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DATE: March 15, 1996

AS REPORTED TO
THE CLERK

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
APPROPRIATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 349 (PCB AG-96-03a)

RELATING TO: Florida Telemarketing Act

SPONSOR(S): Committee on Agriculture and Consumer Services, Representative Harris and Others

STATUTE(S) AFFECTED: Sections 501.603, 501.604, 501.605, 501.608, 772.102, 895.02, F.S.

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE AND CONSUMER SERVICES YEAS 14
- (2) APPROPRIATIONS YEAS 28 NAYS 0
- (3)
- (4)
- (5)

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I. SUMMARY:

This bill amends the language in several of the exemptions to the Florida Telemarketing Act (Act) to ensure that exemptions are only utilized by the telemarketers (commercial telephone sellers) for which they were intended. In addition, a number of similar exemptions are combined thus reducing the total number of exemptions from 29 to 27.

The definition of "commercial telephone solicitation" is amended to insure that each time a non-exempt commercial telephone seller offers a consumer a gift, prize, or award the offer will fall within the definition of "commercial telephone solicitation." The definition of "consumer goods or services" is also amended to include investment opportunities.

Language related to the licensure of commercial telephone sellers is amended to clarify that doing business with a consumer located in Florida means a telephone solicitation call originating from either a location in Florida or from a location outside of Florida.

Penalties for violation of the Act are increased. The bill adds the Act to the definition of crimes chargeable under the Civil Penalties for Criminal Practices Act. In addition, the bill adds the Act to the definition of racketeering for the purposes of the Florida RICO Act.

The bill also reenacts five statutes to incorporate cross references related to adding the Act to the definition of racketeering for the purposes of the Florida RICO Act. No substantive changes are made to the reenacted statutes.

The Department of Agriculture and Consumer Services (department) and state attorneys retain enforcement authority under the Act in this bill.

Section 921.001 (9) (b), F.S., 1994 Supplement, requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The CJEC will review this bill and determine its impact on the state's overall prison population.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 1: Definitions

The present definition of "commercial telephone solicitation" allows commercial telephone sellers offering a gift, award, or prize to fall outside of the definition when they contact consumers who have purchased from them previously when the commercial telephone seller is offering a gift, award, or prize.

The definition of "consumer goods or services" does not specifically mention investment opportunities as a consumer good or service for the purposes of the Act. However, some law enforcement officials believe it is included, and if it is not, that it should be to protect consumers.

Section 2: Exemptions

The Act regulates non-exempt commercial telephone sellers and their respective salespersons by the use of licensure. By claiming at least one of 29 exemptions a commercial telephone seller does not have to comply with the provisions of the telemarketing act. It is the responsibility of the commercial telephone seller to prove entitlement to any of the 29 exemptions provided for in the act.

The language in several of the 29 exemptions is considered to be too vague and unclear. This has allowed some commercial telephone sellers to escape licensure with the department by finding a "gray area" in one of the 29 exemptions.

Based on the committee staff interim report on telemarketing, a higher number of consumer complaints were found to be against commercial telephone sellers who claim to be exempt, rather than those who are licensed. In addition, commercial telephone sellers promoting the sales of magazines as well as what is believed to be those attempting to resale time-shares through the use of publications ranked near the top in written consumer complaints received by the department in 1994.

Section 3 and Section 4: Licensure

Language related to the licensure of commercial telephone sellers specifies that anyone who is not exempt from the telemarketing act must comply with licensure if they will be calling Florida consumers from a location within Florida or from a location outside of Florida. Based on the wording of this section of law, some commercial telephone sellers have attempted to misinterpret the statute to say that licensure is only required when a commercial telephone seller is going to solicit Florida consumers from locations both inside and outside of Florida, rather than one or the other as was originally intended in the telemarketing act.

Section 5 and Section 6: Penalties for Violation of the Telemarketing Act

The department and the state attorneys are given enforcement authority under the act. The department may seek civil remedies and penalties for no more than \$10,000 per violation of the act. First time offenses are punishable by a third-degree felony.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Definitions

The definition of "commercial telephone solicitation" is amended to insure that each time a non-exempt commercial telephone seller offers a consumer a gift, prize, or award, the offer will fall within the definition of "commercial telephone solicitation."

The definition of "consumer good or service" is amended to include "investment opportunity." Some law enforcement officials believe that by including "investment opportunity" the definition of consumer good or service will further enable them to protect consumers from unscrupulous commercial telephone sellers.

Section 2: Exemptions

The proposed changes in this bill will tighten the language in a number of exemptions, clarify the language in some and combine several other exemptions that are similar in nature. Specifically the bill:

- * Clarifies the current exemption for religious, charitable, political, or education purposes.
- * Combines the exemptions for licensed securities, commodities, or investment broker, dealer, or investment adviser with the exemption for licensed associated person of a securities, commodities, or investment broker, dealer, or investment advisor.
- * Defines the term "affiliate" for the purposes of the exemption for supervised financial institutions.
- * Amends the exemption for those individuals licensed under chapter 516, which is related to consumer finance and part II of chapter 520, which provides for retail installment sales. Specifically, the new language will require that the exemption only apply to those goods and services solicited within the scope of a license obtained under chapter 516 or part II of chapter 520.
- * Defines the term "affiliate" for the purposes of the exemption for telephone companies subject to the provisions of chapter 364.
- * Combines the exemptions of those licensed under chapters 470 and 497. Chapter 470 relates to funeral directing, embalming and direct disposition. Chapter 497 governs funeral and cemetery services.

- * Amends the exemption of registered developers and exchange companies to allow the exemption to only apply to those commercial telephone sellers soliciting within the scope of chapter 721.
- * Amends the exemption for publishers and their agents by defining the term "agent."

Section 3 and Section 4: Licensure

The new language related to the licensure of commercial telephone sellers clarifies that doing business with a consumer located in Florida means either a telephone solicitation from a location in Florida or a solicitation from a location outside of Florida.

In addition, the bill corrects cross references relating to the affidavit of exemption.

Section 6 and Section 7: Penalties for Violation of the Telemarketing Act

Penalties for violation of the Florida Telemarketing Act are increased. The bill adds the Act to the definition of crimes chargeable under the Civil Penalties for Criminal Practices Act. In addition, the bill adds the telemarketing act to the definition of racketeering for the purposes of the Florida RICO Act.

**Section 7: Reenactment of Statutes Referencing the Florida RICO Act,
s. 895.02, F.S.**

The bill reenacts five statutes to incorporate cross references to s. 895.02, F.S., the Florida RICO Act. The five reenacted statutes:

- * s. 16.56, F.S., Office of Statewide Prosecution.
- * s. 27.34, F.S., Salaries and other related costs of state attorneys' offices; limitations.
- * s. 655.50, F.S., Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.
- * s. 896.101, F.S., Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.
- * s. 905.34, F.S., Powers and duties; law applicable.

The rules of statutory construction provide for the reenactment of criminal justice statutes when cross referenced with statutes enacted for the first time.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 501.603, F.S., to delete language in the definition of "commercial telephone solicitation." This will ensure that each time a non-exempt commercial telephone seller offers a gift, prize, or award during a telephone solicitation call, it will fall within the definition of "commercial telephone solicitation." In addition, the definition of "consumer good or service" is amended to include "investment opportunity."

Section 2. Amends s. 501.604, F.S., to:

- * Clarify the exemption for religious, charitable, political, or education purposes.
- * Combine the exemptions for licensed securities, commodities, or investment broker, dealer, or investment adviser with the exemption for licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser.
- * Define the term "affiliate" for the purposes of the exemption for supervised financial institutions.
- * Amend the exemption for those individuals licensed under chapter 516 or part II of chapter 520 to require that the exemption only apply to those goods and services solicited within the scope of a license obtained under chapter 516 or part II of chapter 520.
- * Define the term "affiliate" for the purposes of the exemption for telephone companies subject to the provisions of chapter 364.
- * Combine the exemptions of those licensed under chapters 470 and 497. Chapter 470 relates to funeral directing, embalming and direct disposition. Chapter 497 governs funeral and cemetery services.
- * Amend the exemption of registered developers and exchange companies to allow the exemption to only apply to soliciting with the scope of chapter 721. Chapter 721 pertains to vacation and time-share plans.
- * Amend the exemption for publishers and their agents by defining the term "agent."

Section 3. Amends s. 501.605, F.S., to clarify language related to the licensure of commercial telephone sellers.

Section 4. Amends s. 501.608, F.S., to make technical changes related to the affidavit of exemption. The technical changes are necessary since several exemptions are combined, which changed the numeric number of most exemptions in the Act.

Section 5. Amends s. 772.102, F.S., to add the Florida Telemarketing Act to the definition of crimes chargeable under the Civil Remedies for Criminal Practices Act.

Section 6. Amends s. 895.02, F.S., to add the Florida Telemarketing Act to the definition of racketeering for the purposes of the Florida RICO Act.

Section 7. Reenacts several statutes for the purpose of incorporating cross references to 895.02, F.S., the Florida RICO Act. The statutes reenacted:

- * s. 16.56, F.S., Office of Statewide Prosecution.
- * s. 27.34, F.S., Salaries and other related costs of state attorneys' offices; limitations.
- * s. 655.50, F.S., Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.
- * s. 896.101, F.S., Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.
- * s. 905.34, F.S., Powers and duties; law applicable.

Section 8. Provides that this bill shall take effect October 1, 1996.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate. See Fiscal Comments.

2. Recurring Effects:

Indeterminate. See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

Indeterminate. See Fiscal Comments.

4. Total Revenues and Expenditures:

Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The bill does not direct local governments to comply with or perform any function of the Act. However, local governments could incur some minor costs related to the arrest and prosecution of those charged with the enhanced penalties in this bill.

2. Recurring Effects:

See comments above.

3. Long Run Effects Other Than Normal Growth:

See comments noted under non-recurring effects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If the amended exemptions achieve the goal of the bill to limit use of exemptions to only the commercial telephone sellers for whom exemptions were intended, the department may realize an increase in the number of licensed commercial telephone sellers. However, the actual number of new licenses that may be issued and fees collected are indeterminate.

2. Direct Private Sector Benefits:

To the extent that fraudulent commercial telephone sellers are arrested and prosecuted under the new criminal penalties the private sector may realize a reduction in the number of commercial telephone sellers attempting to defraud consumers.

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

Indeterminate.

D. FISCAL COMMENTS:

Section 921.001 (9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The bill will be reviewed by the CJEC.

In addition, to the extent that the amended exemptions achieve the goal of the bill to limit the use of exemptions to only those commercial telephone sellers for whom exemptions were intended, the department may realize an increase in the number of licensed commercial telephone sellers and their respective salespersons. However, the number of new licenses that could be issued and fees collected are indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE AND CONSUMER SERVICES:

Prepared by:

Staff Director:

Bruce D. Topp

Susan D. Reese

AS REVISED BY THE COMMITTEE ON APPROPRIATIONS:

Prepared by:

Staff Director:

Eliza Hawkins

David K Coburn

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.)

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Date: March 11, 1996

Revised: _____

Subject: Florida Telemarketing Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Matthews</u>	<u>Krasovsky</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	<u>WM</u>	<u>Withdrawn</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill revises the definitions for “commercial telephone solicitation” and “consumer goods or services” in ch. 501, F.S., governing the Florida Telemarketing Act, clarifies and combines exemptions under the Act, clarifies language relating to licensure of commercial telephone sellers, and incorporates crimes relating to telemarketing within the definitions of “criminal activity” and “racketeering activity” for purposes of the Civil Remedies for Criminal Practices Act and the Florida RICO Act, respectively.

The bill reenacts five statutory provisions to incorporate the references to the Florida Telemarketing Act into the Florida RICO Act.

This bill substantially amends the following sections of the Florida Statutes: 501.603, 501.604, 501.605, 501.608, 772.102, and 895.02. In addition, the bill reenacts the following sections of the Florida Statutes without technical or substantive changes: 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(1)(g), and 905.34(3).

II. Present Situation:

The Florida Telemarketing Act (“act”) was enacted in 1991. See Part IV, ch. 501, F.S. The act substantially expanded consumer protections against fraudulent telephone solicitation operations. It established an extensive licensure process for commercial telephone solicitors and their sales personnel. The act was particularly aimed at regulating telemarketing activities by those entities attempting to swindle or defraud the public. The Department of Agriculture and Consumer Services is charged with regulatory authority under the act and share enforcement authority with the offices of the State Attorney.

Section 501.603, F.S., defines terms used in the act, including "commercial telephone solicitation and "commercial goods or services." The term "commercial telephone solicitation" currently excludes an offer of a gift, award or prize by a commercial telephone seller made to a consumer to whom a previous sale has been made. The term "commercial goods or services" does not expressly include investment opportunities for purposes of the act.

Section 501.604, F.S., enumerates 29 exemptions from the provisions of the act. The current language in several of the 29 exemptions has been found to be vague and unclear, resulting in some licensure loopholes. Based on an interim report on telemarketing conducted by the House Committee on Agriculture and Consumer Services, a high number of consumer complaints arose from complaints leveled against commercial telephone sellers alleging exemption from licensure and other provisions of the act.

Sections 501.605, F.S., specifies the procedure for licensure of commercial telephone sellers and salespersons, respectively. Prior to conducting business within the state, a commercial telephone seller is required to obtain a license from the department. The current language suggests that the commercial telephone seller need only obtain a license if the commercial telephone seller is going to solicit Florida consumers from locations both inside and outside Florida, rather than one or the other as was the original intent of the act.

Section 501.608, F.S., specifies that those eligible commercial telephone sellers claiming an exemption must file a notarized affidavit of exemption with the department.

Section 772.102, F.S., pertains to the definition of "criminal activity" for purposes of the Civil Penalties for Criminal Practices Act. The term "criminal activity" currently does not include crimes relating to telemarketing under Part IV of ch. 501.

Section 895.02, F.S., pertains to the definition of "racketeering activity" for purposes of the Florida Civil RICO Act. The term "racketeering activity" currently does not include crimes relating to telemarketing under Part IV of ch. 501.

III. Effect of Proposed Changes:

Section 1 redefines the terms "commercial telephone solicitation" and "consumer goods or services." The term "commercial telephone solicitation" is amended to insure that each time a non-exempt commercial telephone seller offers a consumer a gift, prize, or award, the offer falls within the definition and is subject to the act. The term "consumer goods or services" is amended to include investment opportunities for purposes of the act.

Section 2 provides new language clarifying and modifying a number of exemptions available under the act. Specifically the bill:

- ▶ clarifies that a person soliciting for religious, charitable, political or educational purpose is only exempt if that person is soliciting for a nonprofit corporation;

- ▶ combines the exemption for licensed securities, commodities or investment broker, dealer, or adviser with the exemption for licensed associated persons thereof;
- ▶ defines "affiliate" for purposes of the exemption for supervised financial institutions to mean a person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a supervised financial institution;
- ▶ amends the exemption for individuals licensed under ch. 51, F.S., related to consumer finance, or part II of ch. 520, F.S., related to retail installment sales, requiring that the exemption apply only to those goods or services solicited within the scope of licensure under chs. 51 and 52 (part II), F.S.;
- ▶ revises the exemption for a telephone company to include its affiliate and defines affiliate for purposes of the exemption to mean a person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a telephone company subject to the provisions of ch. 364, F.S., relating to the Public Service Commission regulation of telecommunications companies;
- ▶ combines the exemption for those persons licensed under ch. 470, F.S., relating to funeral directing, embalming and direct disposition, with the exemption for those persons licensed under ch. 497, F.S., governing funeral and cemetery services;
- ▶ revises the exemption of registered developers or exchange companies to apply to only those soliciting within the scope of the ch. 721, F.S., relating to vacation and timeshare plans;
- ▶ amends the exemption for publishers or their agents to include a definition for "agent" to mean a person who has entered into a written agreement directly with the publisher.

Section 3 provides for new language relating to the licensure of commercial telephone sellers by clarifying that doing business with a consumer located in Florida means either a telephone solicitation from a location within or outside of the state of Florida.

Section 4 corrects cross reference numbers relating to the occupational license or affidavit of exemption.

Sections 5 and 6 increase the available penalties and remedies for violation of the Act by virtue of the addition of crimes relating to telemarketing under Part IV of ch. 501, F.S., to the respective definitions of: 1) "criminal activity" as chargeable under the Civil Penalties for Criminal Practices Act in ch. 772, F.S., and 2) "racketeering activity" for purposes of civil and criminal prosecution under the Florida RICO Act in ch. 895, F.S.

Sections 7 through 11 provide for the reenactment of five statutory provisions referencing s. 895.02, F.S. of the Florida RICO Act. The rules of statutory construction provide for the

reenactment of criminal justice statutes when cross-referenced with statutes enacted for the first time. The five reenacted statutory provisions are:

- ▶ s. 16.56, F.S., Office of Statewide Prosecution
- ▶ s. 27.34, F.S., Salaries and other related state attorneys' office costs; limitations
- ▶ s. 655.50, F.S., Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; requirements; purpose; definitions; penalties
- ▶ s. 896.101, F.S., Offenses of financial transaction involving proceeds, penalties;
- ▶ s. 905.34, F.S., Powers and duties of grand juries; applicable law.

Section 8 provides for the bill to become effective October 1, 1996.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their ability to raise revenues or receive state tax revenues. Therefore, the provisions of section 18 of Article VII, Florida Constitution are inapplicable.

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:

The bill provides for added consumer protection provisions and remedies pertaining to financial injuries arising from telemarketing activities. The bill may have the effect of reducing the number of commercial telephone sellers attempting to defraud consumers by virtue: 1) of the clarifying language regarding those persons subject to or exempted from the Act, and 2) of the additional criminal and civil remedies available to consumers within the provisions of the Civil Remedies for Criminal Practices Act and the Florida RICO Act.

C. Government Sector Impact:

Section 921.001(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The Economic and Development Research Division indicates that, upon initial review, the bill appears to have no net zero sum impact on the overall prison population. The bills are scheduled on the CJEC agenda for formal review.

The Division of Consumer Services within the Department of Agriculture and Consumer Services anticipates that the bill will generate an average of five new licenses a year. The licensing fee for a commercial telephone seller is \$1,500.00 and for a commercial telephone salesperson is \$50.00. The department anticipates minimal corresponding costs for the issuance of new licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A similar House bill, HB 349, has been filed by the House Committee on Consumer Services and is now in the House Appropriations Committee.

VIII. Amendments:

None.

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

SENATE VOTE RECORD ON BILL NO. SB 996

COMMITTEE ON: Commerce and Economic Opportunities

ACTION: Favorably

DATE: March 11, 1996

OTHER COMMITTEE REFERENCES:

TIME: 2:30 PM -- 5:30 PM

Ways and Means

PLACE: Room EL, Senate Office Bldg.

FINAL BILL VOTE		SENATORS										
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Beard										
X		Burt										
X		Casas										
		Dantzler										
		Diaz-Balart										
X		Dudley										
X		Gutman										
		Harqrett										
X		Holzendorf										
X		Jennings										
		Jones										
X		Thomas										
X		Weinstein										
X		VICE CHAIRMAN Grant										
X		CHAIRMAN McKay										
11	0	TOTAL										
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

APPEARANCE: Key Sponsor _____ Senator _____ Sponsor's Aide _____ Other _____
 (File with Secretary of the Senate) 03/11/96 5:39 PM