

1989

Session Law 89-045

Florida Senate & House of Representatives

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**H 190 GENERAL BILL/CS/1ST ENG by Commerce; Tobin and others
(Similar CS/CS/S 165)**

Telephone Solicitation Act; creates "Fla. Telephone Solicitation Act"; provides definitions & exemptions; provides for enforceability of certain contracts made by telephone; prohibits charges to consumer's credit account under certain circumstances; provides for certain deceptive & unfair trade practices; provides penalties. Creates 365.1655. Effective Date: 10/01/89.

02/02/89 HOUSE Prefiled
02/08/89 HOUSE Referred to Commerce; Appropriations
03/16/89 HOUSE Subreferred to Subcommittee on Banking and Commerce
04/04/89 HOUSE Introduced, referred to Commerce; Appropriations
-HJ 28; Subreferred to Subcommittee on Banking and
Commerce
04/06/89 HOUSE On subcommittee agenda—Commerce, 04/10/89, 1:15 pm,
24-HOB—Temporarily passed
04/10/89 HOUSE On Committee agenda—Commerce, 04/12/89, 3:30 pm,
21-HOB—For ratification to subcommittee
04/14/89 HOUSE On subcommittee agenda—Commerce, 04/18/89, 10:45 am,
24-HOB
04/18/89 HOUSE Subcommittee Recommendation: Favorable with 1 amend-
ment
04/24/89 HOUSE On Committee agenda—Commerce, 04/26/89, 3:45 pm,
21-HOB
04/26/89 HOUSE Preliminary Committee Action by Commerce: Favorable as
a CS
05/02/89 HOUSE Comm. Report: CS by Commerce -HJ 338; CS read first
time -HJ 332; Now in Appropriations -HJ 338
05/09/89 HOUSE Withdrawn from Appropriations -HJ 432; Placed on Cal-
endar
05/11/89 HOUSE Placed on Special Order Calendar; Read second time;
Amendment adopted -HJ 471
05/18/89 HOUSE Read third time; CS passed as amended; YEAS 115
NAYS 0 -HJ 526; Immediately certified -HJ 526
05/18/89 SENATE In Messages
05/25/89 SENATE Received -SJ 458; Substituted for CS/CS/SB 165; CS
passed; YEAS 38 NAYS 0 -SJ 465
05/26/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/15/89 Approved by Governor; Chapter No. 89-45

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NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h190-f.com
 DATE: 06/20/89

HOUSE OF REPRESENTATIVES
 COMMITTEE ON COMMERCE
 FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 190
 RELATING TO: Consumer Protection/Telephone Solicitations
 SPONSOR(S): Commerce and Representative Tobin
 EFFECTIVE DATE: October 1, 1989
 DATE BECAME LAW: June 15, 1989
 CHAPTER #: 89-45, Laws of Florida
 COMPANION BILL(S): SB 165
 OTHER COMMITTEES OF REFERENCE: (1) Appropriations
 (2)

I. SUMMARY:

This committee substitute creates certain conditions for the selling of consumer goods over the telephone. It provides definitions to describe the types of goods and buyers and sellers involved. It also provides exemptions, conditions for the enforceability of contracts, and provisions for charging against a consumer's credit account. Finally, it deems violations to be deceptive and unfair trade practices.

A. PRESENT SITUATION:

Currently there are three statutes which specifically address the area of telephone solicitations. Section 365.165, F.S., restricts the use of automated equipment for the purpose of telephone sales solicitations. Section 501.059, F.S., offers several definitions for consumers, sellers, and goods and not only places requirements on unsolicited calls but in certain instances, prohibits them. Finally, under the category of home solicitation sales, s. 501.046, F.S., states that one of the duties of businesses involved in such sales is to conspicuously disclose the name, address and telephone number of the business on any material or contracts sent or delivered to the buyer as a result of a telephone solicitation.

Although none of these statutes provides the extent of consumer protection offered by CS/HB 190, each appears to contain elements of the CS, and the overall intent of protecting consumers from different aspects of telephone solicitation abuse.

The Division of Consumer Services of the Department of Agriculture and Consumer Services, reports that in 1988, it received approximately 1900 written complaints regarding telephone solicitation sales practices. The majority of the correspondents felt as if they had been deceived in some way and had no recourse, especially if the company received payment by charging against the consumer's credit account.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 190 would require businesses that solicit sales over the telephone to receive a signed contract from the consumer before they charge the consumer's credit account unless they satisfy the conditions for exemption from the provisions of this section. Contract enforceability would depend on compliance with the provisions stated in this CS. Those businesses that do not comply would be in violation of the Florida Deceptive and Unfair Trade Practices Act.

The CS provides definitions for the terms "consumer", "consumer goods", "consumer realty", and "consumer services", "merchant" "newspaper", and "telephone solicitation". These definitions are relatively similar to the definitions in s. 501.059, F.S., for "consumer telephone call", "consumer goods and services", and "telephone solicitor".

This CS provides that in order for a merchant to charge a consumer's credit account for a telephone solicitation transaction he must receive from the consumer a signed copy of the contract which complies with this section. These contracts must truly represent the goods or services described in the telephone solicitation, including any oral or written representations made by the merchant. They must also contain the total price of the contract, the seller's name, address, and telephone number, and the statement that the consumer is not obligated to pay any money unless the contract is signed by the consumer and returned to the seller.

Exemptions to this section are made for specific types of businesses transactions: (1) those resulting from a preexisting business relationship with the consumer; (2) those offering 7 day refund policies where the money is processed in 30 days of receipt of the merchandise; (3) those with sufficient advertising (television, print, or brochure which include the name address and telephone number of the seller); (4) those selling newspapers; (5) and those covered under certain other statutes. A final exemption is made for merchants which are bona fide charitable organizations or newspapers as defined in chapter 50, F.S.

In addition to any other remedies available at law, violators of this section will be subject to the s. 501.201, F.S., which is constructed to protect consumers from suppliers who commit deceptive and unfair trade practices.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Telemarketers would have the added costs of providing contracts to consumers if this is not currently their practice.

2. Direct Private Sector Benefits:

A survey was conducted by the issuers of bank cards which showed that credit card users had approximately \$70 million in unauthorized charges as a result of illegal telemarketing. Of this amount, \$18 million was written off by the financial institutions which offer these accounts. This CS could have the effect of preventing some of these losses to consumers and businesses.

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

Those telemarketers that are currently legitimately conducting business transactions with consumers should not see a noticeable change in their volume of trade.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This committee substitute supports the policy of the Comprehensive State Plan which calls for strengthening the state's commitment to pursue, both criminally and civilly, those individuals who profit from economic crimes.

IV. COMMENTS:

An amendment was adopted on the floor of the House that extended the exemption for certain sales transactions to companies or their wholly owned subsidiaries, if those companies are regulated under chapter 364, F.S.

STATEMENT OF SUBSTANTIAL CHANGES

The Commerce Committee added the exemptions for newspapers and transactions involving land sales, condominiums, and time-share plans which are regulated by other statutes.

According to the Division of Consumer Services of the Department of Agriculture and Consumer Services the majority of the telephone solicitation complaint calls it receives involving credit card charges, are the result of return calls made by consumers in response to some type of correspondence. This CS would not cover that type of telephonic sale.

V. LEGISLATIVE HISTORY:

A. ENACTED BILL:

House Bill 190 was prefiled by Representative Tobin on 2/2/89. On 4/26/89, the Commerce Committee reported the bill favorably as a committee substitute. The CS was withdrawn from Appropriations on 5/9/89 (HJ 00432) and placed on the calendar on 5/11/89 (HJ 00471). The House further amended the bill and passed it on 5/18/89 (HJ 00526) by a vote of 115-0. The Senate substituted it for CS/CS/SB 165 and passed it by a vote of 38-0 on 5/25/89 (SJ 00465). On 6/13/89, the bill was presented to the Governor.

STORAGE NAME: h190-f.com

DATE: 06/20/89

PAGE: 5

B. DISPOSITION OF COMPANION:

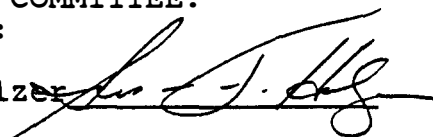
Senate Bill 165 was prefiled by Senator Weinstein on 2/2/89. The Committee on Economic, Professional & Utility Regulation reported the bill favorably as a committee substitute on 5/2/89 (SJ 00257). The Committee on Judiciary-Civil reported the bill favorably as a committee substitute for committee substitute on 5/9/89 (SJ 00312). On 5/25/89, the bill was placed on the calendar and subsequently laid on the table when CS/HB 190 was substituted for it and passed by a vote of 38-0 (SJ 00465).

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Susan F. Holzer



Staff Director:

William Leary



SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. CS/CS/SB 165

DATE: May 10, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Heffner</u>	<u>Krasovsky</u>	1. <u>EPUR</u>	<u>Fav/CS</u>
2. <u>Smawley</u>	<u>Smawley</u>	2. <u>JCI</u>	<u>Fav/CS</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Consumer Protection

BILL NO. AND SPONSOR:

CS/CS/SB 165 by
Judiciary Civil and EPUR and
Senator Weinstein

I. SUMMARY:

A. Present Situation:

Several sections of the Florida Statutes regulate unsolicited consumer telephone calls. Section 365.165, F.S., prohibits the use of automated selection and dialing systems for the purpose of selling consumer goods or services. Sections 501.021-501.055, F.S., regulate home solicitation sales. Generally, these sections require specified persons, who are engaged in home solicitation, to obtain a permit from the clerk of the circuit court; they provide for the buyer's right to cancel; and full disclosure by the seller.

The Attorney General in A.G.O. 77-32, found that a home solicitation sale as defined in s. 501.021, F.S., did not include telephone solicitations. Ch. 77-350, L. O. F., amended s. 501.021(2), F.S., with the following language in the definition of home solicitation sale, " . . . a sales transaction unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services." According to the Division of Consumer Services, of the Department of Agriculture and Consumer Services, it is not always clear whether the home solicitation sale law applies to unsolicited telephone calls.

Section 501.059, F.S., applies to residential telephone solicitation. This section requires a telephone solicitor, who is making an unsolicited telephone call, to identify themselves and the business they are calling for and within thirty seconds after the beginning of the conversation, ask whether the person being solicited is interested in listening to a sales presentation. If the answer is negative the solicitation must be terminated immediately. This section also provides a mechanism for identifying residential customers who do not wish to receive such calls. Violators are subject to a fine up to \$10,000 per violation. Calls made in response to a request by the person called, in connection with an existing debt, to a person with whom the solicitor has an existing business relationship, and by a newspaper publisher or his agent are not subject to the law.

B. Effect of Proposed Changes:

The bill would create the "Florida Telephone Solicitation Act". Telephone solicitation would be defined as the attempt by a merchant to sell or lease real property, goods or services, not including financial services to a consumer in this state, which is made entirely by telephone and initiated by the merchant. A merchant is any person who, offers or makes available consumer goods, consumer services, or consumer realty.

The bill would make a contract, pursuant to a telephone solicitation unenforceable unless: it has been reduced to writing and signed by the consumer; complies with all other applicable laws and regulations; matches the description of goods or services, "as that principally used in the telephone solicitation"; contains the name, address and telephone number of the merchant, the total price of the contract and a detailed description of the goods or services being sold; contains the following statement, "You are not obligated to pay any money unless you sign this contract and return it to the merchant"; and the contract may not exclude from its terms any collateral oral or written representations made by the merchant made during the formation of the contract. A merchant making an intrastate telephone solicitation may not charge a consumer credit account until he receives the signed contract. The bill would make violations of its provisions subject to the Florida Deceptive and Unfair Trade Practices Act.

The bill would exempt the following five types of transactions: (1) Transactions which are the result of prior negotiations in which the merchant has a fixed permanent location which was visited by the consumer; (2) Transactions in which the telephone solicitor is contacting a consumer who has made previous purchases from the merchant or who has a preexisting business relationship; (3) Transactions in which the consumer can obtain a full refund, after return of the unused and undamaged goods within seven days of receipt by the consumer, provided the refund is made within 30 days from receipt of the merchandise; (4) Transactions in which the consumer is responding to an advertisement through the media or brochure, sample or catalogue, or other mailing material, provided, that the advertisement contains the name, address, and telephone number of the merchant, a description of the goods and services being sold, and on limitations which apply to the offer and; (5) Transactions in which the merchant is a bona fide charitable organization or newspaper.

Charitable organization is defined as a person, group, or merchant which holds itself out to be benevolent, educational, philanthropic, humane, patriotic, religious, civic, conservation, preservation, arts, humanities or eleemosynary or a merchant who solicits or sells merchandise for such purposes.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Merchants who engage in telephone solicitation calls may incur costs as a result of the requirement that they receive a signed contract, from the consumer, prior to charging the consumers credit account. However, staff cannot accurately estimate the costs that will be incurred.

B. Government:

The state will incur costs in order to enforce the prohibition that merchants not make or submit any charge to a consumer's credit account prior to receiving a signed contract from the consumer. However, staff cannot accurately estimate the costs that will be incurred at this time.

III. COMMENTS:


The definition for merchant could be interpreted to include telephone solicitors.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 165

The committee substitute makes technical changes to the bill.

Committee on Judiciary-Civil

Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)