<b>Nonresident Annual Saltwater Fishing</b>	\$47.00
<b>Nonresident 3-Day Saltwater Fishing</b>	\$17.00
<b>Nonresident 7-Day Saltwater Fishing</b>	\$30.00
<b>Spiny Lobster Permits</b>	

<b>Annual Spiny Lobster Permit</b>	\$5.00
<b>5-Year Spiny Lobster Permit (Residents only)</b>	\$25.00

During the past five fiscal years the following numbers of recreational spiny lobster permits were sold:

- FY 2008-2009 - 145,682
- FY 2009-2010 - 148,660
- FY 2010-2011 - 140,855
- FY 2011-2012 - 149,327
- FY 2012-2013 - 149,144<sup>1</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 379.407, F.S., to prohibit the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been wrung from the body. Any exception would be granted by Fish and Wildlife Conservation Commission (FWC) rules. The bill provides the following penalties for violations of this act:

- **First Violation** – Misdemeanor of the second degree. If the violation involves 25 or more lobster, the violation is a misdemeanor of the first degree.
- **Second Violation** – Misdemeanor of the first degree and the possibility of license suspension.
- **Third Violation** - Misdemeanor of the first degree with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a license suspension. A third violation within 1 year after a second violation is a felony of the third degree with a mandatory minimum term of imprisonment of 1 year. The violator shall also be assessed a civil penalty of \$5,000 and have all license privileges permanently revoked.
- **Fourth Violation** – Felony of the third degree with a mandatory minimum prison term of one year. The violator shall be assessed a civil penalty of \$5,000 and have all license privileges permanently revoked.

**Section 2** amends s. 379.401, F.S., to conform a cross-reference.

**Section 3** provides that this act shall take effect July 1, 2014.

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<sup>1</sup> Florida Fish and Wildlife Conservation Commission, *Senate Bill 194 Agency Analysis* (December 19, 2013) (on file with the Senate Agriculture Committee).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## 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:

Violators of the provisions of this bill could be subject to significant additional penalties, fines, and imprisonment.

## C. Government Sector Impact:

Indeterminate. There may be an initial increase in fines assessed due to the provisions of this act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 379.401 and 379.407.

**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 13, 2014:**

The committee substitute:

- Deletes provisions pertaining to stone crab regulation.
- Provides penalties for specified violations relating to possession of spiny lobster.

**B. Amendments:**

None.

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

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263502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2014	.	
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The Committee on Agriculture (Grimsley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (5) through (8) of section 379.407, Florida Statutes, are renumbered as subsections (6) through (9), respectively, and a new subsection (5) is added to that section, to read:

379.407 Administration; rules, publications, records; penalties; injunctions.-



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11 (5) PENALTIES FOR POSSESSION OF SPINY LOBSTER; CLOSED  
12 SEASON AND WRUNG TAILS.—It is a major violation under this  
13 section for any person, firm, or corporation to be in possession  
14 of spiny lobster during the closed season or, while on the  
15 water, to be in possession of spiny lobster tails that have been  
16 wrung or separated from the body, unless such possession is  
17 allowed by commission rule. Any person, firm, or corporation  
18 that violates this subsection is subject to penalties as  
19 follows:

20 (a) A first violation is a misdemeanor of the second  
21 degree, punishable as provided in s. 775.082 or s. 775.083. If  
22 the violation involves 25 or more lobster, the violation is a  
23 misdemeanor of the first degree, punishable as provided in s.  
24 775.082 or s. 775.083.

25 (b) A second violation is a misdemeanor of the first  
26 degree, punishable as provided in s. 775.082 or s. 775.083, and  
27 such person is subject to a suspension of all license privileges  
28 under this chapter for a period not to exceed 90 days.

29 (c) A third violation is a misdemeanor of the first degree,  
30 punishable as provided in s. 775.082 or s. 775.083, with a  
31 mandatory minimum term of imprisonment of 6 months, and such  
32 person may be assessed a civil penalty of up to \$2,500 and is  
33 subject to a suspension of all license privileges under this  
34 chapter for a period not to exceed 6 months.

35 (d) A third violation within 1 year after a second  
36 violation is a felony of the third degree, punishable as  
37 provided in s. 775.082 or s. 775.083, with a mandatory minimum  
38 term of imprisonment of 1 year, and such person shall be  
39 assessed a civil penalty of \$5,000 and all license privileges



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40 under this chapter shall be permanently revoked.

41 (e) A fourth or subsequent violation is a felony of the  
42 third degree, punishable as provided in s. 775.082 or s.  
43 775.083, with a mandatory minimum term of imprisonment of 1  
44 year, and such person shall be assessed a civil penalty of  
45 \$5,000 and all license privileges under this chapter shall be  
46 permanently revoked.

47 Section 2. Paragraph (a) of subsection (2) of section  
48 379.401, Florida Statutes, is amended to read:

49 379.401 Penalties and violations; civil penalties for  
50 noncriminal infractions; criminal penalties; suspension and  
51 forfeiture of licenses and permits.—

52 (2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two  
53 violation if he or she violates any of the following provisions:

54 1. Rules or orders of the commission relating to seasons or  
55 time periods for the taking of wildlife, freshwater fish, or  
56 saltwater fish.

57 2. Rules or orders of the commission establishing bag,  
58 possession, or size limits or restricting methods of taking  
59 wildlife, freshwater fish, or saltwater fish.

60 3. Rules or orders of the commission prohibiting access or  
61 otherwise relating to access to wildlife management areas or  
62 other areas managed by the commission.

63 4. Rules or orders of the commission relating to the  
64 feeding of wildlife, freshwater fish, or saltwater fish.

65 5. Rules or orders of the commission relating to landing  
66 requirements for freshwater fish or saltwater fish.

67 6. Rules or orders of the commission relating to restricted  
68 hunting areas, critical wildlife areas, or bird sanctuaries.



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- 69           7. Rules or orders of the commission relating to tagging  
70 requirements for wildlife and fur-bearing animals.
- 71           8. Rules or orders of the commission relating to the use of  
72 dogs for the taking of wildlife.
- 73           9. Rules or orders of the commission which are not  
74 otherwise classified.
- 75           10. Rules or orders of the commission prohibiting the  
76 unlawful use of finfish traps.
- 77           11. All prohibitions in this chapter which are not  
78 otherwise classified.
- 79           12. Section 379.33, prohibiting the violation of or  
80 noncompliance with commission rules.
- 81           13. Section 379.407(7) ~~379.407(6)~~, prohibiting the sale,  
82 purchase, harvest, or attempted harvest of any saltwater product  
83 with intent to sell.
- 84           14. Section 379.2421, prohibiting the obstruction of  
85 waterways with net gear.
- 86           15. Section 379.413, prohibiting the unlawful taking of  
87 bonefish.
- 88           16. Section 379.365(2) (a) and (b), prohibiting the  
89 possession or use of stone crab traps without trap tags and  
90 theft of trap contents or gear.
- 91           17. Section 379.366(4) (b), prohibiting the theft of blue  
92 crab trap contents or trap gear.
- 93           18. Section 379.3671(2) (c), prohibiting the possession or  
94 use of spiny lobster traps without trap tags or certificates and  
95 theft of trap contents or trap gear.
- 96           19. Section 379.357, prohibiting the possession of tarpon  
97 without purchasing a tarpon tag.



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98           20. Rules or orders of the commission prohibiting the  
99 feeding or enticement of alligators or crocodiles.

100           21. Section 379.105, prohibiting the intentional harassment  
101 of hunters, fishers, or trappers.

102           Section 3. This act shall take effect July 1, 2014.

103

104 ===== T I T L E   A M E N D M E N T =====

105 And the title is amended as follows:

106           Delete everything before the enacting clause  
107 and insert:

108

                          A bill to be entitled

109

          An act relating to spiny lobster; amending s. 379.407,  
110 F.S.; providing penalties for certain violations  
111 relating to possession of spiny lobster; amending s.  
112 379.401, F.S.; conforming a cross-reference; providing  
113 an effective date.

By Senator Latvala

20-00176-14

2014194\_\_

A bill to be entitled

An act relating to crustaceans; amending s. 379.407, F.S.; providing that certain violations relating to spiny lobsters and stone crabs are separate and distinct offenses; conforming cross-references; amending s. 379.2431, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) and paragraph (d) of subsection (3) of section 379.407, Florida Statutes, are amended to read:

379.407 Administration; rules, publications, records; penalties; injunctions.—

(1) BASE PENALTIES.—Unless otherwise provided by law:†

(a) A violation any person, firm, or corporation who violates any provision of this chapter, or the rules any rule of the Fish and Wildlife Conservation commission relating to the conservation of marine resources is punishable, ~~shall be punished:~~

~~1. (a)~~ Upon a first conviction, by imprisonment for a ~~period~~ ~~of~~ not more than 60 days or by a fine of not less than \$100 or ~~not~~ more than \$500, or by both such fine and imprisonment.

~~2. (b)~~ Upon ~~or~~ a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 or ~~not~~ more than \$1,000, or by both such fine and imprisonment.

(b) Each spiny lobster or stone crab taken in violation of

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this chapter or the rules of the commission constitutes a separate and distinct violation.

Upon final disposition of ~~an any~~ alleged offense for which a citation for ~~a any~~ violation of this chapter or the rules of the commission has been issued, the court shall, within 10 days, certify the disposition to the commission.

(2) MAJOR VIOLATIONS.—In addition to the penalties provided in subsection (1) ~~paragraphs (1)(a) and (b)~~, the court shall assess additional penalties against any commercial harvester convicted of major violations as follows:

(a) For a violation involving more than 100 illegal blue crabs, spiny lobster, or stone crabs, an additional penalty of \$10 for each illegal blue crab, spiny lobster, stone crab, or part thereof.

(b)1. For a violation involving the taking or harvesting of shrimp from a nursery or other prohibited area, or any two violations within a 12-month period involving shrimping gear, minimum size (count), or season, an additional penalty of \$10 for each pound of illegal shrimp or part thereof.

2. A violation ~~For violations~~ involving the taking of food shrimp in certain closed areas:

a. ~~A Any~~ person with a saltwater products license issued by the commission who is convicted of taking food shrimp in Santa Rosa Sound in violation of commission rule designating a closed area shall have that license and the saltwater products license of the boat involved in the violation revoked and shall be ineligible to make application for such a license for a period of 2 years from the date of such conviction. If a person who

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59 does not have a saltwater products license is convicted  
60 hereunder, that person and the boat involved in the violation is  
61 ~~shall not be~~ eligible for such a license for 5 years.

62 b. A third or subsequent violation by a ~~any~~ person of the  
63 designated closure to food shrimping in Santa Rosa Sound within  
64 a 3-year period is a felony of the third degree, punishable as  
65 provided in s. 775.082, s. 775.083, or s. 775.084.

66 c. A second or any subsequent violation by a ~~any~~ person for  
67 taking food shrimp in a food shrimp production closed area in a  
68 portion of Monroe County designated by the commission is a  
69 felony of the third degree, punishable as provided in s. 775.082  
70 or s. 775.083.

71 d. A third or any subsequent violation by the owner or  
72 master of any vessel engaged in food shrimp production in the  
73 Tortugas Shrimp Beds closed area designated by the commission  
74 within a 3-year period is a felony of the third degree,  
75 punishable as provided in s. 775.082 or s. 775.083.

76 e. This subparagraph does not apply to persons shrimping  
77 for live bait shrimp in the designated closed area when such  
78 persons are shrimping with a live bait shrimping license issued  
79 by the commission.

80 3. The owner or master of any vessel not equipped with live  
81 shrimp bait tanks dragging shrimp nets in the Tortugas Shrimp  
82 Beds without a live bait shrimping license for this area is  
83 subject to the base penalties in subsection (1) for a first or  
84 second violation. A third or subsequent violation by any person  
85 under this subparagraph within a 3-year period is a felony of  
86 the third degree, punishable as provided in s. 775.082 or s.  
87 775.083.

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88 (c) For a violation involving the taking or harvesting of  
89 oysters from nonapproved areas or the taking or possession of  
90 unculled oysters, an additional penalty of \$10 for each bushel  
91 of illegal oysters.

92 (d) For a violation involving the taking or harvesting of  
93 clams from nonapproved areas, an additional penalty of \$100 for  
94 each 500 count bag of illegal clams.

95 (e) For a violation involving the taking, harvesting, or  
96 possession of any of the following species, which are  
97 endangered, threatened, or of special concern:

98 1. Shortnose sturgeon (*Acipenser brevirostrum*);

99 2. Atlantic sturgeon (*Acipenser oxyrinchus*);

100 3. Common snook (*Centropomus undecimalis*);

101 4. Atlantic loggerhead turtle (*Caretta caretta caretta*);

102 5. Atlantic green turtle (*Chelonia mydas mydas*);

103 6. Leatherback turtle (*Dermochelys coriacea*);

104 7. Atlantic hawksbill turtle (*Eretmochelys imbricata*

105 *imbricata*);

106 8. Atlantic ridley turtle (*Lepidochelys kempi*); or

107 9. West Indian manatee (*Trichechus manatus latirostris*),

108

109 an additional penalty of \$100 for each unit of marine life or  
110 part thereof.

111 (f) For a second or subsequent conviction within 24 months  
112 for any violation of the same law or rule involving the taking  
113 or harvesting of more than 100 pounds of any finfish, an  
114 additional penalty of \$5 for each pound of illegal finfish.

115 (g) For a ~~any~~ violation involving the taking, harvesting,  
116 or possession of more than 1,000 pounds of any illegal finfish,

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117 an additional penalty equivalent to the wholesale value of the  
118 illegal finfish.

119 (h) ~~A permit Permits~~ issued to any commercial harvester by  
120 the commission to take or harvest saltwater products, or a any  
121 license issued pursuant to s. 379.361 or s. 379.362 may be  
122 suspended or revoked by the commission, pursuant to the  
123 provisions and procedures of s. 120.60, for any major violation  
124 prescribed in this subsection:

- 125 1. Upon a first conviction, for up to 30 calendar days.
- 126 2. Upon a second conviction which occurs within 12 months  
127 after a prior violation, for up to 90 calendar days.
- 128 3. Upon a third conviction which occurs within 24 months  
129 after a prior conviction, for up to 180 calendar days.
- 130 4. Upon a fourth conviction which occurs within 36 months  
131 after a prior conviction, for a period of 6 months to 3 years.

132 (i) Upon the arrest and conviction for a major violation  
133 involving stone crabs, the licenseholder must show just cause  
134 why his or her license should not be suspended or revoked. For  
135 the purposes of this paragraph, a "major violation" means a  
136 major violation as prescribed for illegal stone crabs; any  
137 single violation involving possession of more than 25 stone  
138 crabs during the closed season or possession of 25 or more  
139 whole-bodied or egg-bearing stone crabs; any violation for trap  
140 molestation, trap robbing, or pulling traps at night; or any  
141 combination of violations in any 3-consecutive-year period  
142 wherein more than 75 illegal stone crabs in the aggregate are  
143 involved.

144 (j) Upon the arrest and conviction for a major violation  
145 involving spiny lobster, the licenseholder must show just cause

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146 why his or her license should not be suspended or revoked. For  
147 the purposes of this paragraph, a "major violation" means a  
148 major violation as prescribed for illegal spiny lobster; any  
149 single violation involving possession of more than 25 spiny  
150 lobster during the closed season or possession of more than 25  
151 wrung spiny lobster tails or more than 25 egg-bearing or  
152 stripped spiny lobster; any violation for trap molestation, trap  
153 robbing, or pulling traps at night; or any combination of  
154 violations in any 3-consecutive-year period wherein more than 75  
155 illegal spiny lobster in the aggregate are involved.

156 (k) Upon the arrest and conviction for a major violation  
157 involving blue crabs, the licenseholder shall show just cause  
158 why his or her saltwater products license should not be  
159 suspended or revoked. This paragraph shall not apply to an  
160 individual fishing with no more than five traps. For the  
161 purposes of this paragraph, a "major violation" means a major  
162 violation as prescribed for illegal blue crabs, any single  
163 violation wherein 50 or more illegal blue crabs are involved;  
164 any violation for trap molestation, trap robbing, or pulling  
165 traps at night; or any combination of violations in any 3-  
166 consecutive-year period wherein more than 100 illegal blue crabs  
167 in the aggregate are involved.

168 (l) Upon the conviction for a major violation involving  
169 finfish, the licenseholder must show just cause why his or her  
170 saltwater products license should not be suspended or revoked.  
171 For the purposes of this paragraph, a major violation is  
172 prescribed for the taking and harvesting of illegal finfish, any  
173 single violation involving the possession of more than 100  
174 pounds of illegal finfish, or any combination of violations in

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175 any 3-consecutive-year period wherein more than 200 pounds of  
176 illegal finfish in the aggregate are involved.

177 (m) For a violation involving the taking or harvesting of  
178 any marine life species, as those species are defined by rule of  
179 the commission, the harvest of which is prohibited, or the  
180 taking or harvesting of such a species out of season, or with an  
181 illegal gear or chemical, or any violation involving the  
182 possession of 25 or more individual specimens of marine life  
183 species, or any combination of violations in any 3-year period  
184 involving more than 70 such specimens in the aggregate, the  
185 suspension or revocation of the licenseholder's marine life  
186 endorsement as provided in paragraph (h).

187  
188 The penalty provisions of this subsection apply to commercial  
189 harvesters and wholesale and retail dealers as defined in s.  
190 379.362. Any other person who commits a major violation under  
191 this subsection commits a Level Three violation under s.  
192 379.401. Notwithstanding the provisions of s. 948.01, no court  
193 may suspend, defer, or withhold adjudication of guilt or  
194 imposition of sentence for any major violation prescribed in  
195 this subsection. The proceeds from the penalties assessed  
196 pursuant to this subsection shall be deposited into the Marine  
197 Resources Conservation Trust Fund to be used for marine  
198 fisheries research.

199 (3) PENALTIES FOR USE OF ILLEGAL NETS.—

200 (d) Upon reinstatement of saltwater license privileges  
201 suspended pursuant to a violation of this subsection, a licensee  
202 owning or operating a vessel containing or otherwise  
203 transporting in or on Florida waters any gill net or other

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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204 entangling net, or containing or otherwise transporting in  
205 nearshore and inshore Florida waters any net containing more  
206 than 500 square feet of mesh area shall remain restricted for a  
207 period of 12 months following reinstatement, to operating under  
208 the following conditions:

209 1. Vessels subject to this reinstatement period shall be  
210 restricted to the corridors established by commission rule.

211 2. A violation of the reinstatement period provisions shall  
212 be punishable pursuant to subsection (1) ~~paragraphs (1)(a) and~~  
213 ~~(b)~~.

214 Section 2. Paragraph (s) of subsection (2) of section  
215 379.2431, Florida Statutes, is amended to read:

216 379.2431 Marine animals; regulation.—

217 (2) PROTECTION OF MANATEES OR SEA COWS.—

218 (s) Except as otherwise provided in this paragraph, a any  
219 person violating ~~the provisions of~~ this subsection or a any rule  
220 or ordinance adopted pursuant to this subsection commits a  
221 misdemeanor, punishable as provided in s. 379.407(1)(a) ~~or (b)~~.

222 1. A Any person operating a vessel in excess of a posted  
223 speed limit commits ~~shall be guilty of~~ a civil infraction,  
224 punishable as provided in s. 327.73, except as provided in  
225 subparagraph 2.

226 2. This paragraph does not apply to a person ~~persons~~  
227 violating restrictions governing "No Entry" zones or "Motorboat  
228 Prohibited" zones, who, if convicted, commits ~~shall be guilty of~~  
229 a misdemeanor, punishable as provided in s. 379.407(1)(a) ~~or~~  
230 ~~(b)~~, or, if such violation demonstrates blatant or willful  
231 action, may be found guilty of harassment as described in  
232 paragraph (d).

Page 8 of 9

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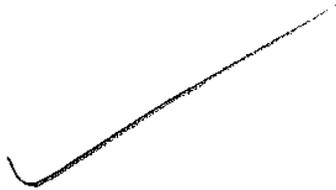
2014194\_\_

233 3. A person may engage in an ~~any~~ activity otherwise  
234 prohibited by this subsection or a ~~any~~ rule or ordinance adopted  
235 pursuant to this subsection if the activity is reasonably  
236 necessary in order to prevent the loss of human life or a vessel  
237 in distress due to weather conditions or other reasonably  
238 unforeseen circumstances, or in order to render emergency  
239 assistance to a person ~~persons~~ or a vessel in distress.

240 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



1/13/14  
Meeting Date

Topic CRUSTACEANS

Bill Number SB 194  
(if applicable)

Name JERRY SANDSON

Amendment Barcode 263502  
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address PO Box 200

Phone 321 773-0212

Street  
Cocoa Fl. 32923  
City State Zip

E-mail FISHAWK@A&S.COM

Speaking:  For  Against  Information

Representing ORGANIZED FISHERMEN OF FL.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

**SENATOR JACK LATVALA**  
20th District

October 17<sup>th</sup>, 2013

The Honorable Senator Bill Montford, Chair  
Senate Committee on Agriculture  
335 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Montford:

I respectfully request consideration of Senate Bill 194 regarding Crustaceans at your earliest convenience.

I have filed this bill in order to provide clarity in the assessment of penalties for those who violate Florida law regarding the illegal capture of crustaceans. I would greatly appreciate the opportunity to present this legislation to the Committee on Agriculture as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,



Jack Latvala  
State Senator  
District 20

Cc: Katherine Halley, Staff Director; Joyce Butler, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
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Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

**SENATOR JACK LATVALA**  
20th District

January 13, 2014

The Honorable Senator Bill Montford, Chair  
Senate Committee on Agriculture  
335 Knott Building  
Tallahassee, FL 32399-1100

Dear Chairman Montford:

I respectfully request permission for Representative Holly Raschein to present SB 194 on my behalf today during the meeting of the Senate Committee on Agriculture. Representative Raschein is the House Companion sponsor for SB 194, and she is prepared to present with your approval. As you may know, my attendance is otherwise required at the meeting of the Senate Committee on Ethics and Elections today during the timeframe in which SB 194 will be heard in your committee.

I would appreciate your approval to allow Representative Raschein to present SB 194 on my behalf today.

Thank you for your consideration.

Sincerely,



Jack Latvala  
State Senator  
District 20

cc: Katherine Halley Staff Director; Joyce Butler, Administrative Assistant

REPLY TO:

☐ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797  
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Don Gaetz**  
President of the Senate

**Garrett Richter**  
President Pro Tempore

**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.<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

### 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.

---

<sup>2</sup> Chapter 2013-251, s. 16, Laws of Fla. Effective July 1, 2013.

<sup>3</sup> 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).

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

<sup>5</sup> Section 501.059(3)(d).

<sup>6</sup> 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 bill<sup>7</sup> 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
<b>Total recurring cost</b>		<b>-0-</b>	<b>165,846</b>	<b>165,846</b>
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-
<b>Total non-recurring cost</b>		<b>-0-</b>	<b>16,103</b>	<b>-0-</b>
<b>Total recurring and nonrecurring cost</b>		<b>-0-</b>	<b>181,949</b>	<b>165,846</b>
Non-operating cost				
	Information tech support	-0-	7,268	7,268
	Admin/indirect cost	-0-	17,583	17,583
<b>Total non-operating cost</b>		<b>-0-</b>	<b>24,851</b>	<b>24,851</b>
<b>Expenditures Grand Total (GITF)</b>		<b>-0-</b>	<b>206,800</b>	<b>190,697</b>

<sup>7</sup> 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.”<sup>8</sup>

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.

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<sup>8</sup> 15 U.S.C. s. 7707(b)(1).



660798

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2014	.	
	.	
	.	
	.	

---

The Committee on Agriculture (Bullard) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 501.059, Florida Statutes, is reordered and amended, and subsection (5) of that section is amended, to read:

501.059 Telephone solicitation.—

(1) As used in this section, the term:

(g)~~(a)~~ "Telephonic sales call" means a telephone call or



660798

11 ~~text message call made by a telephone solicitor~~ to a consumer,  
12 for the purpose of soliciting a sale of any consumer goods or  
13 services, ~~or for the purpose of soliciting an extension of~~  
14 credit for consumer goods or services, or ~~for the purpose of~~  
15 obtaining information that will or may be used for the direct  
16 solicitation of a sale of consumer goods or services or an  
17 extension of credit for such purposes.

18 (b) "Consumer goods or services" means ~~any~~ real property or  
19 ~~any~~ tangible or intangible personal property that ~~which~~ is  
20 normally used for personal, family, or household purposes,  
21 including, but not limited to ~~without limitation~~, any such  
22 property intended to be attached to or installed in any real  
23 property without regard to whether it is so attached or  
24 installed, as well as cemetery lots and timeshare estates, and  
25 any services related to such property.

26 (h) ~~(e)~~ "Unsolicited telephonic sales call" means a  
27 telephonic sales call other than a call made:

28 1. In response to an express request of the person called;

29 2. Primarily in connection with an existing debt or  
30 contract, if payment or performance of such debt or contract  
31 ~~which~~ has not been completed at the time of such call;

32 3. To a ~~any~~ person with whom the telephone solicitor has a  
33 prior or existing business relationship; or

34 4. By a newspaper publisher or his or her agent or employee  
35 in connection with his or her business.

36 (f) ~~(d)~~ "Telephone solicitor" means a ~~any~~ natural person,  
37 firm, organization, partnership, association, or corporation, or  
38 a subsidiary or affiliate thereof, doing business in this state,  
39 who makes or causes to be made a telephonic sales call,



660798

40 including, but not limited to, calls made by use of automated  
41 dialing or recorded message devices.

42 (a)~~(e)~~ "Consumer" means an actual or prospective purchaser,  
43 lessee, or recipient of consumer goods or services.

44 (e)~~(f)~~ "Merchant" means a person who, directly or  
45 indirectly, offers or makes available to consumers any consumer  
46 goods or services.

47 (d)~~(g)~~ "Doing business in this state" means ~~refers to~~  
48 businesses that ~~who~~ conduct telephonic sales calls from a  
49 location in Florida or from other states or nations to consumers  
50 located in Florida.

51 (c)~~(h)~~ "Department" means the Department of Agriculture and  
52 Consumer Services.

53 (5) A telephone solicitor may not initiate an outbound  
54 telephone call or text message to a consumer who has previously  
55 communicated to the telephone solicitor that he or she does not  
56 wish to receive an outbound telephone call or text message:

57 (a) Made by or on behalf of the seller whose goods or  
58 services are being offered; or

59 (b) Made on behalf of a charitable organization for which a  
60 charitable contribution is being solicited.

61 Section 2. This act shall take effect July 1, 2014.

62  
63 ===== T I T L E A M E N D M E N T =====

64 And the title is amended as follows:

65 Delete everything before the enacting clause  
66 and insert:

67 A bill to be entitled

68 An act relating to telephone solicitation; reordering



660798

69 and amending s. 501.059, F.S.; redefining the term  
70 "telephonic sales call"; prohibiting a telephone  
71 solicitor from transmitting certain text messages to a  
72 consumer if the consumer is on the "no sales  
73 solicitation calls" list maintained by the Department  
74 of Agriculture and Consumer Services or the consumer  
75 has previously communicated such a request to the  
76 telephone solicitor; providing an effective date.

By Senator Clemens

27-00182-14

2014450\_\_

A bill to be entitled

An act relating to telephone solicitation; reordering and amending s. 501.059, F.S.; redefining the term "telephonic sales call" as used in the administration of the "no sales solicitation calls" list by the Department of Agriculture and Consumer Services to include voice, text, or electronic communication through a landline, mobile, or internet telephone service for the purpose of prohibiting certain communications from telephone solicitors to consumers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 501.059, Florida Statutes, is reordered and amended to read:

501.059 Telephone solicitation.—

(1) As used in this section, the term:

(g)(a) "Telephonic sales call" means a voice, text, or electronic communication through a landline, mobile, or internet telephone service 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.

(b) "Consumer goods or services" means ~~any~~ real property or ~~any~~ tangible or intangible personal property which is normally

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

27-00182-14

2014450\_\_

used for personal, family, or household purposes, including, but not limited to ~~without limitation~~, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any services related to such property.

(h)(e) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

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

(f)(d) "Telephone solicitor" means any 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.

(a)(e) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(e)(f) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(d)(g) "Doing business in this state" means ~~refers to~~ businesses that ~~who~~ conduct telephonic sales calls from a

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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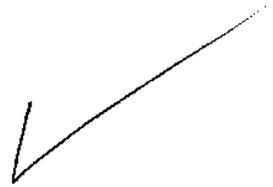
59 location in Florida or from other states or nations to consumers  
60 located in Florida.

61 (c) ~~(b)~~ "Department" means the Department of Agriculture and  
62 Consumer Services.

63 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



1/13/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 450  
*(if applicable)*

Name Frank Meiners

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Consultant

Address PO Box 1633

Phone 850 591-0177

Tall FL 32301  
City State Zip

E-mail frank@chgmair.com

Speaking:  For  Against  Information

Representing FL Collectors Assoc & AIF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Banking and Insurance, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Ethics and Elections  
Gaming  
Transportation

**SENATOR JEFF CLEMENS**

27th District

December 11, 2013

Senator Bill Montford, Chair  
Committee on Agriculture  
335 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Montford:

I respectfully request that SB 450 – Telephone Solicitation be added to the agenda for the next Committee on Agriculture.

Senate Bill 450 will expand the “no sales solicitation calls” list maintained by the Department of Agriculture and Consumer Services to include voice, text, or electronic communication through a landline, mobile, or internet telephone service.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeff Clemens".

Senator Jeff Clemens  
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# 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 534

INTRODUCER: Senator Latvala

SUBJECT: Tax Exemptions

DATE: January 13, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Halley</u>	<u>AG</u>	<u>Favorable</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 534 creates an exemption from sales tax for medical products and supplies or medicine dispensed according to an individual prescription for treatment of animals whether sold by a veterinarian or by an authorized druggist. It further creates a sales tax exemption for special diet food items, which don't require a prescription, intended for treatment of a health disorder diagnosed by a licensed veterinarian.

## II. Present Situation:

Presently the sale of drugs by a veterinarian in connection with medical treatment is exempt from sales tax.<sup>1</sup> The sales tax on an individual prescription written by an authorized prescriber is exempt if for human beings,<sup>2</sup> but it is not exempt if for animals. This bill would provide a sales tax exemption for prescription drugs for animals whether sold by a veterinarian or filled by an authorized druggist.

The above described exemption for the sale of drugs by a veterinarian was codified in 1998.<sup>3</sup> At the same time the Legislature created a sales tax exemption for the purchase by a veterinarian of commonly recognized substances possessing curative or remedial properties which are ordered and dispensed as treatment for a diagnosed health disorder as prescribed by a veterinarian.<sup>4</sup> These exemptions were enacted into law as a result of a legislative review in 1998 of the rulemaking authority of the Florida Department of Revenue (DOR) with the objective being to provide specific statutory authority for rules or parts of rules that had been identified as subject

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<sup>1</sup> Section 212.08(2)(f), F.S.

<sup>2</sup> Section 212.08(2)(a), F.S.

<sup>3</sup> Chapter 98-143, s. 1, Laws of Fla. (creating s. 212.08(f), F.S., effective July 1, 1988.

<sup>4</sup> Chapter 98-143, s. 1, Laws of Fla. (creating s. 212.08(h), F.S., effective July 1, 1988.

to repeal under s. 120.536, F.S., because the rule exceeded statutory authority. If the authorizing language was not passed, these items would have become taxable.<sup>5</sup>

Therapeutic diet food is specially formulated for use in the treatment of animals with specific diagnosed illnesses. These foods are commonly referred to as “Prescription Diets,” although a prescription is not required. For more than 30 years, DOR treated these special diet foods as exempt from sales tax under s. 212.08(2)(h), F.S.<sup>6</sup> This exemption was no longer allowed after July 12, 2010, when DOR adopted a new rule defining “veterinary prescription drugs” as drugs intended solely for veterinary use for which the label of the drug bears the statement: “Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian.”<sup>7</sup> After this rule was adopted, DOR took the position that prescription diet food was not exempt from sales tax because a prescription was not required and there was no label setting forth the preceding cautionary statement.<sup>8</sup> Since that time, the sale of special diet food items for animals has been subject to sales tax.

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.08(2), F.S., as follows:

- Subsection (a) is revised to create a sales tax exemption for prescription medications written by an authorized prescriber for treatment of animals; presently this exemption is available only if the treatment is for human beings.
- Subsection (i) creates a sales tax exemption on sales of special diet food items intended as treatment of a diagnosed health disorder by a licensed veterinarian without a prescription being required.
- It also makes technical changes which 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.

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<sup>5</sup> Information contained in this portion of the bill analysis is from the analysis for CS/SB 1694 by the Senate Committee on Ways and Means (April 21, 1998) <http://archive.flsenate.gov/data/Session/1998/Senate/Bills/Analysis/pdf/SB1694.wm.PDF>. (last visited Jan. 8, 2014).

<sup>6</sup> Information contained in this portion of the bill analysis is from FVMA Bill Position Brief provided by the Florida Veterinary Association Jan. 8, 2014. Copy available in committee files.

<sup>7</sup> Rule 12A-1.0215, F.A.C.

<sup>8</sup> Letter from Department of Revenue to Mr. Edwin A. Bayo (May 27, 2010) regarding Proposed Rule 12A-1.0215, F.A.C., Veterinary Sales and Services. Copy available in committee files.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Animal owners will be relieved of an unknown, but estimated to be insignificant, amount of sales tax on prescriptions and special diet food items for animals.

C. Government Sector Impact:

The Department of Revenue estimates that implementation of this bill will result in an insignificant impact to its operations.<sup>9</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 212.08 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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<sup>9</sup> Department of Revenue Analysis SB 534, Jan. 2, 2014. Copy available in committee files.

By Senator Latvala

20-00567A-14

2014534\_\_

1 A bill to be entitled  
2 An act relating to tax exemptions; amending s. 212.08,  
3 F.S.; exempting medical products and special diet food  
4 items used to treat animals from the state tax on  
5 sales, use, and other transactions; providing an  
6 effective date.

8 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Paragraph (a) of subsection (2) of section  
11 212.08, Florida Statutes, is amended, present paragraphs (i)  
12 through (k) of that subsection are redesignated as paragraphs  
13 (j) through (l), respectively, and a new paragraph (i) is added  
14 to that subsection, to read:

15 212.08 Sales, rental, use, consumption, distribution, and  
16 storage tax; specified exemptions.—The sale at retail, the  
17 rental, the use, the consumption, the distribution, and the  
18 storage to be used or consumed in this state of the following  
19 are hereby specifically exempt from the tax imposed by this  
20 chapter.

21 (2) EXEMPTIONS; MEDICAL.—

22 (a) There shall be exempt from the tax imposed by this  
23 chapter any medical products and supplies or medicine dispensed  
24 according to an individual prescription ~~or prescriptions~~ written  
25 by a prescriber authorized by law to prescribe medicinal drugs;  
26 hypodermic needles; hypodermic syringes; chemical compounds and  
27 test kits used for the diagnosis or treatment of human disease,  
28 illness, or injury; and common household remedies recommended  
29 and generally sold for internal or external use in the cure,

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

20-00567A-14

2014534\_\_

30 mitigation, treatment, or prevention of illness or disease in  
31 human beings or animals, ~~excluding but not including~~ cosmetics  
32 or toilet articles regardless of whether they contain,  
33 ~~notwithstanding the presence of~~ medicinal ingredients ~~therein~~,  
34 according to a list prescribed and approved by the Department of  
35 Business and Professional Regulation. ~~Such~~, ~~which~~ list shall be  
36 certified to the Department of Revenue from time to time and  
37 included in the rules adopted ~~promulgated~~ by the Department of  
38 Revenue. There shall also be exempt from the tax imposed by this  
39 chapter artificial eyes and limbs; orthopedic shoes;  
40 prescription eyeglasses and items incidental thereto or which  
41 become a part thereof; dentures; hearing aids; crutches;  
42 prosthetic and orthopedic appliances; and funerals. In addition,  
43 any items intended for one-time use which transfer essential  
44 optical characteristics to contact lenses are ~~shall be~~ exempt  
45 from the tax imposed by this chapter; however, this exemption  
46 applies ~~shall apply~~ only after \$100,000 of the tax imposed by  
47 this chapter on such items has been paid in any calendar year by  
48 a taxpayer who claims the exemption in such year. Funeral  
49 directors shall pay tax on all tangible personal property used  
50 by them in the conduct of their business.

51 (i) Sales of special diet food items intended as treatment  
52 of a diagnosed health disorder by a licensed veterinarian are  
53 exempt from the tax imposed under this chapter.

54 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/04  
Meeting Date

Topic Sales tax Exemption, Special diets

Name JOHN Dr. Bass

Job Title VETERINARIAN

Address 1377 COCONUT PALM CR.

PORT ORANGE FL 32128  
City State Zip

Bill Number 534  
(if applicable)

Amendment Barcode \_\_\_\_\_  
(if applicable)

Phone 386-322-4071

E-mail CALLFOR1@AOL.COM

Speaking:  For  Against  Information

Representing Florida Veterinary Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

**SENATOR JACK LATVALA**  
20th District

December 19<sup>th</sup>, 2013

The Honorable Senator Bill Montford, Chair  
Senate Committee on Agriculture  
335 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Montford:

I respectfully request consideration of Senate Bill 534 regarding Tax Exemptions. I have filed this bill in order to provide a sales tax exemption for prescription diets that are used to treat animals that have been diagnosed with specific illnesses. Prior to 2010, these prescription diets were already sales tax exempt, and my bill restores that exemption. I would greatly appreciate the opportunity to present this legislation to the Committee on Agriculture as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

Cc: Katherine Halley, Staff Director; Joyce Butler, Administrative Assistant

**REPLY TO**

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

# CourtSmart Tag Report

Room: SB 301  
Caption: Senate Agriculture

Case:  
Judge:

Type:

Started: 1/13/2014 4:00:38 PM

Ends: 1/13/2014 4:12:27 PM

Length: 00:11:50

4:00:52 PM Meeting called to order by chairman Montford  
4:01:04 PM Roll call by Administrative Assistant, Joyce Butler  
4:01:11 PM Comments from Chairman Montford  
4:01:39 PM Introduction of Tab 2, SB 450 and Amendment 660798 by Chairman Montford  
4:02:05 PM Explanation of SB Bill 450 by Senator Clemens  
4:02:10 PM Amendment 660798 adopted  
4:03:02 PM Speaker, Frank Meiners, Consultant, Florida Collectors Association & AIF on the bill  
4:04:12 PM Comments from Chairman Montford  
4:04:19 PM Senator Clemens waives closure  
4:04:28 PM Senator Garcia moves for Committee Substitute  
4:04:35 PM Roll call by Administrative Assistant, Joyce Butler  
4:05:02 PM CS/SB 450 reported favorably  
4:05:22 PM Introduction of Tab 1, SB 194 and Amendment 263502 by Chairman Montford  
4:05:41 PM Strike-all courtesy Amendment by Senator Grimsley  
4:06:15 PM Explanation of Strike-all Amendment 263502 by Representative Raschein  
4:06:26 PM Comments from Chairman Montford regarding Amendment  
4:06:40 PM Question from Senator Garcia regarding the Amendment  
4:06:52 PM Response by Representative Raschein  
4:08:05 PM Comments from Chairman Montford  
4:08:14 PM Amendment 263502 adopted  
4:08:21 PM Chairman Montford on bill as amended  
4:08:33 PM Jerry Sansom, Executive Director, Organized Fishermen of Florida waives in support  
4:08:50 PM Closure of SB 194 by Representative Raschein  
4:08:56 PM Senator Garcia moves for Committee Substitute  
4:09:02 PM Roll call by Administrative Assistant, Joyce Butler  
4:09:12 PM CS/SB 194 reported favorably  
4:09:22 PM Introduction of Tab 3, SB 534 by Chairman Montford  
4:09:37 PM Explanation of SB 534 by Senator Grimsley  
4:11:05 PM Question from Senator Sachs  
4:11:15 PM Explanation of SB 534 by Dr. John Bass, Veterinarian, Florida Veterinary Medicine Association  
4:11:23 PM Follow-up question by Senator Sachs  
4:11:38 PM Senator Grimsley waives closure on SB 534  
4:11:45 PM Roll call by Administrative Assistant, Joyce Butler  
4:11:55 PM SB 534 reported favorably  
4:12:07 PM Senator Sachs votes in the affirmative on SB 450  
4:12:21 PM Senator Bullard moves to rise