

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.)

BILL: CS/SB 2278

SPONSOR: Committee on Regulated Industries and Senator Sebesta

SUBJECT: Telephone Solicitation/Caller ID

DATE: March 30, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides penalties for telephone solicitors who make unsolicited calls without providing electronic caller identification information.

This bill substantially amends section 501.059, Florida Statutes.

II. Present Situation:

Complaints about telephone solicitation calls are among the top consumer complaints received by the Florida Department of Agriculture and Consumer Affairs (Department). Section 501.059, F.S., Florida’s telephonic sales law, requires the Department to produce a list of telephone numbers of subscribers who do not wish to receive solicitation calls for the sale of consumer goods or services.

Subsection (2) of s. 501.059, F.S., provides that “[a]ny telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device shall identify himself or herself by his or her true last 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.”

A “telephone solicitor” is defined in subsection (1)(e) of s. 501.059, F.S., as “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.”

“Doing business in this state” is defined in subsection (1)(f) of s. 501.059, F.S., as referring “to businesses who conduct telephonic sales calls from a location in Florida or from other states or nations to consumers in Florida.”

An “unsolicited telephonic sales call” is defined in subsection (1)(c) of s. 501.059, F.S., as 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, payment or performance of 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 agent or employee in connection with his or her business.

Any residential, mobile, or telephonic paging device subscriber may be placed on a “no sales solicitation calls” listing maintained by the Department for \$10 the first year and \$5 each year thereafter. The fees are used to pay the expenses of operating the program and enforcing the law. Business numbers may not be included on the list. The list is updated quarterly, published on the first business day of January, April, July, and October and is then made available to telemarketers throughout the country.

Most commercial telephone solicitors are prohibited from calling numbers on the list. There is an active enforcement program designed to seek out offenders and help them achieve compliance. The Department provides this listing for a fee to telephone solicitors. The quarterly fee for the list is \$30 per area code or \$100 per statewide listing and the yearly fee for the list is \$120 per area code or \$400 per statewide listing.

If a consumer on the list is called by a telephone solicitor, they are instructed by the Department to obtain as much information as possible from the caller and immediately report it to the Department on pre-printed postcards that are provided to all subscribers. Specifically, consumers are instructed to include the following information about the caller:

1. Name, address and telephone number of the company;
2. Name of person making the call;
3. Consumer’s name, address and telephone number;
4. Date and time of call; and
5. Products or services offered.

The Department is charged with contacting the solicitation firm, informing it of the requirements of the law and requiring it to conform. The Department will initially warn the offender of the violation. If the offender does not comply, the law provides for civil penalties of up to \$10,000 per violation and injunctive relief through the courts.

III. Effect of Proposed Changes:

In addition to the oral identification already required by law, this bill would prohibit telephone solicitors from making any unsolicited sales call unless electronic caller identification information is provided.

Failure to comply would be an unfair and deceptive trade practice punishable under the provisions of part II of Chapter 501, F.S.

Any telephone solicitor committing a knowing violation of this section would also commit a first degree misdemeanor. Knowing violations would include:

1. Disabling a telephone system's caller identification generator;
2. Providing a false or fictitious number; or
3. Knowingly using telephone equipment that is incapable of providing caller identification information.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Electronic identification of telephone sales calls will make it easier for consumers and the Department to track and deal with violators.

Telephone solicitors may need to test their systems to make sure they are in compliance with the information requirements. Out-dated systems may need to be replaced.

C. Government Sector Impact:

The bill will make it easier for the Department to monitor the operations of telephone solicitors in Florida.

VI. Technical Deficiencies:

The bill's prohibition against making unsolicited sales calls without providing electronic caller identification information may be difficult to enforce. There are several ways that the required information could be excluded from the call. First, by dialing *67 (or 1167 from a rotary phone) the caller can block the transmission of identification information. This action is precisely the behavior the bill seeks to proscribe. However, identification information may also be excluded due to incompatible or out-dated circuitry. In fact, identification information may never "attach" to the call if the call is not routed through certain channels. Therefore, proving a willful violation would be difficult.

The term "caller identification generator" is neither defined in statute nor recognizable by staff at the Florida Public Service Commission (FPSC). FPSC staff suggested that the term may refer to caller identification software at the switching office. A more generic reference to "a telephone system's caller identification capabilities" may be more appropriate.

Caller identification information does not attach to the phone call at the point the call is made. Instead, this information is "attached" to the call at the local exchange company's switching office. Therefore, calls that are not routed through a local exchange company's switching office do not carry the information. Some companies use trunk lines that bypass the incumbent's office thereby avoiding costly originating access charges. Requiring caller identification information on these calls would entail modifications to existing switches or the use of new equipment by certain companies.

VII. Related Issues:

The Federal Trade Commission has adopted regulation addressing abusive telemarketing acts and practices. 16 CFR 310.4(b)(1) provides, in part:

- (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.

This bill may make it easier to track and prosecute federal violations.

VIII. Amendments:

None.

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