STORAGE NAME: h1655.uco
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HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
ANALYSIS

BILL #: HB 1655

RELATING TO: Telephone Solicitation

SPONSOR(S): Representative Bilirakis

COMPANION BILL(S): SB 2278

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) UTILITIES AND COMMUNICATIONS
(2) BUSINESS REGULATION AND CONSUMER AFFAIRS
(3)
(4)
(5)

I. SUMMARY:

The bill provides legislative intent with respect to protecting consumers from unwanted telephone solicitation and providing consumers with all possible information regarding the identity of any telephone solicitor who calls consumers.

The bill prohibits telephone solicitors from making unsolicited telephonic sales calls to any residential, mobile, or telephonic paging device telephone number unless all possible caller identification information is provided to the intended recipient.

The bill provides that: 1) disabling a telephone system's caller identification generator 2) providing a false or fictitious telephone number 3)using telephone equipment that is incapable of providing caller identification information, and 4) using a telephone carrier that is incapable of transmitting caller identification information to the intended recipient of the telephone solicitation, constitute a knowing violation of this act.

The bill provides that violation of the act constitutes a deceptive and unfair trade practice.

The bill further provides that a knowing violation of these actions constitute a misdemeanor of the first degree which is punishable, pursuant to Section 775.082, Florida Statutes, by a definite term of imprisonment not exceeding 1 year, or pursuant to s. 775.083, F.S., by a fine of $1,000.

This bill does not appear to have a fiscal impact on state or local government.

This act shall take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 501.059(1)(a), Florida Statutes, provides that a telephonic sales call:

> (1) As used in this section:
> (a) "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

Section 501.059(1)(c), F.S., distinguishes an unsolicited telephonic sales call to mean any call that is not in response to a request of the person being called, or in connection with a prior or existing business relationship, or any newspaper publisher agent or employee in connection with that business.

According to the Department of Agriculture and Consumer Services (DACS) countless individuals contact the department's complaints section regarding unsolicited telephone calls. The department however is unable to keep statistical information on the problem because the comsumers are unable to identify the source of the unsolicited telephone call.

Section 501.059(3)(a), F.S., provides that:

> (3)(a) Any residential, mobile, or telephonic paging device telephone subscriber desiring to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls may notify the department and be placed on that listing upon receipt by the department of a $10 initial listing charge. This listing shall be renewed by the department annually for each consumer upon receipt of a renewal notice and a $5 assessment.

Within the DACS is the Telemarketing Section, this section is divided into two more sections. They are the "No Sale Solicitation" listing and "Telemarketing Enforcement". According to the No Sale Solicitation section, the consumer listing is updated quarterly and is available at a cost of $30 per area code, per quarter, to any telemarketer. According to the No Sale Solicitation section, the consumer listing can not itself prevent a call from being made to consumers, but the listing does reduce the number of complaints received by DACS relating to unsolicited calls. After DACS receives 10 complaints from consumers about a particular telemarketing company. The Telemarketing Enforcement section comes into action.

According to the Telemarketing Enforcement section, it receives approximately 400-900 complaints monthly from no solicitation consumers. During the fiscal year 1997-1998, the section had 15 settlements with telemarketing companies and colleted $90,750 in settlement in addition to $1,060 for the telemarketers to renew the complainants "no sale solicitation calls" listing. The current statistics were unavailable at this time.

According to the Public Service Commission (PSC) situations do exist where a caller's identification information is not passed on to a recipient. For example, some rural areas utilize equipment switches that lack the capability to convey caller identification information. Another example, MCI uses a system which connects its services directly to a long distance carrier, instead of following a path which requires it to go through a local carrier, and it is at the local carrier interaction where caller identification is passed on to the call recipient.

Section 501.059(2), F.S., requires that:

> (2) Any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number shall identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation.

The Telemarketing and Consumer Fraud Abuse Prevention Act, 15 USC 1601-1608, addresses restrictions on telephone solicitations at the federal level. This federal act includes a provision which prohibits solicitation calls from being made between the hours of 9:00 p.m. and 8:00 a.m.

The Federal Trade Commission has adopted regulations addressing abusive telemarketing acts and practices. In 16 CFR 310.4(b)(1), it reads in part that:

> (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:
>
> (ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

Section 501.059(8), F.S., provides in part that DACS:

> shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed $10,000 per violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Consumer Frauds Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

Section 501.2075, F.S., Deceptive and Unfair Trade Practices, provides that:

> Except as provided in s. 501.2077, any person, firm, corporation, association, or entity, or any agent or employee of the foregoing, who is willfully using, or has willfully used, a method, act, or practice declared unlawful under s. 501.204, or who is willfully violating any of the rules of the department promulgated under this part, is liable for a civil penalty of not more than $10,000 for each such violation. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. This civil penalty may be recovered in any action brought under this part by the enforcing authority; or the enforcing authority may terminate any investigation or action upon agreement by the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, to pay a stipulated civil penalty. The department or the court may waive any such civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full

restitution or reimbursement or has paid actual damages to the consumers who have been injured by the unlawful act or practice or rule violation. If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

B. EFFECT OF PROPOSED CHANGES:

The bill provides legislative intent with respect to protecting consumers from unwanted telephone solicitation and providing consumers with all possible information regarding the identity of any telephone solicitor who calls consumers.

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C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 501.059, Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   None.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the PSC, it is unaware of a telephone system's caller identification generator, nor is it aware of how a caller could provide, through a caller identification system, a false or fictitious telephone number.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

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