

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WITHDRAWN \_\_\_\_\_ (Y/N)  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: Commerce Committee  
2 Representative Beltran offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (9) through (13) of section  
7 501.059, Florida Statutes, are renumbered as subsections (10)  
8 through (14), respectively, subsections (1) and (2), paragraph  
9 (a) of subsection (8), present subsection (10), and paragraphs  
10 (a), (c), (d), and (e) of present subsection (11) are amended,  
11 paragraphs (e) and (f) are added to subsection (8), and new  
12 subsections (9) and (15) are added to that section, to read:

13 501.059 Telephone solicitation.—

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

15 (a) "Automated system" means a computerized, mechanical,  
16 or other technological system or device that creates a telephone

Amendment No. 1

17 number, or stores or selects any telephone number from any  
18 database or list, and then causes that telephone number to be  
19 called. The term also includes any system which the live caller,  
20 or any other person, operates by click-to-call. The term does  
21 not include a live caller manually selecting and calling  
22 telephone numbers using only a contact list or telephone log.

23 (b)-(a) "Called party" means a person who is the regular  
24 user of the telephone number that receives a telephonic sales  
25 call.

26 (c) "Live caller" means a natural person who causes a call  
27 to be made and who is ready to speak to the called party at the  
28 time the call is made.

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

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

39 (f)-(d) "Department" means the Department of Agriculture  
40 and Consumer Services.

41 (g)-(e) "Doing business in this state" means businesses

672399 - h1095-strike.docx

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Amendment No. 1

42 that conduct telephonic sales calls from a location in Florida  
43 or from other states or nations to consumers located in Florida.

44 (h) "Express request" means a prior oral or written  
45 request, invitation, consent or permission from a called party  
46 made directly or indirectly to the live caller or telephone  
47 solicitor, for calls or text messages regarding the live  
48 caller's or telephone solicitor's goods, services or products.

49 (i)-(f) "Merchant" means a person who, directly or  
50 indirectly, offers or makes available to consumers any consumer  
51 goods or services.

52 (j)-(g) "Prior express written consent" means a written  
53 agreement that:

54 1. Bears the signature of the called party;

55 2. Clearly authorizes the person making or allowing the  
56 placement of a telephonic sales call by telephone call, text  
57 message, or voicemail transmission to deliver or cause to be  
58 delivered to the called party a telephonic sales call using an  
59 automated system for the selection and ~~or~~ dialing of telephone  
60 numbers, the playing of a recorded message when a connection is  
61 completed to a number called, the transmission of a text  
62 message, or the transmission of a prerecorded voicemail;

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

65 4. Includes a clear and conspicuous disclosure informing  
66 the called party that:

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Amendment No. 1

67 a. By executing the agreement, the called party authorizes  
68 the person making or allowing the placement of a telephonic  
69 sales call to deliver or cause to be delivered a telephonic  
70 sales call to the called party using an automated system for the  
71 selection and ~~or~~ dialing of telephone numbers or the playing of  
72 a recorded message when a connection is completed to a number  
73 called, the transmission of a text message, or the transmission  
74 of a prerecorded voicemail; and

75 b. He or she is not required to directly or indirectly  
76 sign the written agreement or to agree to enter into such an  
77 agreement as a condition of purchasing any property, goods, or  
78 services.

79  
80 For purposes of subparagraph 4., a designated signature line  
81 with the following notice placed directly above the designated  
82 signature line that is prominent and robust in at least 12-point  
83 bold font, is presumptively compliant:

84  
85 By signing below, you authorize [NAME] to place a  
86 telephonic sales call to you at [TELEPHONE NUMBER] by way  
87 of telephone calls, text messages, or voicemail  
88 transmissions using an automated system for the selection  
89 and/or dialing of telephone numbers or the playing of a  
90 recorded message when a connection is completed to your  
91 telephone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH

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Published On: 2/22/2022 9:07:07 PM

Amendment No. 1

92 AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY,  
93 GOODS, OR SERVICES.

94  
95 ~~(k)-(h)~~ "Signature" includes an electronic or digital  
96 signature, including agreements obtained through a compliant e-  
97 mail, website form, text message, telephone keypress, or voice  
98 recording, or any to the extent that such form of signature that  
99 is recognized as a valid signature under applicable federal law  
100 or state contract law.

101 ~~(l)-(i)~~ "Telephone solicitor" means a natural person, firm,  
102 organization, partnership, association, or corporation, or a  
103 subsidiary or affiliate thereof, doing business in this state,  
104 who makes or causes to be made a telephonic sales call,  
105 including, but not limited to, calls made by use of automated  
106 systems, automated dialing or recorded message devices.

107 ~~(m)-(j)~~ "Telephonic sales call" means a telephone call,  
108 text message, or voicemail transmission, including, but not  
109 limited to, calls made by the use of automated systems, or  
110 automated dialing or recorded message devices, to a consumer for  
111 the purpose of soliciting a sale, lease, or acquisition of any  
112 consumer goods or services, soliciting an extension of credit  
113 for consumer goods or services, or obtaining information that  
114 will or may be used for the direct solicitation of a sale,   
115 lease, or acquisition of consumer goods or services or an  
116 extension of credit for such purposes.

672399 - h1095-strike.docx

Published On: 2/22/2022 9:07:07 PM

## Amendment No. 1

- 117        (n)-(k) "Unsolicited telephonic sales call" means a  
118 telephonic sales call other than a call made:
- 119            1. Within 120 days after ~~In response to~~ an express request  
120 of the ~~person~~ called party;
- 121            2. Primarily in connection with an existing debt or  
122 contract, if payment or performance of such debt or contract has  
123 not been completed at the time of such call;
- 124            3. To a person with whom the telephone solicitor has a  
125 prior or existing business relationship; ~~or~~
- 126            4. By a newspaper publisher or his or her agent or  
127 employee in connection with his or her business;
- 128            5. To a person who has provided prior express written  
129 consent to be contacted; or
- 130            6. For the purpose of polling or soliciting the expression  
131 of ideas, opinions, or votes, including when such polling or  
132 soliciting is made by text message.
- 133        (o)-(l) "Voicemail transmission" means technologies that  
134 deliver a voice message directly to a voicemail application,  
135 service, or device.
- 136            (2) Any telephone solicitor who makes an unsolicited  
137 telephonic sales call to a called party ~~residential, mobile, or~~  
138 ~~telephonic paging device~~ ~~telephone number~~ shall identify himself  
139 or herself by his or her true first and last names and the  
140 business on whose behalf he or she is soliciting immediately  
141 upon making contact by telephone with the called party ~~person~~

Amendment No. 1

142 ~~who is the object of the telephone solicitation.~~

143 (8)(a) A telephone solicitor or live caller ~~person~~ may not  
144 make or knowingly allow an unsolicited ~~a~~ telephonic sales call  
145 to be made if such call involves an automated system for the  
146 selection and ~~or~~ dialing of telephone numbers or the playing of  
147 a recorded message when a connection is completed to a number  
148 called, the transmission of a text message, or the transmission  
149 of a prerecorded voicemail ~~without the prior express written~~  
150 ~~consent of the called party.~~

151 (e) This subsection does not prohibit the use of an  
152 automated system for the selection and dialing of telephone  
153 numbers with a live caller or text messages if the call or  
154 message is made solely in response to an express request  
155 initiated by the called party, or prior express written consent  
156 by the called party, and the live caller or telephone solicitor  
157 maintains evidence of the called party's express request or  
158 prior express written consent. However, only three such calls or  
159 messages may be made in response to each express request or  
160 prior express written consent, unless such express request or  
161 prior express written consent specifically indicates a different  
162 number of calls or messages that are authorized or a specific  
163 time period that such calls or messages are authorized to be  
164 made.

165 (f) A merchant, telephone solicitor, live caller, or other  
166 person may not require any consumer or called party to provide

Amendment No. 1

167 an express request or prior express written consent as a  
168 condition of any transaction.

169 (9) (a) A telephone solicitor may not cause any unsolicited  
170 telephonic sales call to be initiated by use of any automated  
171 system.

172 (b) A telephone solicitor may not cause any telephonic  
173 sales call to be initiated by any person or device other than a  
174 live caller.

175 (12) ~~(11)~~ (a) In any civil litigation resulting from a  
176 transaction involving a violation of this section, the  
177 prevailing party, after judgment in the trial court and  
178 exhaustion of all appeals, if any, may ~~shall~~ receive his or her  
179 reasonable attorney ~~attorney's~~ fees and costs from the  
180 nonprevailing party.

181 (c) The trial judge may ~~shall~~ award the prevailing party  
182 the sum of reasonable costs incurred in the action plus a  
183 reasonable legal fee for the hours actually spent on the case as  
184 sworn to in an affidavit.

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

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

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Published On: 2/22/2022 9:07:07 PM



Amendment No. 1

192 justiciable issue of either law or fact raised by the losing  
193 party or if the court finds bad faith on the part of the losing  
194 party.

195 (15) If any provision of this section or its application  
196 to any person or circumstance is held invalid, the invalidity  
197 does not affect other provisions or applications of this section  
198 that can be given effect without the invalid provision or  
199 application, and to this end the provisions of this section are  
200 severable.

201 Section 2. The amendments made by this act are remedial in  
202 nature and apply retroactively to July 1, 2021, and to any  
203 proceeding pending or commenced on or after July 1, 2021, except  
204 that the amendments made by this act to s. 501.059 (8)(e) and  
205 (9) relating to violations, and (12), relating to attorney fees  
206 and costs, do not apply retroactively.

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

208 -----  
209 -----

210 **T I T L E A M E N D M E N T**

211 Remove everything before the enacting clause and insert:  
212 An act relating to telephone solicitation; amending s.  
213 501.059, F.S.; providing and revising definitions;  
214 conforming provisions; authorizing the use of  
215 automated systems with live messages or text messages  
216 in response to certain inquiries; providing a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1095 (2022)

Amendment No. 1

217 |        limitation; providing an exception to the limitation  
218 |        of such calls or messages under certain circumstances;  
219 |        authorizing the purchase of any property, goods, or  
220 |        services without the express request or prior written  
221 |        consent of a called party; prohibiting certain  
222 |        telephonic sales calls; prohibiting any action for  
223 |        damages if a called party provides an express request  
224 |        or prior written consent to remove his or her number  
225 |        from specified lists; authorizing such requests to be  
226 |        made at certain times; revising provisions for the  
227 |        award of attorney fees and costs; providing  
228 |        severability; providing retroactive applicability;  
229 |        providing an effective date.

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