

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 Commerce and Tourism

BILL: SB 568

INTRODUCER: Senator Young

SUBJECT: Telephone Solicitation

DATE: November 9, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 568 expands the Florida Do Not Call Act to prohibit the unsolicited ringless delivery of voicemail messages into consumers' voicemail boxes, in addition to phone calls and text messages. This prohibition applies to the Florida Do Not Call Program.

II. Present Situation:

During 2017, the Federal Communications Commission (FCC) received 155,282 consumer complaints about robocalls, including federal Do Not Call List violations, call spoofing, and solicitations made by an automated recording.¹ One organization estimates that in September 2017, 2.4 billion robocalls were made to U.S. consumers.^{2,3}

One form of telephone marketing is direct-to-voicemail transmissions, which deposit a message into consumers' voicemail boxes without ringing as a traditional phone call would.⁴ Current law does not expressly address direct-to-voicemail transmissions.

¹ Federal Communications Commission, *Consumer Complaints Data- Unwanted Calls*, (Oct. 31, 2017)

<https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Nov. 6, 2017).

² YouMail, *Robocall Index*, <https://robocallindex.com/> (last visited Nov. 6, 2017).

³ A "robocall" is an unsolicited sales call, fax, or text message. A robocall can manifest as a prerecorded message played to a consumer once he or she accepts a call; a phone call made via a "spoofed" or falsified phone number, usually intended to trick the consumer into accepting the call; or an autodialed sales solicitation.

⁴ Kaitlyn Johnson and Anne Lockner, *I'm Unavailable to Take Your Advertisement Right Now: FCC Regulation of Direct-To-Voicemail Marketing* (Oct. 11, 2017) <https://www.jdsupra.com/legalnews/i-m-unavailable-to-take-your-32721/> (last visited Nov. 7, 2017).

Federal Law

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers,⁵ prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:⁶

- Are made to residences before 8 am, and after 9 pm;
- Fail to provide the consumer with the solicitor's identity, and an opportunity to opt out of the call, and all future calls made by that solicitor;
- Send artificial or pre-recorded messages to a residential line;
- Use an autodialer, artificial message, or pre-recorded messages to a cellular, emergency, or hospital room line.

The Federal Trade Commission (FTC), in concert with the FCC, administers the National Do Not Call Program as part of the TCPA's requirements.⁷ Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:⁸

- Made with a consumer's prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.⁹ State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.¹⁰

In 2015, the FCC confirmed that the TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.¹¹ In March 2017, a company that provides direct-to-voicemail transmissions submitted a request for waiver under federal law to clarify the legality of the practice, but withdrew its request before the FCC made any determination.¹² Members of a class filed suit against a Florida car dealership, based on the dealership's alleged violation of the TCPA for its use of direct-to-voicemail transmissions.¹³ However, the case was settled before the Court made a final determination.

⁵ An autodialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

⁶ 47 U.S.C. § 227(b). *See also*, 47 C.F.R. § 64.1200(8)(c) (2012).

⁷ Federal Communications Commission, *Stop Unwanted Calls and Texts—The National Do Not Call List*, <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Nov. 7, 2017).

⁸ 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

⁹ 47 U.S.C. § 227 (c)(5).

¹⁰ 47 U.S.C. § 227 (f).

¹¹ Federal Communications Commission, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Nov. 7, 2017).

¹² All About the Message, LLC Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Mar. 31, 2017) *available at* <https://ecfsapi.fcc.gov/file/104010829816078/Petition%20for%20Declaratory%20Ruling%20of%20All%20About%20the%20Message%20LLC.pdf> (last visited Nov. 7, 2017).

¹³ *Tom Mahoney v. TT of Pine Ridge, Inc.*, No. 17-80029-CV-DMM (S.D. Fla. Filed Jan. 9, 2017). *See also*, <https://www.nntcpasettlement.com/> (last visited Nov. 7, 2017).

Florida Law

The Department of Agriculture and Consumer Services (Department) administers the Florida Do Not Call Act (also called the “Do Not Call List”), which prohibits unsolicited phone calls and text messages.¹⁴ Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the Department’s list.¹⁵

A communication is unsolicited, and therefore prohibited under the Do Not Call Act, unless the contact is made:

- At the consumer’s request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher’s business.

Section 501.059(5), F.S., also prohibits a telephone solicitor from calling, text messaging, or using automated telephone equipment to contact any consumer, whether or not he or she is part of the Do Not Call List, who has previously communicated to the solicitor that he or she does not wish to receive a telephone call that is:

- Made by or on behalf of the seller who offers goods or services; or
- Made on behalf of a charity that is soliciting a charitable contribution.

A telephone solicitor who violates the provisions of the Do Not Call Act is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney’s fees and costs.¹⁶

III. Effect of Proposed Changes:

Section 1 expands the definition of a “telephonic sales call” to include a voicemail transmission, in addition to a telephone call and text message for purposes of the Do Not Call Program.

The bill makes conforming changes throughout the Florida Do Not Call Act to prohibit:

- Direct-to-voicemail transmissions to any consumer’s residential, mobile, or telephonic paging device, if the consumer previously requested to opt-out of such calls by inclusion on the Do Not Call List; and
- Direct-to-voicemail transmissions to any consumer who has previously communicated that he or she does not wish to receive further sales calls made on behalf of the seller or charitable organization.

Section 2 of the bill provides an effective date of July 1, 2018.

¹⁴ See, s. 501.059, F.S.. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call> (last visited Nov. 6, 2017).

¹⁵ Section 501.059(3)-(4), F.S.

¹⁶ Section 501.059(9), F.S.

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:

Companies that provide voicemail transmission services may see a reduction in revenue.

C. Government Sector Impact:

The Department may see an increase in prosecutions for violations of the Florida Do Not Call Program, but this will not increase the Department's expenditures.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 501.059 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.

¹⁷ Florida Department of Agriculture and Consumer Services, *SB 568 Agency Bill Analysis*, (Oct. 26, 2017) (on file with the Senate Committee on Commerce and Tourism).

B. Amendments:

None.

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