

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 15, 1998 Revised: _____

Subject: Telephonic Solicitations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Masterton	Guthrie	RI	Favorable/CS
2.			CM	
3.			WM	
4.				
5.				

I. Summary:

This bill expands the application of the Florida “No Sales Solicitation Calls” law to include uninvited solicitations on behalf of newspapers, charities, religious organizations, educational and governmental entities, political candidates, political parties, or ballot proposals. The bill allows solicitors to obtain copies of the no solicitation list from the Department of Agriculture and Consumer Services at no charge. It requires the department to notify solicitors when they have violated the law and prohibits the department from initiating enforcement until the fourth violation. The bill also requires the Division of Elections to indicate a voter’s placement on the no solicitation list in the central voter file.

This bill substantially amends the following sections of the Florida Statutes: 501.059 and 98.097.

II. Present Situation:

Section 501.059, F.S., allows individuals to place their home, mobile, and pager telephone numbers on a “No Sales Solicitation Calls” list with the Department of Agriculture and Consumer Services (DACS). Telemarketers (those selling consumer goods or services over the telephone) are prohibited from calling the telephone numbers on the list.

The section provides several exemptions from the law, including:

- calls that do not involve the sale of a good or service, i.e., charitable and religious organizations, educational institutions, and political candidates or parties;
- calls at the express invitation of the consumer;

- calls in connection with an existing debt;
- calls in connection with an existing or prior business relationship;
- calls on behalf of newspapers; and
- calls from realtors in response to yard signs or advertisements placed by consumers stating that real property is for sale.

As of April 1, 1998, approximately 84,000 subscribers paid DACS an initial fee of \$10 or an annual renewal fee of \$5 to have their telephone number placed on the no calls list. DACS updates the list quarterly and sells it to telemarketers for \$100 per copy for all area codes or \$30 per copy for a specific area code. The law does not specifically require telemarketers to buy the list, but it is the only way for them to know the telephone numbers that they are prohibited from calling.

Section 501.059, F.S., also sets forth requirements for contracts made pursuant to telephonic sales calls. Merchants may not submit charges to a consumer's credit card account based on a telephonic sales call until the merchant receives a signed copy of the contract from the consumer. (Several exceptions to this requirement are enumerated.)

The section provides penalties for violations of the law similar to the penalties provided in the Deceptive and Unfair Trade Practices Act (part II of ch. 501, F.S.). DACS or the Department of Legal Affairs may bring a civil action to impose a penalty of up to \$10,000 for each violation, and the prevailing party is entitled to attorney's fees and costs.

Section 98.097, F.S., requires the Division of Elections of the Department of State to maintain a central voter file, which is a statewide database containing the voter registration information for all counties in the state.

Chapter 496, F.S., contains the "Solicitation of Contributions Act," which provides for the regulation of entities that solicit funds for charitable purposes. The act requires charitable organizations that solicit contributions in the state to register with DACS. In addition, it prescribes disclosure, record keeping, and reporting requirements relating to solicitation activities. The act does not apply to bona fide religious organizations, educational institutions, or governmental entities.

The Legislature in 1997 added s. 106.147, F.S., to the Florida campaign financing law to prescribe requirements for individuals making telephone calls in support of a candidate, public official, or ballot proposal. A person who willfully fails to comply with these requirements commits a first degree misdemeanor.

III. Effect of Proposed Changes:

The bill amends s. 501.059, F.S., to establish legislative intent to protect an individual's basic right to privacy, as well as a person's or organization's right to conduct telephonic solicitation activities. It eliminates the majority of exemptions from the prohibition on calling people on the no solicitation calls list. Under the bill, individuals making calls on behalf of newspapers, charities, religious organizations, educational and governmental entities, political candidates, political parties, or ballot proposals are prohibited from calling telephone numbers on the no solicitation list, unless such calls are "invited" or otherwise specifically exempted.

The "No Sales Solicitation Calls" list is renamed the "No Telephonic Solicitation" list to make it clear that it applies to all telephone solicitation calls, not just sales solicitation calls. Only individuals calling at the request of the person being called, calling in response to a sign or other form of advertisement, or calling a person with whom the solicitor has a prior or existing relationship, including an existing debt or unpaid warranty, are exempt from s. 501.059, F.S.

The bill prohibits telephone solicitors from making a subsequent call to a subscriber (defined as an individual on the list) with whom the solicitor has a prior or existing relationship, if the subscriber requests the solicitor not to call again. It is an affirmative defense to an action for a violation of this prohibition if the solicitor has written procedures to comply with the subsection, trains its personnel to comply with the procedures, maintains current lists of persons who have requested not to receive any more telephonic solicitations from the solicitor, and makes any subsequent calls in error. This prohibition does not apply to solicitations made in connection with an existing debt, contract, or performance which has not been completed at the time of the call.

The bill provides that individuals may place their name on the no solicitation list maintained by DACS by paying \$15 for a three-year subscription or by paying \$10 initially and \$5 annually thereafter (as in current law). Individuals choosing the three-year payment option will save \$5 compared to current law. The fees for subscribers are to be reviewed by the Legislature prior to the regular legislative session in 2001 to determine if they are set at a level commensurate with the costs of the no telephonic solicitation program.

The bill requires DACS to compile the no solicitation list three times a year and to make the list available to solicitors 30 days prior to the first day of April, August, and December, when the list is effective. It also removes current language authorizing DACS to charge phone solicitors a fee for the list.

The bill deletes provisions prohibiting a merchant from charging a consumer's credit card based on a telephone sales call until the merchant receives a signed contract from the consumer. It requires automatic telephone dialing systems, when permitted to be used by a telephone solicitor, to be equipped with a feature that automatically clears the telephone line when the called party hangs up.

Penalties for making calls to telephone numbers on the no telephonic solicitation list remain the same as in the current law, i.e., DACS or the Department of Legal Affairs may bring a civil action to recover a penalty of up to \$10,000 for each violation. However, the bill requires DACS to notify solicitors when they violate s. 501.059, F.S., and precludes DACS from initiating enforcement proceedings until after the fourth violation.

The bill requires elections officials to provide notice to candidates of the requirements of the no solicitation law. In addition, it amends s. 98.097, F.S., to require the central voter file maintained by the Division of Elections of the Department of State to indicate if a voter is on the no telephonic solicitation list.

The bill is effective on January 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Extending the application of the no solicitation law to individuals making requests on behalf of political parties, candidates, or ballot proposals may subject the act to a constitutional challenge on free speech grounds under the First Amendment of the United States Constitution. Generally, the government may regulate the time, place, and manner of expressive activity, if the restrictions are content neutral, are narrowly tailored to serve a significant government interest, and provide ample alternatives for communication. The United States Supreme Court has held that laws restricting the free exercise of political speech merit the highest level of judicial scrutiny. Any content-based restrictions on political speech in a public forum are subject to strict scrutiny, that is, the state must show that the regulation is narrowly drawn to serve a compelling government interest. *See Burson v. Freeman*, 504 U.S. 191 (1992).

In contrast to political speech, commercial speech has been afforded only a limited measure of protection under the First Amendment. Commercial speech has been described as speech

related solely to the economic interests of the speaker and its audience. *See Central Hudson Gas & Electric Corp v. Public Service Commission of New York*, 447 U.S. 566 (1980).

The Florida Constitution expressly protects the right of the state's citizens to be free from unnecessary governmental intrusion into their private lives. *See* Art. I, sec. 23, Fla. Const. In addition, case law has established the right to privacy, that is, freedom from unwarranted government intrusion into an individual's private life, as an implied right in the first ten amendments of the U.S. Constitution. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965). The right to privacy as it relates to intrusive actions by private entities is not protected by the state or federal constitutions, but is a matter for state legislation or tort action in a civil court.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Newspapers, charities, religious organizations, governmental entities, and political candidates that make telephone solicitations will incur any costs associated with complying with the requirements not to call individuals on the no solicitation list. In addition, if they call a prohibited number more than three times, they may be subject to civil penalties.

C. Government Sector Impact:

DACS estimates the following fiscal impact of the bill:

	FY 1998-1999	FY 1999-2000
Non-recurring Expenditures:		
Expense (13 standard pkgs @ \$3,125)	\$41,795	
Subscription Processing Machine (OCO)	\$200,000	
Technology Upgrade (OCO)	\$405,000	
Computer Upgrade AGMIC (OCO)	\$35,000	
Total Non-recurring	\$681,795	
Recurring Expenditures:		
Salaries & Benefits	\$390,027	\$836,198
Total Expenditures	\$1,071,822	\$836,198

The salaries and benefits for FY 1998-1999 are for a six-month period since the bill does not take effect until January 1, 1999. Additionally, DACS calculated the beginning salaries at 10% above the minimum of each pay grade and included a 3% salary increase for the second year. According to DACS, without the indicated equipment purchases it would need 8 additional FTEs to implement the program.

The Revenue Estimating Conference estimates the following impact on General Inspection Trust Fund revenues from the bill:

FY 1998-1999	FY 1999-2000
\$1.5 million	\$1.6 million

This estimate is based on a growth in subscribership of 25% per quarter. DACS estimates that by the end of FY 1999, there will be at least 200,000 subscribers. The estimate assumes 90% of new subscribers would choose the \$15 three-year option and that 50% of the current subscribers would switch to the three-year plan in the first year and another 25% in the succeeding year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides the DACS adequate and appropriate standards to implement the legislation.

VIII. Amendments:

None.