

Bill No. SB 1520

Barcode 110132

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Lynn)
recommended the following amendment:

Senate Amendment (with title amendment)

On page 5, line 1, through
page 12, line 25, delete those lines

and insert:

Section 2. Subsections (7), (8), and (9) of section
501.059, Florida Statutes, are amended to read:

501.059 Telephone solicitation.--

(7)(a) ~~A No~~ person may not ~~shall~~ make or knowingly
allow a telephonic sales call to be made if the ~~such~~ call
involves an automated system for the selection or dialing of
telephone numbers or the playing of a recorded message when a
connection is completed to a number called.

(b) Nothing herein prohibits the use of an automated
telephone dialing system with live messages if the calls are
made or messages given solely in response to calls initiated
by the persons to whom the automatic calls or live messages
are directed or if the telephone numbers selected for

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1 automatic dialing have been screened to exclude any telephone
2 subscriber who is included on the department's then-current
3 "no sales solicitation calls" listing or any unlisted
4 telephone number, or if the calls made concern goods or
5 services that have been previously ordered or purchased.

6 (c) A person may not transmit, or knowingly allow the
7 transmission of, a facsimile of documents through connection
8 with a telephone network if the facsimile transmission
9 involves unsolicited advertising material for the sale of any
10 real property, goods, or services.

11 (8) The department shall investigate any complaints
12 received concerning violations of this section. If, after
13 investigating any complaint, the department finds that there
14 has been a violation of this section, the department or the
15 Department of Legal Affairs may bring an action to impose a
16 civil penalty and to seek other relief, including injunctive
17 relief, as the court deems appropriate against the telephone
18 solicitor. The civil penalty shall not exceed \$10,000 per
19 violation and shall be deposited in the General Inspection
20 Trust Fund if the action or proceeding was brought by the
21 department, or the Legal Affairs Revolving Trust Fund if the
22 action or proceeding was brought by the Department of Legal
23 Affairs. This civil penalty may be recovered in any action
24 brought under this part by the department, or the department
25 may terminate any investigation or action upon agreement by
26 the person to pay an agreed-upon ~~a stipulated~~ civil penalty.
27 The department or the court may waive any civil penalty if the
28 person has previously made full restitution or reimbursement
29 or has paid actual damages to the consumers who have been
30 injured by the violation.

31 (9)(a) In any civil litigation resulting from a

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1 transaction involving a violation of this section, the
 2 prevailing party, after judgment in the trial court and
 3 exhaustion of all appeals, if any, shall receive his or her
 4 reasonable attorney's fees and costs from the nonprevailing
 5 party.

6 (b) The attorney for the prevailing party shall submit
 7 a sworn affidavit of his or her time spent on the case and his
 8 or her costs incurred for all the motions, hearings, and
 9 appeals to the trial judge who presided over the civil case.

10 (c) The trial judge shall award the prevailing party
 11 the sum of reasonable costs incurred in the action plus a
 12 reasonable legal fee for the hours actually spent on the case
 13 as sworn to in an affidavit.

14 (d) Any award of attorney's fees or costs shall become
 15 a part of the judgment and subject to execution as the law
 16 allows.

17 (e) In any civil litigation initiated by the
 18 department or the Department of Legal Affairs, the court shall
 19 ~~may~~ award to the prevailing party reasonable attorney's fees
 20 and costs ~~if the court finds that there was a complete absence~~
 21 ~~of a justiciable issue of either law or fact raised by the~~
 22 ~~losing party or if the court finds bad faith on the part of~~
 23 ~~the losing party.~~ Travel and per diem expenses incurred by the
 24 department or the Department of Legal Affairs for its
 25 attorneys and witnesses shall be recoverable costs by the
 26 department or the Department of Legal Affairs if either party
 27 prevails in civil litigation.

30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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1 On page 1, lines 11-27, delete those lines
2
3 and insert:
4 required; amending s. 501.059, F.S.;
5 prohibiting the transmission
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