

1 A bill to be entitled  
2 An act relating to telephone solicitation; amending s.  
3 501.059, F.S.; revising definitions; conforming a  
4 provision; authorizing the use of automated telephone  
5 dialing systems with live messages or text messages in  
6 response to certain inquiries; providing a limitation;  
7 revising provisions for the award of attorney fees and  
8 costs; providing for retroactive applicability;  
9 providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. Paragraphs (g) and (k) of subsection (1),  
14 paragraph (a) of subsection (8), and subsection (11) of section  
15 501.059, Florida Statutes, are amended, and paragraph (e) is  
16 added to subsection (8) of that section, to read:

17 501.059 Telephone solicitation.—

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

19 (g) "Prior express written consent" means a written  
20 agreement that:

- 21 1. Bears the signature of the called party;  
22 2. Clearly authorizes the person making or allowing the  
23 placement of a telephonic sales call by telephone call, text  
24 message, or voicemail transmission to deliver or cause to be  
25 delivered to the called party a telephonic sales call using an

26 | automated system for the selection and ~~or~~ dialing of telephone  
 27 | numbers, the playing of a recorded message when a connection is  
 28 | completed to a number called, the transmission of a text  
 29 | message, or the transmission of a prerecorded voicemail;

30 |         3. Includes the telephone number to which the signatory  
 31 | authorizes a telephonic sales call to be delivered; and

32 |         4. Includes a clear and conspicuous disclosure informing  
 33 | the called party that:

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

41 |             b. He or she is not required to directly or indirectly  
 42 | sign the written agreement or to agree to enter into such an  
 43 | agreement as a condition of purchasing any property, goods, or  
 44 | services.

45 |         (k) "Unsolicited telephonic sales call" means a telephonic  
 46 | sales call other than a call made:

47 |             1. Within 120 days after ~~In response to~~ an express request  
 48 | of the ~~person~~ called party;

49 |             2. Primarily in connection with an existing debt or  
 50 | contract, if payment or performance of such debt or contract has

51 not been completed at the time of such call;

52 3. To a person with whom the telephone solicitor has a  
53 prior or existing business relationship; or

54 4. By a newspaper publisher or his or her agent or  
55 employee in connection with his or her business.

56 (8) (a) A person may not make or knowingly allow a  
57 telephonic sales call to be made if such call involves an  
58 automated system for the selection and ~~or~~ dialing of telephone  
59 numbers or the playing of a recorded message when a connection  
60 is completed to a number called without the prior express  
61 written consent of the called party.

62 (e) This subsection does not prohibit the use of an  
63 automated telephone dialing system with live messages or text  
64 messages if the call or message is made solely in response to an  
65 inquiry initiated by the called party. However, only two such  
66 calls or messages may be made in response to each inquiry.

67 (11) (a) In any civil litigation resulting from a  
68 ~~transaction involving a~~ violation of this section, the  
69 prevailing party, after judgment in the trial court and  
70 exhaustion of all appeals, if any, shall receive his or her  
71 reasonable attorney ~~attorney's~~ fees and costs from the  
72 nonprevailing party.

73 (b) The attorney for the prevailing party shall submit a  
74 sworn affidavit of his or her time spent on the case and his or  
75 her costs incurred for all the motions, hearings, and appeals to

76 the trial judge who presided over the civil case.

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

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

84 (e) In any civil litigation initiated by the department or  
85 the Department of Legal Affairs, the court may award to the  
86 prevailing party reasonable attorney ~~attorney's~~ fees and costs  
87 if the court finds that there was a complete absence of a  
88 justiciable issue of either law or fact raised by the losing  
89 party or if the court finds bad faith on the part of the losing  
90 party.

91 Section 2. The amendments made by this act to s. 501.059,  
92 Florida Statutes, are remedial in nature and apply retroactively  
93 to July 1, 2021, and to any proceeding pending or commenced on  
94 or after July 1, 2021.

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