

By Senator Gruters

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1 A bill to be entitled
2 An act relating to telephone solicitation; amending s.
3 501.059, F.S.; defining terms; prohibiting certain
4 telephonic sales calls without the prior express
5 written consent of the called party; removing
6 provisions authorizing the use of certain automated
7 telephone dialing systems; providing a rebuttable
8 presumption for certain calls made to an area code in
9 this state; providing a cause of action for aggrieved
10 called parties; authorizing a court to increase an
11 award for willful and knowing violations; revising
12 awards of attorney fees and costs for violations to
13 authorize only a prevailing defendant to receive such
14 an award; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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

24 501.059 Telephone solicitation.—

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

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

28 (g) "Prior express written consent" means a written
29 agreement that:

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30 1. Bears the signature of the called party;

31 2. Clearly authorizes the person making or allowing the
32 placement of a telephonic sales call by telephone call, text
33 message, or voicemail transmission to deliver or cause to be
34 delivered to the called party a telephonic sales call using an
35 automated system for the selection or dialing of telephone
36 numbers, the playing of a recorded message when a connection is
37 completed to a number called, or the transmission of a
38 prerecorded voicemail;

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

41 4. Includes a clear and conspicuous disclosure informing
42 the called party that:

43 a. By executing the agreement, the called party authorizes
44 the person making or allowing the placement of a telephonic
45 sales call to deliver or cause to be delivered a telephonic
46 sales call to the called party using an automated system for the
47 selection or dialing of telephone numbers or the playing of a
48 recorded message when a connection is completed to a number
49 called; and

50 b. He or she is not required to directly or indirectly sign
51 the written agreement or to agree to enter into such an
52 agreement as a condition of purchasing any property, goods, or
53 services.

54 (h) "Signature" includes an electronic or digital
55 signature, to the extent that such form of signature is
56 recognized as a valid signature under applicable federal law or
57 state contract law.

58 (8) (a) A ~~No~~ person may not shall make or knowingly allow a

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59 telephonic sales call to be made if such call involves an
60 automated system for the selection or dialing of telephone
61 numbers or the playing of a recorded message when a connection
62 is completed to a number called without the prior express
63 written consent of the called party.

64 (b) ~~Nothing herein prohibits the use of an automated~~
65 ~~telephone dialing system with live messages if the calls are~~
66 ~~made or messages given solely in response to calls initiated by~~
67 ~~the persons to whom the automatic calls or live messages are~~
68 ~~directed or if the telephone numbers selected for automatic~~
69 ~~dialing have been screened to exclude any telephone subscriber~~
70 ~~who is included on the department's then-current "no sales~~
71 ~~solicitation calls" listing or any unlisted telephone number, or~~
72 ~~if the calls made concern goods or services that have been~~
73 ~~previously ordered or purchased.~~

74 (c) It shall be unlawful for any person who makes a
75 telephonic sales call or causes a telephonic sales call to be
76 made to fail to transmit or cause not to be transmitted the
77 originating telephone number and, when made available by the
78 telephone solicitor's carrier, the name of the telephone
79 solicitor to any caller identification service in use by a
80 recipient of a telephonic sales call. However, it is ~~shall~~ not
81 ~~be~~ a violation to substitute, for the name and telephone number
82 used in or billed for making the call, the name of the seller on
83 behalf of which a telephonic sales call is placed and the
84 seller's customer service telephone number, which is answered
85 during regular business hours. If a telephone number is made
86 available through a caller identification service as a result of
87 a telephonic sales call, the solicitor must ensure that

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88 telephone number is capable of receiving telephone calls and
89 must connect the original call recipient, upon calling such
90 number, to the telephone solicitor or to the seller on behalf of
91 which a telephonic sales call was placed. For purposes of this
92 section, the term "caller identification service" means a
93 service that allows a telephone subscriber to have the telephone
94 number and, where available, the name of the calling party
95 transmitted contemporaneously with the telephone call and
96 displayed on a device in or connected to the subscriber's
97 telephone.

98 (c) ~~(d)~~ It shall be unlawful for any person who makes a
99 telephonic sales call or causes a telephonic sales call to be
100 made to intentionally alter the voice of the caller in an
101 attempt to disguise or conceal the identity of the caller in
102 order to defraud, confuse, or financially or otherwise injure
103 the recipient of a telephonic sales call or in order to obtain
104 personal information from the recipient of a telephonic sales
105 call which may be used in a fraudulent or unlawful manner.

106 (d) There is a rebuttable presumption that a telephonic
107 sales call made to an area code in this state is made to a
108 Florida resident or to a person in this state at the time of the
109 call.

110 (10) (a) A called party who is aggrieved by a violation of
111 this section may bring an action to:

- 112 1. Enjoin such violation.
113 2. Recover actual damages or \$500, whichever is greater.

114 (b) If the court finds that the defendant willfully or
115 knowingly violated this section or rules adopted pursuant to
116 this section, the court may, in its discretion, increase the

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117 amount of the award to an amount equal to not more than three
118 times the amount available under paragraph (a).

119 (11) (a) If a plaintiff prevails in any civil litigation
120 resulting from a ~~transaction involving~~ a violation of this
121 section, ~~the prevailing party,~~ after judgment in the trial court
122 and exhaustion of all appeals, if any, the plaintiff shall
123 receive his or her reasonable attorney ~~attorney's~~ fees and costs
124 from the defendant ~~nonprevailing party~~.

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

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

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

136 (e) In any civil litigation initiated by the department or
137 the Department of Legal Affairs, the court may award to the
138 prevailing party reasonable attorney ~~attorney's~~ fees and costs
139 if the court finds that there was a complete absence of a
140 justiciable issue of either law or fact raised by the losing
141 party or if the court finds bad faith on the part of the losing
142 party.

143 (12) ~~(11)~~ Telecommunications companies shall inform their
144 customers of the provisions of this section. The notification
145 may be made by:

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146 (a) Annual inserts in the billing statements mailed to
147 customers; and

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

150 (13)~~(12)~~ The department may adopt rules to implement this
151 section.

152 Section 2. This act shall take effect July 1, 2021.