



456696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Regulated Industries (Gruters) recommended the following:

Senate Amendment (with title amendment)

Before line 24

insert:

Section 1. Present paragraphs (a) through (e) and (f) through (i) of subsection (1) of section 501.059, Florida Statutes, are redesignated as paragraphs (b) through (f) and (i) through (l), respectively, new paragraphs (a), (g), and (h) are added to that subsection, and subsections (8) and (10) and present subsections (11) and (12) are amended, to read:



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11 501.059 Telephone solicitation.—

12 (1) As used in this section, the term:

13 (a) "Called party" means a person who is the regular user
14 of the telephone number that receives a telephonic sales call.

15 (g) "Prior express written consent" means a written
16 agreement that:

17 1. Bears the signature of the called party;

18 2. Clearly authorizes the person making or allowing the
19 placement of a telephonic sales call by telephone call, text
20 message, or voicemail transmission to deliver or cause to be
21 delivered to the called party a telephonic sales call using an
22 automated system for the selection or dialing of telephone
23 numbers, the playing of a recorded message when a connection is
24 completed to a number called, or the transmission of a
25 prerecorded voicemail;

26 3. Includes the telephone number to which the signatory
27 authorizes a telephonic sales call to be delivered; and

28 4. Includes a clear and conspicuous disclosure informing
29 the called party that:

30 a. By executing the agreement, the called party authorizes
31 the person making or allowing the placement of a telephonic
32 sales call to deliver or cause to be delivered a telephonic
33 sales call to the called party using an automated system for the
34 selection or dialing of telephone numbers or the playing of a
35 recorded message when a connection is completed to a number
36 called; and

37 b. He or she is not required to directly or indirectly sign
38 the written agreement or to agree to enter into such an
39 agreement as a condition of purchasing any property, goods, or



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40 services.

41 (h) "Signature" includes an electronic or digital
42 signature, to the extent that such form of signature is
43 recognized as a valid signature under applicable federal law or
44 state contract law.

45 (8) (a) A ~~No~~ person may not ~~shall~~ make or knowingly allow a
46 telephonic sales call to be made if such call involves an
47 automated system for the selection or dialing of telephone
48 numbers or the playing of a recorded message when a connection
49 is completed to a number called without the prior express
50 written consent of the called party.

51 ~~(b) Nothing herein prohibits the use of an automated~~
52 ~~telephone dialing system with live messages if the calls are~~
53 ~~made or messages given solely in response to calls initiated by~~
54 ~~the persons to whom the automatic calls or live messages are~~
55 ~~directed or if the telephone numbers selected for automatic~~
56 ~~dialing have been screened to exclude any telephone subscriber~~
57 ~~who is included on the department's then-current "no sales~~
58 ~~solicitation calls" listing or any unlisted telephone number, or~~
59 ~~if the calls made concern goods or services that have been~~
60 ~~previously ordered or purchased.~~

61 ~~(e)~~ It shall be unlawful for any person who makes a
62 telephonic sales call or causes a telephonic sales call to be
63 made to fail to transmit or cause not to be transmitted the
64 originating telephone number and, when made available by the
65 telephone solicitor's carrier, the name of the telephone
66 solicitor to any caller identification service in use by a
67 recipient of a telephonic sales call. However, it is ~~shall~~ not
68 ~~be~~ a violation to substitute, for the name and telephone number



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69 used in or billed for making the call, the name of the seller on
70 behalf of which a telephonic sales call is placed and the
71 seller's customer service telephone number, which is answered
72 during regular business hours. If a telephone number is made
73 available through a caller identification service as a result of
74 a telephonic sales call, the solicitor must ensure that
75 telephone number is capable of receiving telephone calls and
76 must connect the original call recipient, upon calling such
77 number, to the telephone solicitor or to the seller on behalf of
78 which a telephonic sales call was placed. For purposes of this
79 section, the term "caller identification service" means a
80 service that allows a telephone subscriber to have the telephone
81 number and, where available, the name of the calling party
82 transmitted contemporaneously with the telephone call and
83 displayed on a device in or connected to the subscriber's
84 telephone.

85 (c) ~~(d)~~ It shall be unlawful for any person who makes a
86 telephonic sales call or causes a telephonic sales call to be
87 made to intentionally alter the voice of the caller in an
88 attempt to disguise or conceal the identity of the caller in
89 order to defraud, confuse, or financially or otherwise injure
90 the recipient of a telephonic sales call or in order to obtain
91 personal information from the recipient of a telephonic sales
92 call which may be used in a fraudulent or unlawful manner.

93 (d) There is a rebuttable presumption that a telephonic
94 sales call made to any area code in this state is made to a
95 Florida resident or to a person in this state at the time of the
96 call.

97 (10) (a) A called party who is aggrieved by a violation of



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98 this section may bring an action to:

99 1. Enjoin such violation.

100 2. Recover actual damages or \$500, whichever is greater.

101 (b) If the court finds that the defendant willfully or
102 knowingly violated this section or rules adopted pursuant to
103 this section, the court may, in its discretion, increase the
104 amount of the award to an amount equal to not more than three
105 times the amount available under paragraph (a).

106 (11) (a) If a plaintiff prevails in any civil litigation
107 resulting from a ~~transaction involving a~~ violation of this
108 section, ~~the prevailing party,~~ after judgment in the trial court
109 and exhaustion of all appeals, if any, the plaintiff shall
110 receive his or her reasonable attorney ~~attorney's~~ fees and costs
111 from the defendant ~~nonprevailing party.~~

112 (b) The attorney for the prevailing plaintiff ~~party~~ shall
113 submit a sworn affidavit of his or her time spent on the case
114 and his or her costs incurred for all the motions, hearings, and
115 appeals to the trial judge who presided over the civil case.

116 (c) The trial judge shall award the prevailing plaintiff
117 ~~party~~ the sum of reasonable costs incurred in the action plus a
118 reasonable legal fee for the hours actually spent on the case as
119 sworn to in an affidavit.

120 (d) Any award of attorney ~~attorney's~~ fees or costs shall
121 become a part of the judgment and subject to execution as the
122 law allows.

123 (e) In any civil litigation initiated by the department or
124 the Department of Legal Affairs, the court may award to the
125 prevailing party reasonable attorney ~~attorney's~~ fees and costs
126 if the court finds that there was a complete absence of a



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127 justiciable issue of either law or fact raised by the losing
128 party or if the court finds bad faith on the part of the losing
129 party.

130 (12)~~(11)~~ Telecommunications companies shall inform their
131 customers of the provisions of this section. The notification
132 may be made by:

133 (a) Annual inserts in the billing statements mailed to
134 customers; and

135 (b) Conspicuous publication of the notice in the consumer
136 information pages of the local telephone directories.

137 (13)~~(12)~~ The department may adopt rules to implement this
138 section.

139
140 ===== T I T L E A M E N D M E N T =====

141 And the title is amended as follows:

142 Delete line 2

143 and insert:

144 An act relating to telephone solicitation; amending s.
145 501.059, F.S.; defining terms; prohibiting certain
146 telephonic sales calls without the prior express
147 written consent of the called party; removing
148 provisions authorizing the use of certain automated
149 telephone dialing systems; providing a rebuttable
150 presumption for certain calls made to any area code in
151 this state; providing a cause of action for aggrieved
152 called parties; authorizing a court to increase an
153 award for willful and knowing violations; revising
154 awards of attorney fees and costs for violations to
155 authorize only a prevailing plaintiff to receive such



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an award;