

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

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

13
 14 Section 1. Subsections (9) through (13) of section
 15 501.059, Florida Statutes, are renumbered as subsections (10)
 16 through (14), respectively, subsections (1) and (2), paragraph
 17 (a) of subsection (8), and paragraphs (a), (d), and (e) of
 18 present subsection (11) are amended, paragraph (e) is added to
 19 subsection (8), and a new subsection (9) is added to that
 20 section, to read:

21 501.059 Telephone solicitation.—

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

23 (a) "Automated system" means a computerized, mechanical,
 24 or other technological system or device that creates a telephone
 25 number, stores or selects any telephone number from any database

26 | or list, and then causes that telephone number to be called. The
 27 | term includes any system which the caller or any other person
 28 | operates by click-to-call or which the caller or any other
 29 | person selects telephone numbers from a list to call. The term
 30 | does not include a user selecting telephone numbers from a
 31 | contact list or telephone log on a cellular, handheld, or
 32 | landline device.

33 | (b)-(a) "Called party" means a person who is the regular
 34 | user of the telephone number that receives a telephonic sales
 35 | call.

36 | (c) "Caller" means a natural person who causes a call to
 37 | be made and who is ready to speak to the called party at the
 38 | time the call is made.

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

41 | (e)-(e) "Consumer goods or services" means real property or
 42 | tangible or intangible personal property or services that are ~~is~~
 43 | normally used for personal, family, or household purposes. The
 44 | term includes, including, but is not limited to, any such
 45 | property intended to be attached to or installed in any real
 46 | property without regard to whether it is so attached or
 47 | installed, as well as cemetery lots and timeshare estates, and
 48 | any related services ~~related to such property~~.

49 | (f)-(d) "Department" means the Department of Agriculture
 50 | and Consumer Services.

51 (g)~~(e)~~ "Doing business in this state" means businesses
 52 that conduct telephonic sales calls from a location in Florida
 53 or from other states or nations to consumers located in Florida.

54 (h)~~(f)~~ "Merchant" means a person who, directly or
 55 indirectly, offers or makes available to consumers any consumer
 56 goods or services.

57 (i)~~(g)~~ "Prior express written consent" means a written
 58 agreement that:

- 59 1. Bears the signature of the called party;
- 60 2. Clearly authorizes the person making or allowing the
 61 placement of a telephonic sales call by telephone call, text
 62 message, or voicemail transmission to deliver or cause to be
 63 delivered to the called party a telephonic sales call using an
 64 automated system for the selection and ~~or~~ dialing of telephone
 65 numbers, the playing of a recorded message when a connection is
 66 completed to a number called, the transmission of a text
 67 message, or the transmission of a prerecorded voicemail;
- 68 3. Includes the telephone number to which the signatory
 69 authorizes a telephonic sales call to be delivered; and
- 70 4. Includes a clear and conspicuous disclosure informing
 71 the called party that:
 - 72 a. By executing the agreement, the called party authorizes
 73 the person making or allowing the placement of a telephonic
 74 sales call to deliver or cause to be delivered a telephonic
 75 sales call to the called party using an automated system for the

76 selection and ~~or~~ dialing of telephone numbers or the playing of
 77 a recorded message when a connection is completed to a number
 78 called, the transmission of a text message, or the transmission
 79 of a prerecorded voicemail; and

80 b. He or she is not required to directly or indirectly
 81 sign the written agreement or to agree to enter into such an
 82 agreement as a condition of purchasing any property, goods, or
 83 services.

84
 85 For purposes of subparagraph 4., a designated signature line
 86 with the following notice in at least 12-point bold font within
 87 2 inches of the signature is presumptively satisfactory in form:

88
 89 By signing below, you authorize [NAME] to place a
 90 telephonic sales call to you at [TELEPHONE NUMBER] by way
 91 of telephone calls, text messages, or voicemail
 92 transmissions using an automated system for the selection
 93 and/or dialing of telephone numbers or the playing of a
 94 recorded message when a connection is completed to your
 95 telephone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH
 96 AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY,
 97 GOODS, OR SERVICES.

98
 99 (j) "Selection" means to store or randomly produce
 100 telephone numbers to be called and to create a list of called

101 parties without manual intervention.

102 (k)-(h) "Signature" includes an electronic or digital
 103 signature, including agreements obtained through a compliant e-
 104 mail, website form, text message, telephone keypress, or voice
 105 recording, to the extent that such form of signature is
 106 recognized as a valid signature under applicable federal law or
 107 state contract law.

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

114 (m)-(j) "Telephonic sales call" means a telephone call,
 115 text message, or voicemail transmission to a consumer for the
 116 purpose of soliciting a sale or acquisition of any consumer
 117 goods or services, soliciting an extension of credit for
 118 consumer goods or services, or obtaining information that will
 119 or may be used for the direct solicitation of a sale or
 120 acquisition of consumer goods or services or an extension of
 121 credit for such purposes.

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

- 124 1. Within 120 days after ~~In response to~~ an express request
 125 of the ~~person~~ called party;

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

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

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

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

135 6. For the purpose of polling or soliciting the expression
 136 of ideas, opinions, or votes, including when such polling or
 137 soliciting is made by text message.

138 (o)~~(1)~~ "Voicemail transmission" means technologies that
 139 deliver a voice message directly to a voicemail application,
 140 service, or device.

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

148 (8) (a) A telephone solicitor ~~person~~ may not make or
 149 knowingly allow an unsolicited ~~a~~ telephonic sales call to be
 150 made if such call involves an automated system for the selection

151 and ~~or~~ dialing of telephone numbers or the playing of a recorded
152 message when a connection is completed to a number called, the
153 transmission of a text message, or the transmission of a
154 prerecorded voicemail ~~without the prior express written consent~~
155 ~~of the called party.~~

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

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

165 (b) A telephone solicitor may not cause any telephonic
166 sales call to be initiated by any person other than the caller.

167 (12)-(11)(a) In any civil litigation resulting from a
168 ~~transaction involving a~~ violation of this section, the
169 prevailing party, after judgment in the trial court and
170 exhaustion of all appeals, if any, shall receive his or her
171 reasonable attorney ~~attorney's~~ fees and costs from the
172 nonprevailing party.

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

176 (e) In any civil litigation initiated by the department or
177 the Department of Legal Affairs, the court may award to the
178 prevailing party reasonable attorney ~~attorney's~~ fees and costs
179 if the court finds that there was a complete absence of a
180 justiciable issue of either law or fact raised by the losing
181 party or if the court finds bad faith on the part of the losing
182 party.

183 Section 2. The amendments made by this act are remedial in
184 nature and apply retroactively to July 1, 2021, and to any
185 proceeding pending or commenced on or after July 1, 2021, except
186 that the amendments made by this act to s. 501.059(12), Florida
187 Statutes, relating to attorney fees and costs, do not apply
188 retroactively.

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