

1987

Session Law 87-253

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # 87-253	Sec. # 1	LOF cite I,ii, 1772-1774
Prime Bill # HB. 162	Comp./Sim. Bills SB 217	
JLMC Hist. Cites	Senate 60 House 226	Comms. of Ref. Senate COMM. REC. 200A House COMM. REC. (Sub Comm)

COMMITTEE RECORDS

H/S	Committee	Record Series: Folder title, etc.	Location Cite	✓
H	Commerce	Meeting files (Sub General). 4-8-87	19/1733	NE
"	"	" " (file); 4-22-87	"	NE
"	"	Original SA's	"	
"	"	Bill files. HB. 162	19/1737	✓
S	Commerce	Meeting files	18/1681	NE
"	"	Bill files. SB 217	"	✓
"	"	" " HB. 162	18/1683	✓
"	ECCA	Bill files SB 217 (Comm. Comm. rec SA only)	18/1540	✓

continued on reverse

Senate/House Journals

Page #	?	Date	Page #	?	Date

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation

Record Series Title, folder title, etc.	Location Cite

By Representative Carpenter

This publication was produced at an average cost of 15 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to consumer protection;
creating s. 501.059, F.S.; providing
definitions; providing restrictions upon
unsolicited consumer telephone calls to
residences; prohibiting the making of
unsolicited consumer telephone calls to certain
subscribers; authorizing the Division of
Consumer Services of the Department of
Agriculture and Consumer Services to
investigate complaints of violations and
institute civil proceedings; providing
severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.059, Florida Statutes, is
created to read:

501.059 Residential telephone solicitation.--

(1) As used in this section:

(a) "Consumer telephone call" means a call made by a
telephone solicitor for the purpose of soliciting a sale of
any consumer goods or services to the person called, or for
the purpose of soliciting an extension of credit for consumer
goods or services to the person called, 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 to the
person called or an extension of credit for such purposes.

(b) "Consumer goods or services" means any tangible
personal property which is normally used for personal, family,
or household purposes, including, without limitation, any such

1	<u>property intended to be attached to or installed in any real</u>	1.21
2	<u>property without regard to whether it is so attached or</u>	
3	<u>installed, as well as cemetery lots and time-share estates,</u>	1.22
4	<u>and any services related to such property.</u>	1.23
5	(c) <u>"Unsolicited consumer telephone call" means a</u>	1:1us
6	<u>consumer telephone call other than a call made:</u>	1.25
7	1. <u>In response to an express request of the person</u>	1:1us
8	<u>called;</u>	1.27
9	2. <u>Primarily in connection with an existing debt or</u>	1:1us
10	<u>contract, payment or performance of which has not been</u>	1.29
11	<u>completed at the time of such call; or</u>	
12	3. <u>To any person with whom the telephone solicitor has</u>	1.31
13	<u>an existing business relationship.</u>	1.32
14	(d) <u>"Commission" means the Florida Public Service</u>	1:1us
15	<u>Commission.</u>	1.34
16	(e) <u>"Telephone solicitor" means any natural person,</u>	1:1us
17	<u>firm, organization, partnership, association, or corporation</u>	1.36
18	<u>who makes or causes to be made a consumer telephone call,</u>	
19	<u>including, but not limited to, calls made by use of automated</u>	1.37
20	<u>dialing or recorded message devices.</u>	1.38
21	(f) <u>"Division" means the Division of Consumer Services</u>	1.40
22	<u>of the Department of Agriculture and Consumer Services.</u>	1.41
23	(2) <u>Any telephone solicitor who makes an unsolicited</u>	1:1us
24	<u>consumer telephone call to a residential telephone number</u>	1.43
25	<u>shall:</u>	
26	(a) <u>Identify himself or herself and the business on</u>	1.45
27	<u>whose behalf he or she is soliciting immediately upon making</u>	1.47
28	<u>contact by telephone with the person who is the object of the</u>	1.48
29	<u>telephone solicitation; and</u>	
30	(b) <u>Within 30 seconds after beginning the</u>	1:1us
31	<u>conversation, inquire whether the person being solicited is</u>	1.50

1 interested in listening to a sales presentation and
2 immediately discontinue the solicitation if the person being 1.51
3 solicited gives a negative response.
4
5 (3) Any residential telephone subscriber desiring a 1.5
6 directory listing indicating that the subscriber does not wish 1.54
7 to receive unsolicited consumer telephone calls may notify the
8 serving local exchange company and order an extra line listing 1.55
9 effective with the next telephone directory issue. Such extra 1.57
10 line listing shall appear directly beneath the primary listing 1.58
11 and shall read "No Sales Solicitation Calls." The charge for 1.59
12 such extra line listings shall be the tariffed rates as 1.60
13 approved by the commission for additional or extra line
14 listings. 1.6
15
16 (4) No telephone solicitor shall make or cause to be 1.11
17 made any unsolicited consumer telephone call to any 1.6
18 residential telephone number if the number for that telephone
19 appears in the then-current directory published by the 1.6
20 telephone company and such listing indicates that the 1.61
21 subscriber does not wish to receive unsolicited consumer
22 telephone calls. 1.61
23
24 (5) No telephone solicitor shall attempt to contact by 1.11
25 telephone any person whose residential telephone number is not 2.2
26 included in the most recently published telephone directory as
27 the result of a request for an unpublished telephone number, 2.3
28 unless the person making such solicitation has had previous 2.4
29 business experience with the person solicited.
30
31 (6) The division shall investigate any complaints 1.11
received concerning violations of this section. If, after 2.7
investigating any complaint, the division finds that there has
been a violation of this section, it may bring an action to 2.8
impose a civil penalty and to seek such other relief. 2.11

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 Revenue Fund, unallocated.

2.12
2.13

(7) Telephone companies shall not be responsible for
the enforcement of the provisions of this section, and shall
not be liable for any error or omission in the listings made
pursuant hereto.

1:1us
2.15
2.16

Section 2. If any provision of this act or the
application thereof to any person or circumstance is held
invalid, the invalidity shall not affect other provisions or
applications of the act which can be given effect without the
invalid provisions or application, and to this end the
provisions of this act are declared severable.

2.17
2.18
2.19
2.20
2.21

Section 3. This act shall take effect October 1, 1987.

2.22

HOUSE SUMMARY

Provides restrictions upon unsolicited consumer telephone calls to residences and defines such calls for purposes of the act. Prohibits the making of unsolicited consumer telephone calls to certain subscribers.

Provides that residential telephone subscribers may order extra line listings which specify their desire not to receive solicitation calls. Specifies a fee for such listing.

Authorizes the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate complaints of violations of the act and to institute civil proceedings against telephone solicitors violating such provisions.

STORAGE NAME: sa-hb162

Date: March 18, 1987

Revised: _____

Revised: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

19 1737

BILL #: HB 162

RELATING TO: Unsolicited Telephone Calls

SPONSOR: Representative Carpenter

EFFECTIVE DATE: October 1, 1987

COMPANION BILL: SB 217

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2) _____

I. SUMMARY:

This bill would require anyone making an unsolicited consumer telephone call to a residence to identify himself and the business for which the call is being made immediately upon telephone contact. It further stipulates that the solicitor must poll the consumer on whether or not he wishes to hear a sales pitch, and then desist if the consumer responds negatively.

The bill prohibits the making of unsolicited consumer telephone calls to any residential consumer whose telephone number is listed in the then-current telephone directory and the listing indicates that the subscriber does not wish to receive such calls. It also prohibits calls to persons with unlisted phone numbers unless there has been a previous business relationship with that party.

A. Current Law & Present Situation:

Section 365.165, Florida Statutes, currently prohibits telephone solicitation calls which involve the use of an automated system for the selection or dialing of telephone numbers and the playing of a recorded message when a connection is made. This prohibition does not apply to calls made concerning previously ordered or purchased goods or services.

The Division of Consumer Services (division) presently investigates complaints relating to unsolicited telephone calls. If the division determines that a person has violated s. 365.165, F.S., the matter is referred to the Department of Legal Affairs. More often, however, no law has been violated so the division

endeavors to resolve the complaint by contacting the business against whom the complaint has been registered. The division currently has no authority to seek sanctions against anyone relative to these complaints.

B. Effect of Proposed Changes:

House Bill 162 would create s. 501.059, F.S., which would regulate residential telephone solicitation. It defines "consumer telephone call", "consumer goods or services", "unsolicited consumer telephone call", and "telephone solicitor".

The bill would require any person making an unsolicited telephone call to a residence for the purpose of offering goods or services for sale to identify himself and the business on whose behalf he is soliciting immediately upon telephone contact with the object of his phone call. It also requires that a solicitor ask the consumer whether or not he wishes to hear a sales pitch and desist if that consumer responds negatively.

The bill prohibits the making of an unsolicited consumer telephone call to any telephone number which is listed in the then-current telephone directory and which has an indicator that the subscriber does not wish to receive such calls. Subscribers who desire an indicator in the telephone directory stating that they do not wish to receive unsolicited consumer telephone calls may notify the local telephone company and order an extra line listing effective with the next issue of the telephone directory. The extra line would appear directly beneath the primary listing and would read "No Solicitation Calls". Charges for this extra line would be regular rates charged for additional or extra line listings. Additionally prohibited by the bill would be telephone contact with persons with unlisted telephone numbers unless there had been previous business contact between the parties.

The bill directs the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate complaints and allows the division to seek civil penalties and injunctive relief against persons in violation. The amount of civil penalties is limited to \$10,000 per violation which would be deposited in the General Revenue Fund.

Telephone companies are specifically relieved of responsibility for enforcing the act and could not be held liable for errors or omissions in listings made pursuant to the act.

II. ECONOMIC IMPACT:

A. Public:

The Florida Press Association indicates that passage of this bill would have a dramatically negative effect on newspaper sales. The influx and mobility of Florida's population has accelerated to the degree that the newspapers feel telephone solicitation is the most reasonable marketing tool they can use to reach this mobile population.

Fees paid by subscribers for the indication in the telephone directory that they do not wish to receive unsolicited consumer telephone calls would be regular rates charged for extra line listings. This would be the tariffed rate of approximately \$1.20 per month. Any costs to telephone companies for recording requests for the indicators and for printing the extra line should be offset by these fees.

It could be argued that the provisions of this portion of the bill could save businesses considerable time and money since their solicitation calls would be limited to those subscribers who would be receptive to solicitation calls. For those businesses whose lists of prospective telephone customers comes from a source other than the telephone directory, however, there would be costs incurred in cross-checking those lists with the directory listings.

B. Government:

Staff of the Division of Consumer Services estimates that to adequately administer its charge under this bill, it would need to hire additional personnel: one analyst and one clerical person. Including furniture, start-up cost for an analyst, pay grade 17 would be \$22,557; for a Clerk Typist III, the total would be \$16,900. Subsequent year costs would be slightly less because there would not be the need for the furnishings. Additionally, since the consumer service office is unable to field all of its incoming calls now, it contends that increased telephone traffic that could result from the implementation of this bill would necessitate the installation of another WATS line, at a maximum recurring monthly cost of \$2,250.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill would produce no negative impact on the State Comprehensive Plan.

IV. COMMENTS:

Although the constitutionality of legislation curbing telephone solicitation has never been decided, a closely analogous activity, door-to-door selling, has been held to be subject to complete legislative prohibition. In Breard v. Alexandria (341 U.S. 622), decided in 1951, the United States Supreme Court upheld a local ordinance which forbade door-to-door salesmen from entering on private residences without prior consent of the owners. The ordinance was attacked on grounds that it constituted a taking of property without due process of law, that it was an undue burden on interstate commerce, and that it violated freedom of speech guaranteed in the first amendment as made applicable to the states through the 14th amendment.

In considering the due process argument, the Court was of the opinion that a legitimate occupation could be restricted or prohibited when such legislation is in the public interest and has a rational basis. The Court felt that the usual means of solicitation were still open to businessmen through radio, television, periodicals, mail, and local outlets (it did not mention telephones). Also, the Court held that since the ordinance did not discriminate against interstate commerce and since the regulation was a local matter, the state regulation did not do violence to the congressional commerce power. Lastly, the Court held that freedom of speech and press does not mean that one can talk or distribute where, when, and how one chooses; but the right to do so must be adjusted to the rights of others.

The Florida Supreme Court echoed the sentiments of the Breard case in a 1981 ruling dealing with direct mail solicitation of clients by an attorney (The Florida Bar v. Schreiber 407 So.2d 595). Speaking through Chief Justice Sundberg, the Court conceded that commercial speech is a constitutionally protected form of communication, but that it was well accepted that it did not receive the same staunch First Amendment protection as noncommercial speech and occupied a subordinate position in the scale of First Amendment values. Additionally considered was Florida's somewhat unique protectionistic attitude toward privacy, having adopted an independent privacy amendment in its Constitution (Art. I, s. 23). On balance, it was reasoned that regulation was warranted in this case.

It is expected that local phone companies' work volume will increase due to the new activities imposed upon them by the bill. For example, the time it takes to negotiate new orders will increase because an explanation of the option afforded by the bill will have to be given. If the customer chooses the new service, an order will have to be processed and notification made to all the records (business office, repair and directory assistance) which is time consuming. New computer programs will have to be developed to account for information relative to

solicitation listings and to add the charge to the customer's telephone bill. Finally, the phone companies will have to entertain inquiries and complaints regarding the new system, particularly if those who have purchased the new service are still receiving solicitation calls; and, they may since not all types of solicitation calls are prohibited (e.g., charitable contributions, political contributions, previous business dealings).

According to the Division of Consumer Services, for calendar years 1985 and 1986, complaints relating to unsolicited telephone calls ranked among the top ten of all complaints received by the division.

An almost identical bill was offered in 1986, but that bill dictated that allowable calls could only be made during the hours of 9 a.m. to 6 p.m. It did not include the provision which calls for solicitors to ascertain whether or not the consumer wishes to listen to a sales pitch before they continue.

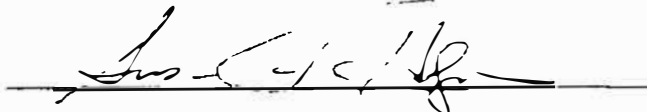
The State of Oregon has implemented a law making it mandatory for the solicitor to identify himself within the first 30 seconds, explain the purpose of the call, describe the goods and the price, and ask the consumer if he wishes to listen to a sales pitch.

California has enacted a change in its Public Utility Code which prohibits automatically dialed unsolicited telephone calls to those consumers whose names appear on a privacy record maintained by their local telephone corporation. This record is updated yearly and made available to any soliciting business concerns for a fee.

V. AMENDMENTS:

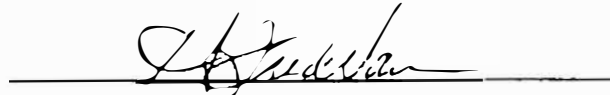
None

VI. PREPARED BY:



Susan F. Holzer

VII. STAFF DIRECTOR:



H. Fred Varn

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u> <i>LB</i>	<u>Fort</u> <i>LB</i>	1. <u>COM</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Telephone Solicitation

BILL NO. AND SPONSOR:

HB 162 by
Representatives Carpenter,
Burnsed, et al.

I. SUMMARY:

A. Present Situation:

Currently, s. 365.165, F.S., prohibits telephone solicitation involving the use of an automated system for the selection or dialing of telephone numbers and the playing of a recorded message when a connection is made. However, automated telephone systems may be used if the calls concern previously ordered or purchased goods or services.

The Division of Consumer Services, Department of Agriculture and Consumer Services, investigates complaints it receives relating to unsolicited telephone calls. If it is found that a violation of s. 365.165, F.S., has occurred, the matter is referred to the Department of Legal Affairs. In an attempt to resolve such complaints in a satisfactory manner, the division tries to work with the business against whom the complaint was filed.

B. Effect of Proposed Changes:

This bill creates s. 501.059, F.S., which would regulate residential telephone solicitation. It defines "consumer telephone call," "consumer goods or services," "unsolicited consumer telephone call," and "telephone solicitor."

The bill would require any person making an unsolicited telephone call to a residence for the purpose of offering goods or services for sale to identify himself and the business on whose behalf he is soliciting immediately upon telephone contact with the person who is the object of his phone call. It also requires that a solicitor ask the consumer whether or not he wishes to hear a sales pitch, and discontinue the solicitation if that consumer responds negatively.

The bill prohibits the making of an unsolicited consumer telephone call to any telephone number which is listed in the then-current telephone directory and which has an indicator that the subscriber does not wish to receive such calls. Subscribers who desire an indicator in the telephone directory stating that they do not wish to receive unsolicited consumer telephone calls may notify the local telephone company and order an extra line listing effective with the next issue of the telephone directory. The extra line would appear directly beneath the primary listing and would read "No Solicitation Calls." Charges for this extra line would be the regular rates charged for additional or extra line listings. Also prohibited by the bill would be telephone contact with persons with unlisted telephone numbers unless there had been previous business contact between the parties.

18 1683

The bill requires the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate complaints and allows the division to seek civil penalties and injunctive relief against persons in violation. The amount of civil penalties is limited to \$10,000 per violation which would be deposited in the General Revenue Fund.

Telephone companies are specifically relieved of responsibility for enforcing the act and could not be held liable for errors or omissions in listings made pursuant to the act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

It has been represented that passage of this bill may have a dramatically negative effect on newspaper sales. The influx and mobility of Florida's population has accelerated to the degree that the newspapers feel telephone solicitation is the most reasonable marketing tool they can use to reach this mobile population.

Fees paid by subscribers for the indication in the telephone directory that they do not wish to receive unsolicited consumer telephone calls would be the regular rates charged for extra line listings. This would be the tariffed rate of approximately \$1.20 per month. Any costs to telephone companies for recording requests for the indicators and for printing the extra line should be offset by these fees.

It is possible that the provisions of this bill could save businesses considerable time and money since their solicitation calls would be limited to those subscribers who would be receptive to solicitation calls. For those businesses whose lists of prospective telephone customers comes from a source other than the telephone directory, however, there would be costs incurred in cross-checking those lists with the directory listings.

B. Government

A spokesman for the Division of Consumer Services, Department of Agriculture and Consumer Services, has estimated that the division would need two additional employees to adequately administer the division's responsibilities pursuant to this bill. The start-up costs for the first year, including salaries and furniture, would be approximately \$39,500. Subsequent year costs could be slightly less. Also, the division may have to install another WATS line to handle the increase in telephone complaints. This recurring monthly cost is estimated to be approximately \$2,250.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: fs 10162

Date: June 11, 1987

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS

19 1737

ENACTED BILL #: HB 162

RELATING TO: Unsolicited Telephone Calls

SPONSORS: Representatives Carpenter and Burnsed

EFFECTIVE DATE: October 1, 1987

BECAME LAW: _____

CHAPTER 87- , LAWS OF FLORIDA

COMPANION BILL: SB 217

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) _____

I. SUMMARY:

This bill requires anyone making an unsolicited consumer telephone call to a residence to identify himself and the business for which the call is being made immediately upon telephone contact. It further stipulates that the solicitor must poll the consumer on whether or not he wishes to hear a sales pitch, and then desist if the consumer responds negatively.

The bill prohibits the making of unsolicited consumer telephone calls to any residential consumer whose telephone number is listed in the then-current telephone directory and the listing indicates that the subscriber does not wish to receive such calls. It also prohibits calls to persons with unlisted phone numbers unless there has been a previous business relationship with that party.

A. Current Law & Present Situation:

Section 365.165, Florida Statutes, currently prohibits telephone solicitation calls which involve the use of an automated system for the selection or dialing of telephone numbers and the playing of a recorded message when a connection is made. This prohibition does not apply to calls made concerning previously ordered or purchased goods or services.

The Division of Consumer Services (division) presently investigates complaints relating to unsolicited telephone calls. If the division determines that a person has violated s. 365.165, F.S., the matter is referred to the Department of Legal Affairs.

More often, however, no law has been violated so the division endeavors to resolve the complaint by contacting the business against whom the complaint has been registered. The division currently has no authority to seek sanctions against anyone relative to these complaints.

B. Effect of Proposed Changes:

House Bill 162 creates s. 501.059, F.S., which regulates residential telephone solicitation. It defines "consumer telephone call", "consumer goods or services", "unsolicited consumer telephone call", and "telephone solicitor".

The bill requires any person making an unsolicited telephone call to a residence for the purpose of offering goods or services for sale to identify himself and the business on whose behalf he is soliciting immediately upon telephone contact with the object of his phone call. It also requires that a solicitor ask the consumer whether or not he wishes to hear a sales pitch and desist if that consumer responds negatively.

The bill prohibits the making of an unsolicited consumer telephone call to any telephone number which is listed in the then-current telephone directory and which has an indicator that the subscriber does not wish to receive such calls. Subscribers who desire an indicator in the telephone directory stating that they do not wish to receive unsolicited consumer telephone calls may notify the local telephone company and order an extra line listing effective with the next issue of the telephone directory. The extra line would appear directly beneath the primary listing and would read "No Solicitation Calls". Charges for this extra line would be regular rates charged for additional or extra line listings. Additionally prohibited by the bill is telephone contact with persons with unlisted telephone numbers unless there had been previous business contact between the parties.

Specifically exempted from the provisions of this bill are the newspaper subscription solicitors.

The bill directs the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate complaints and allows the division to seek civil penalties and injunctive relief against persons in violation. The amount of civil penalties is limited to \$10,000 per violation which would be deposited in the General Revenue Fund.

Telephone companies are specifically relieved of responsibility for enforcing the act and could not be held liable for errors or omissions in listings made pursuant to the act.

II. ECONOMIC IMPACT:

A. Public:

Fees paid by subscribers for the indication in the telephone directory that they do not wish to receive unsolicited consumer telephone calls would be regular rates charged for extra line listings. This would be the tariffed rate of approximately \$1.20 per month. Any costs to telephone companies for recording requests for the indicators and for printing the extra line should be offset by these fees.

It could be argued that the provisions of this portion of the bill could save businesses considerable time and money since their solicitation calls would be limited to those subscribers who would be receptive to solicitation calls. For those businesses whose lists of prospective telephone customers comes from a source other than the telephone directory, however, there would be costs incurred in cross-checking those lists with the directory listings.

B. Government:

Staff of the Division of Consumer Services estimates that to adequately administer its charge under this bill, it would need to hire additional personnel: one analyst and one clerical person. Including furniture, start-up cost for an analyst, pay grade 17 would be \$22,557; for a Clerk Typist III, the total would be \$16,900. Subsequent year costs would be slightly less because there would not be the need for the furnishings. Additionally, since the consumer service office is unable to field all of its incoming calls now, it contends that increased telephone traffic that could result from the implementation of this bill would necessitate the installation of another WATS line, at a maximum recurring monthly cost of \$2,250.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill would produce no negative impact on the State Comprehensive Plan.

IV. COMMENTS:

Although the constitutionality of legislation curbing telephone solicitation has never been decided, a closely analogous activity, door-to-door selling, has been held to be subject to complete legislative prohibition. In Breard v. Alexandria (341 U.S. 622), decided in 1951, the United States Supreme Court upheld a local ordinance which forbade door-to-door salesmen from entering on private residences without prior consent of the owners. The ordinance was attacked on grounds

that it constituted a taking of property without due process of law, that it was an undue burden on interstate commerce, and that it violated freedom of speech guaranteed in the first amendment as made applicable to the states through the 14th amendment.

In considering the due process argument, the Court was of the opinion that a legitimate occupation could be restricted or prohibited when such legislation is in the public interest and has a rational basis. The Court felt that the usual means of solicitation were still open to businessmen through radio, television, periodicals, mail, and local outlets (it did not mention telephones). Also, the Court held that since the ordinance did not discriminate against interstate commerce and since the regulation was a local matter, the state regulation did not do violence to the congressional commerce power. Lastly, the Court held that freedom of speech and press does not mean that one can talk or distribute where, when, and how one chooses; but the right to do so must be adjusted to the rights of others.

The Florida Supreme Court echoed the sentiments of the Breard case in a 1981 ruling dealing with direct mail solicitation of clients by an attorney (The Florida Bar v. Schreiber 407 So.2d 595). Speaking through Chief Justice Sundberg, the Court conceded that commercial speech is a constitutionally protected form of communication, but that it was well accepted that it did not receive the same staunch First Amendment protection as noncommercial speech and occupied a subordinate position in the scale of First Amendment values. Additionally considered was Florida's somewhat unique protectionistic attitude toward privacy, having adopted an independent privacy amendment in its Constitution (Art. I, s. 23). On balance, it was reasoned that regulation was warranted in this case.

It is expected that local phone companies' work volume will increase due to the new activities imposed upon them by the bill. For example, the time it takes to negotiate new orders will increase because an explanation of the option afforded by the bill will have to be given. If the customer chooses the new service, an order will have to be processed and notification made to all the records (business office, repair and directory assistance) which is time consuming. New computer programs will have to be developed to account for information relative to solicitation listings and to add the charge to the customer's telephone bill. Finally, the phone companies will have to entertain inquiries and complaints regarding the new system, particularly if those who have purchased the new service are still receiving solicitation calls; and, they may since not all types of solicitation calls are prohibited (e.g., charitable contributions, political contributions, previous business dealings).

According to the Division of Consumer Services, for calendar years 1985 and 1986, complaints relating to unsolicited telephone calls ranked among the top ten of all complaints received by the division.

An almost identical bill was offered in 1986, but that bill dictated that allowable calls could only be made during the hours of 9 a.m. to 6 p.m. It did not include the provision which calls for solicitors to ascertain whether or not the consumer wishes to listen to a sales pitch before they continue.

The State of Oregon has implemented a law making it mandatory for the solicitor to identify himself within the first 30 seconds, explain the purpose of the call, describe the goods and the price, and ask the consumer if he wishes to listen to a sales pitch.

California has enacted a change in its Public Utility Code which prohibits automatically dialed unsolicited telephone calls to those consumers whose names appear on a privacy record maintained by their local telephone corporation. This record is updated yearly and made available to any soliciting business concerns for a fee.

V. LEGISLATIVE HISTORY:

A. Enacted Bill:

Representatives Carpenter and Burnsed filed House Bill 162 on February 3, 1987. It was referred to the Committees on Commerce and Appropriations. On April 8, the Subcommittee on General Commerce reported the bill favorably and on April 23, the Full Committee on Commerce reported the bill favorably (HJ 00268). The Appropriations Committee, its second committee of reference, also reported the bill favorably and it was placed on the Special Order Calendar on May 5. The bill passed the House by a vote of 114-0 on May 13 (HJ 00425). The Senate received the bill in Messages and referred it to Senate Commerce which reported it favorably on May 25 (SJ 00417). The House bill was placed on the Special Order Calendar and was amended. The amendment exempted newspaper subscription solicitors from the provisions of this act. The Senate passed the bill by a vote of 34-0 on May 28 (SJ 00477). The bill was certified back to the House which concurred in the amendment and passed the bill by a vote of 114-1 on May 28, 1987 (HJ 00753). It was ordered engrossed and enrolled.

B. Disposition of Companion:

Senator Dudley filed Senate Bill 217 on February 5, 1987. It was referred to the Committees on Commerce, Economic Community and Consumer Affairs and Appropriations. Senate Commerce

Page 6
Bill # HB 162
Date: June 11, 1987

reported the bill favorably on May 25 (SJ 00417). It was withdrawn from Appropriations (SJ 00446) and died in the Committee on Economic Community and Consumer Affairs on June 6, 1987.

VI. PREPARED BY:



Susan F. Holzer

VII. STAFF DIRECTOR:



H. Fred Varn

By Senator Dudley

This publication was produced at an estimated page cost of 1.5 cents per page for the information of members of the Legislature and the public.

1 A bill to be entitled

2 An act relating to consumer protection;

3 creating s. 501.059, F.S.; providing

4 definitions; providing restrictions upon

5 unsolicited consumer telephone calls to

6 residences; prohibiting the making of

7 unsolicited consumer telephone calls to certain

8 subscribers; authorizing the Division of

9 Consumer Services of the Department of

10 Agriculture and Consumer Services to

11 investigate complaints of violations and

12 institute civil proceedings; providing

13 severability; providing an effective date.

14

15 Be It Enacted by the Legislature of the State of Florida:

16

17 Section 1. Section 501.059, Florida Statutes, is

18 created to read:

19 501.059 Residential telephone solicitation.--

20 (1) As used in this section:

21 (a) "Consumer telephone call" means a call made by a

22 telephone solicitor for the purpose of soliciting a sale of

23 any consumer goods or services to the person called, or for

24 the purpose of soliciting an extension of credit for consumer

25 goods or services to the person called, or for the purpose of

26 obtaining information that will or may be used for the direct

27 solicitation of a sale of consumer goods or services to the

28 person called or an extension of credit for such purposes.

29 (b) "Consumer goods or services" means any tangible

30 personal property which is normally used for personal, family,

31 or household purposes, including, without limitation, any such

1 property intended to be attached to or installed in any real
 2 property without regard to whether it is so attached or
 3 installed, as well as cemetery lots and time-share estates,
 4 and any services related to such property

5 (c) "Unsolicited consumer telephone call" means a
 6 consumer telephone call other than a call made:

7 1. In response to an express request of the person
 8 called;

9 2. Primarily in connection with an existing debt or
 10 contract, payment or performance of which has not been
 11 completed at the time of such call; or

12 3. To any person with whom the telephone solicitor has
 13 an existing business relationship.

14 (d) "Commission" means the Florida Public Service
 15 Commission.

16 (e) "Telephone solicitor" means any natural person,
 17 firm, organization, partnership, association, or corporation
 18 who makes or causes to be made a consumer telephone call,
 19 including, but not limited to, calls made by use of automated
 20 dialing or recorded message devices.

21 (f) "Division" means the Division of Consumer Services
 22 of the Department of Agriculture and Consumer Services.

23 (2) Any telephone solicitor who makes an unsolicited
 24 consumer telephone call to a residential telephone number
 25 shall:

26 (a) Identify himself or herself and the business on
 27 whose behalf he or she is soliciting immediately upon making
 28 contact by telephone with the person who is the object of the
 29 telephone solicitation; and

30 (b) Within 30 seconds after beginning the
 31 conversation, inquire whether the person being solicited is

1 interested in listening to a sales presentation and
2 immediately discontinue the solicitation if the person being
3 solicited gives a negative response.

4 (3) Any residential telephone subscriber desiring a
5 directory listing indicating that the subscriber does not wish
6 to receive unsolicited consumer telephone calls may notify the
7 serving local exchange company and order an extra line listing
8 effective with the next telephone directory issue. Such extra
9 line listing shall appear directly beneath the primary listing
10 and shall read "No Sales Solicitation Calls." The charge for
11 such extra line listings shall be the tariffed rates as
12 approved by the commission for additional or extra line
13 listings.

14 (4) No telephone solicitor shall make or cause to be
15 made any unsolicited consumer telephone call to any
16 residential telephone number if the number for that telephone
17 appears in the then-current directory published by the
18 telephone company and such listing indicates that the
19 subscriber does not wish to receive unsolicited consumer
20 telephone calls.

21 (5) No telephone solicitor shall attempt to contact by
22 telephone any person whose residential telephone number is not
23 included in the most recently published telephone directory as
24 the result of a request for an unpublished telephone number,
25 unless the person making such solicitation has had previous
26 business experience with the person solicited.

27 (6) The division shall investigate any complaints
28 received concerning violations of this section. If, after
29 investigating any complaint, the division finds that there has
30 been a violation of this section, it may bring an action to
31 impose a civil penalty and to seek such other relief,

1 including injunctive relief, as the court deems appropriate
2 against the telephone solicitor. The civil penalty shall not
3 exceed \$10,000 per violation and shall be deposited in the
4 General Revenue Fund, unallocated.

5 (7) Telephone companies shall not be responsible for
6 the enforcement of the provisions of this section, and shall
7 not be liable for any error or omission in the listings made
8 pursuant hereto.

9 Section 2. If any provision of this act or the
10 application thereof to any person or circumstance is held
11 invalid, the invalidity shall not affect other provisions or
12 applications of the act which can be given effect without the
13 invalid provisions or application, and to this end the
14 provisions of this act are declared severable.

15 Section 3. This act shall take effect October 1, 1987.
16
17

18 *****

19 HOUSE SUMMARY

20 Provides restrictions upon unsolicited consumer telephone
21 calls to residences and defines such calls for purposes
22 of the act. Prohibits the making of unsolicited consumer
23 telephone calls to certain subscribers.

24 Provides that residential telephone subscribers may order
25 extra line listings which specify their desire not to
26 receive solicitation calls. Specifies a fee for such
27 listing.

28 Authorizes the Division of Consumer Services of the
29 Department of Agriculture and Consumer Services to
30 investigate complaints of violations of the act and to
31 institute civil proceedings against telephone solicitors
violating such provisions.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Branning</u> <i>BB</i>	Fort <i>BB</i>	1. <u>COM</u>	_____
2. _____	_____	2. <u>ECCA</u>	_____
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

Telephone Solicitation

BILL NO. AND SPONSOR:

SB 217 by
Senator Dudley

I. SUMMARY:

A. Present Situation:

Currently, s. 365.165, F.S., prohibits telephone solicitation involving the use of an automated system for the selection or dialing of telephone numbers and the playing of a recorded message when a connection is made. However, automated telephone systems may be used if the calls concern previously ordered or purchased goods or services.

The Division of Consumer Services, Department of Agriculture and Consumer Services, investigates complaints it receives relating to unsolicited telephone calls. If it is found that a violation of s. 365.165, F.S., has occurred, the matter is referred to the Department of Legal Affairs. In an attempt to resolve such complaints in a satisfactory manner, the division tries to work with the business against whom the complaint was filed.

18 1681

B. Effect of Proposed Changes.

This bill creates s 501.059, F.S., which would regulate residential telephone solicitation. It defines "consumer telephone call," "consumer goods or services," "unsolicited consumer telephone call," and "telephone solicitor."

The bill would require any person making an unsolicited telephone call to a residence for the purpose of offering goods or services for sale to identify himself and the business on whose behalf he is soliciting immediately upon telephone contact with the person who is the object of his phone call. It also requires that a solicitor ask the consumer whether or not he wishes to hear a sales pitch, and discontinue the solicitation if that consumer responds negatively.

The bill prohibits the making of an unsolicited consumer telephone call to any telephone number which is listed in the then-current telephone directory and which has an indicator that the subscriber does not wish to receive such calls. Subscribers who desire an indicator in the telephone directory stating that they do not wish to receive unsolicited consumer telephone calls may notify the local telephone company and order an extra line listing effective with the next issue of the telephone directory. The extra line would appear directly beneath the primary listing and would read "No Solicitation Calls." Charges for this extra line would be the regular rates charged for additional or extra line listings. Also prohibited by the bill would be telephone contact with persons with unlisted telephone numbers unless there had been previous business contact between the parties.

The bill requires the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate

complaints and allows the division to seek civil penalties and injunctive relief against persons in violation. The amount of civil penalties is limited to \$10,000 per violation which would be deposited in the General Revenue Fund.

Telephone companies are specifically relieved of responsibility for enforcing the act and could not be held liable for errors or omissions in listings made pursuant to the act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

It has been represented that passage of this bill may have a dramatically negative effect on newspaper sales. The influx and mobility of Florida's population has accelerated to the degree that the newspapers feel telephone solicitation is the most reasonable marketing tool they can use to reach this mobile population.

Fees paid by subscribers for the indication in the telephone directory that they do not wish to receive unsolicited consumer telephone calls would be the regular rates charged for extra line listings. This would be the tariffed rate of approximately \$1.20 per month. Any costs to telephone companies for recording requests for the indicators and for printing the extra line should be offset by these fees.

It is possible that the provisions of this bill could save businesses considerable time and money since their solicitation calls would be limited to those subscribers who would be receptive to solicitation calls. For those businesses whose lists of prospective telephone customers comes from a source other than the telephone directory, however, there would be costs incurred in cross-checking those lists with the directory listings.

B. Government:

A spokesman for the Division of Consumer Services, Department of Agriculture and Consumer Services, has estimated that the division would need two additional employees to adequately administer the division's responsibilities pursuant to this bill. The start-up costs for the first year, including salaries and furniture, would be approximately \$39,500. Subsequent year costs could be slightly less. Also, the division may have to install another WATS line to handle the increase in telephone complaints. This recurring monthly cost is estimated to be approximately \$2,250.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.