

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 Appropriations

BILL: CS/CS/SB 450

INTRODUCER: Appropriations Committee; Agriculture Committee; and Senator Clemens

SUBJECT: Telephone Solicitation

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	Fav/CS
2.	<u>Telotte/Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 450 expands the definition of the term, “telephonic sales call” to include text messaging in the type of unsolicited telephone calls that are prohibited by the Do Not Call program. In addition, the bill prohibits a telephone solicitor from sending text messages to a consumer who has previously communicated that he or she does not wish to be contacted.

The Department of Agriculture and Consumer Services (department) administers the Do Not Call program. The bill provides three positions and \$168,278 from the General Inspection Trust Fund to the department for the 2014-2015 fiscal year to implement the provisions in this act.

II. Present Situation:

The Department of Agriculture and Consumer Services maintains the state's "Do Not Call" list, also known as the “no sales solicitation calls” list. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.¹ A “telephonic sales call” is defined as a call made by a telephone solicitor to a consumer to solicit the sale of consumer goods or services. The call may be to solicit an extension of credit or to obtain information that will be used to sell consumer goods or services.

¹ <https://www.fldnc.com/About.aspx>

Telephone solicitors² are prohibited from making telephonic sales calls to consumers who register for the Do Not Call program. There are exceptions to this prohibition which include calls made:

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

In addition to those consumers registered for the Do Not Call program, a telephone solicitor may not call a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted.

A telephone solicitor that contacts a person whose number is on the Do Not Call list, contacts a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted, or makes a call that does not fall into one of the four exceptions is subject to penalties. The penalty may include a civil penalty³ with a maximum fine of \$10,000 per violation, or an administrative fine⁴ with a maximum of \$1000 per violation, in addition to payment of the consumer's attorney fees and costs.

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone. The state's language is consistent with the federal law.

III. Effect of Proposed Changes:

The bill expands the term "telephonic sales calls" to include text messages, made by a solicitor to a consumer, for the purpose of the Do Not Call prohibition.

The bill also prohibits a telephone solicitor from contacting by text message consumers who have previously communicated that they do not wish to be contacted.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

² "Telephone solicitor" means a 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.

³ Section 501.059(9)(a), F.S.

⁴ Section 501.059(9)(b), F.S.

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:

Individuals and entities will be prohibited from sending unsolicited text messages to persons who register for the Do Not Call program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted by a telephone solicitor.

C. Government Sector Impact:

For Fiscal Year 2014-2015, the CS/CS/SB 450 appropriates three positions and \$168,278 from the General Inspection Trust fund to the department to implement the provisions in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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/CS by Appropriations on March 13, 2014:

The CS/CS appropriates three positions and \$168,278 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services for the 2014-2015 fiscal year.

CS by Agriculture on January 14, 2014:

The CS clarifies that only telephone calls and text messages are “telephonic sales calls.” This term is used in the administration of the “no sales solicitation calls” list maintained by the department under the Do Not Call program, which presently only applies to a “call made by a telephone solicitor.”

B. Amendments:

None.