



456696

LEGISLATIVE ACTION

Senate

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House

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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;