

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                         (Y/N)  
ADOPTED AS AMENDED                         (Y/N)  
ADOPTED W/O OBJECTION                     (Y/N)  
FAILED TO ADOPT                             (Y/N)  
WITHDRAWN                                     (Y/N)  
OTHER                                          

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1 Committee/Subcommittee hearing bill: Civil Justice & Property  
2 Rights Subcommittee  
3 Representative Beltran offered the following:

4  
5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (1), (8), and (11) of section  
8 501.059, Florida Statutes, are amended, and subsections (9) and  
9 (10) are added to that section, to read:

10 501.059 Telephone solicitation.—

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

12 (a) "Automated system" means a computerized, mechanical,  
13 or other technological system or device that creates a phone  
14 number, stores or selects any phone number from any database or  
15 list, and then causes that number to be called. "Automated  
16 system" includes any system which the caller or any other person

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17 operates by "click to call" or where the caller or any other  
18 person selects numbers from a list to call. The term does not  
19 include a user selecting numbers from a contact list or phone  
20 log on a cellular, handheld, or landline device.

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

23 (c) "Caller" means a natural person who causes a call to  
24 be made and who is ready to speak to the called party at the  
25 time the call is made.

26 (d)-(b) "Consumer" means an actual or prospective  
27 purchaser, lessee, or recipient of consumer goods or services.

28 (e)-(e) "Consumer goods or services" means real property or  
29 tangible or intangible personal property or services that are ~~is~~  
30 normally used for personal, family, or household purposes. The  
31 definition includes ~~including~~, but is not limited to, any such  
32 property intended to be attached to or installed in any real  
33 property without regard to whether it is so attached or  
34 installed, as well as cemetery lots and timeshare estates, and  
35 any related services ~~related to such property.~~

36 (f)-(d) "Department" means the Department of Agriculture  
37 and Consumer Services.

38 (g)-(e) "Doing business in this state" means businesses  
39 that conduct telephonic sales calls from a location in Florida  
40 or from other states or nations to consumers located in Florida.

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41        ~~(h)-(f)~~ "Merchant" means a person who, directly or  
42 indirectly, offers or makes available to consumers any consumer  
43 goods or services.

44        ~~(i)-(g)~~ "Prior express written consent" means a written  
45 agreement that:

46            1. Bears the signature of the called party;

47            2. Clearly authorizes the person making or allowing the  
48 placement of a telephonic sales call by telephone call, text  
49 message, or voicemail transmission to deliver or cause to be  
50 delivered to the called party a telephonic sales call using an  
51 automated system for the selection and ~~or~~ dialing of telephone  
52 numbers, the playing of a recorded message when a connection is  
53 completed to a number called, the transmission of a text  
54 message, or the transmission of a prerecorded voicemail;

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

57            4. Includes a clear and conspicuous disclosure informing  
58 the called party that:

59            a. By executing the agreement, the called party authorizes  
60 the person making or allowing the placement of a telephonic  
61 sales call to deliver or cause to be delivered a telephonic  
62 sales call to the called party using an automated system for the  
63 selection and ~~or~~ dialing of telephone numbers or the playing of  
64 a recorded message when a connection is completed to a number

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65 called, the transmission of a text message, or the transmission  
66 of a prerecorded voicemail; and

67 b. He or she is not required to directly or indirectly  
68 sign the written agreement or to agree to enter into such an  
69 agreement as a condition of purchasing any property, goods, or  
70 services.

71  
72 For purposes of subparagraph (i)4., a designated signature line  
73 with the following notice in at least 12-point bold font within  
74 two inches of the signature is presumptively satisfactory in  
75 form:

76 By signing below, you authorize [NAME] to place a  
77 telephonic sales call to you at [TELEPHONE PHONE NUMBER] by  
78 way of telephone calls, text messages, or voicemail  
79 transmissions using an automated system for the selection  
80 and/or dialing of telephone numbers or the playing of a  
81 recorded message when a connection is completed to your  
82 phone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH  
83 AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY,  
84 GOODS, OR SERVICES.

85 (j) "Selection" means to store or randomly produce  
86 telephone numbers to be called and to create a list of called  
87 parties without manual intervention.

88 (k)~~(h)~~ "Signature" includes an electronic or digital  
89 signature, including agreements obtained via a compliant email,

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90 website form, text message, telephone keypress, or voice  
91 recording, to the extent that such form of signature is  
92 recognized as a valid signature under applicable federal law or  
93 state contract law.

94 (l)-(i) "Telephone solicitor" means a natural person, firm,  
95 organization, partnership, association, or corporation, or a  
96 subsidiary or affiliate thereof, doing business in this state,  
97 who makes or causes to be made a telephonic sales call,  
98 including, but not limited to, calls made by use of automated  
99 dialing or recorded message devices.

100 (m)-(j) "Telephonic sales call" means a telephone call,  
101 text message, or voicemail transmission to a consumer for the  
102 purpose of soliciting a sale or acquisition of any consumer  
103 goods or services, soliciting an extension of credit for  
104 consumer goods or services, or obtaining information that will  
105 or may be used for the direct solicitation of a sale or  
106 acquisition of consumer goods or services or an extension of  
107 credit for such purposes.

108 (n)-(k) "Unsolicited telephonic sales call" means a  
109 telephonic sales call other than a call made:

110 1. Within 120 days after ~~In response to~~ an express request  
111 of the ~~person~~ called party;

112 2. Primarily in connection with an existing debt or  
113 contract, if payment or performance of such debt or contract has  
114 not been completed at the time of such call;

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115 3. To a person with whom the telephone solicitor has a  
116 prior or existing business relationship; ~~or~~

117 4. By a newspaper publisher or his or her agent or  
118 employee in connection with his or her business;

119 5. To a person who has provided prior express written  
120 consent to be contacted; or

121 6. For the purpose of polling or soliciting the expression  
122 of ideas, opinions, or votes, including when such polling or  
123 soliciting is made by text message.

124 (o)(1) "Voicemail transmission" means technologies that  
125 deliver a voice message directly to a voicemail application,  
126 service, or device.

127 (2) Any telephone solicitor who makes an unsolicited  
128 telephonic sales call to a called party ~~residential, mobile, or~~  
129 ~~telephonic paging device telephone number~~ shall identify himself  
130 or herself by his or her true first and last names and the  
131 business on whose behalf he or she is soliciting immediately  
132 upon making contact by telephone with the called party ~~person~~  
133 ~~who is the object of the telephone solicitation.~~

134 (8)(a) A telephone solicitor ~~person~~ may not make or  
135 knowingly allow an unsolicited a telephonic sales call to be  
136 made if such call involves an automated system for the selection  
137 and ~~or~~ dialing of telephone numbers or the playing of a recorded  
138 message when a connection is completed to a number called, the  
139 transmission of a text message, or the transmission of a

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140 ~~prerecorded voicemail without the prior express written consent~~  
141 ~~of the called party.~~

142 (b) It shall be unlawful for any person who makes a  
143 telephonic sales call or causes a telephonic sales call to be  
144 made to fail to transmit or cause not to be transmitted the  
145 originating telephone number and, when made available by the  
146 telephone solicitor's carrier, the name of the telephone  
147 solicitor to any caller identification service in use by a  
148 recipient of a telephonic sales call. However, it is not a  
149 violation to substitute, for the name and telephone number used  
150 in or billed for making the call, the name of the seller on  
151 behalf of which a telephonic sales call is placed and the  
152 seller's customer service telephone number, which is answered  
153 during regular business hours. If a telephone number is made  
154 available through a caller identification service as a result of  
155 a telephonic sales call, the solicitor must ensure that  
156 telephone number is capable of receiving telephone calls and  
157 must connect the original call recipient, upon calling such  
158 number, to the telephone solicitor or to the seller on behalf of  
159 which a telephonic sales call was placed. For purposes of this  
160 section, the term "caller identification service" means a  
161 service that allows a telephone subscriber to have the telephone  
162 number and, where available, the name of the calling party  
163 transmitted contemporaneously with the telephone call and

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164 displayed on a device in or connected to the subscriber's  
165 telephone.

166 (c) It shall be unlawful for any person who makes a  
167 telephonic sales call or causes a telephonic sales call to be  
168 made to intentionally alter the voice of the caller in an  
169 attempt to disguise or conceal the identity of the caller in  
170 order to defraud, confuse, or financially or otherwise injure  
171 the recipient of a telephonic sales call or in order to obtain  
172 personal information from the recipient of a telephonic sales  
173 call which may be used in a fraudulent or unlawful manner.

174 (d) There is a rebuttable presumption that a telephonic  
175 sales call made to any area code in this state is made to a  
176 Florida resident or to a person in this state at the time of the  
177 call.

178 (e) This subsection does not prohibit the use of an  
179 automated system for the selection and dialing of telephone  
180 numbers with live messages or text messages if the call or  
181 message is made solely in response to an inquiry initiated by  
182 the called party. However, only three such calls or messages may  
183 be made in response to each inquiry.

184 (9) No telephone solicitor shall cause any unsolicited  
185 telephonic sales call to be initiated by use of any automated  
186 system.

187 (10) No telephone solicitor shall cause any telephonic  
188 sales call to be initiated by any person other than the caller.

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189        ~~(11)(9)~~(a) The department shall investigate any complaints  
190 received concerning violations of this section. If, after  
191 investigating a complaint, the department finds that there has  
192 been a violation of this section, the department or the  
193 Department of Legal Affairs may bring an action to impose a  
194 civil penalty and to seek other relief, including injunctive  
195 relief, as the court deems appropriate against the telephone  
196 solicitor. The civil penalty shall be in the Class IV category  
197 pursuant to s. 570.971 for each violation and shall be deposited  
198 in the General Inspection Trust Fund if the action or proceeding  
199 was brought by the department, or the Legal Affairs Revolving  
200 Trust Fund if the action or proceeding was brought by the  
201 Department of Legal Affairs. This civil penalty may be recovered  
202 in any action brought under this part by the department, or the  
203 department may terminate any investigation or action upon  
204 agreement by the person to pay a stipulated civil penalty. The  
205 department or the court may waive any civil penalty if the  
206 person has previously made full restitution or reimbursement or  
207 has paid actual damages to the consumers who have been injured  
208 by the violation.

209        (b) The department may, as an alternative to the civil  
210 penalties provided in paragraph (a), impose an administrative  
211 fine in the Class III category pursuant to s. 570.971 for each  
212 act or omission that constitutes a violation of this section. An  
213 administrative proceeding that could result in the entry of an

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214 order imposing an administrative penalty must be conducted  
215 pursuant to chapter 120.

216 ~~(12)-(10)~~(a) A called party who is aggrieved by a violation  
217 of this section may bring an action to:

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

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

225 ~~(13)-(11)~~(a) In any civil litigation resulting from a  
226 ~~transaction involving a~~ violation of this section, the  
227 prevailing party, after judgment in the trial court and  
228 exhaustion of all appeals, if any, shall receive his or her  
229 reasonable attorney ~~attorney's~~ fees and costs from the  
230 nonprevailing party.

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

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

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

242 (e) In any civil litigation initiated by the department or  
243 the Department of Legal Affairs, the court may award to the  
244 prevailing party reasonable attorney ~~attorney's~~ fees and costs  
245 if the court finds that there was a complete absence of a  
246 justiciable issue of either law or fact raised by the losing  
247 party or if the court finds bad faith on the part of the losing  
248 party.

249 ~~(14)-(12)~~ Telecommunications companies shall inform their  
250 customers of the provisions of this section. The notification  
251 may be made by:

252 (a) Annual inserts in the billing statements mailed to  
253 customers; and

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

256 ~~(15)-(13)~~ The department may adopt rules to implement this  
257 section.

258 Section 2. The amendments made by this act are remedial in  
259 nature and apply retroactively to July 1, 2021, and to any  
260 proceeding pending or commenced on or after July 1, 2021, except  
261 for the amendments made to subsection (11) of section 501.059,  
262 F.S., relating to attorney fees, which shall not apply  
263 retroactively.

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264 | Section 3. This act shall take effect July 1, 2022.