

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 1564

INTRODUCER: Commerce and Tourism Committee and Senator Hutson

SUBJECT: Telephone Solicitation

DATE: January 25, 2022

REVISED: 1/26/2022

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u></u>	<u></u>	<u>RI</u>	<u></u>
3.	<u></u>	<u></u>	<u>RC</u>	<u></u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

Section 501.059, F.S., prohibits telephonic sales calls that:

- Use an automated system for the selection *or* dialing of telephone numbers or playing a recorded message to a number without the prior express written consent of the called party;
- Fail to transmit the originating telephone number and, when possible, name of the solicitor;  
or
- Alter the voice of the caller in order to defraud, confuse, or injure the telephone call recipient.

The law also includes Do-Not-Call provisions, and similar consumer protections.

CS/SB 1564 makes the following changes to s. 501.059, F.S., regarding telephone solicitations:

- Amends the definition of an “automated system” that is subject to s. 501.059, F.S., to include only those that select *and* dial telephone numbers, play a recorded message, *transmit a text message*, or transmit a prerecorded voicemail, rather than those that select *or* dial telephone numbers;
- Classifies telephonic sales calls made 120 days or more after the called party’s express request for such a call as an unsolicited telephonic sales call;
- Removes telephonic sales calls and text messages that poll or solicit the expression of ideas, opinions, or votes from regulation as an unsolicited telephonic sales call subject to the Do-Not-Call list regulations;

- Limits the number of calls or messages that are made using an automated telephone dialing system with live messages or text messages in response to an inquiry by the called party to two per inquiry, but expressly provides that such calls are not prohibited pursuant to s. 501.059(8), F.S.; and
- Declares the bill as remedial in nature and applies the amendments made by the bill retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

The bill takes effect upon becoming law.

## II. Present Situation:

### Unsolicited Phone Calls

Consumers are often inundated with unwanted calls. In fiscal year 2021, the Federal Trade Commission (FTC) received 388,227 complaints from Florida consumers about unwanted telephone calls.<sup>1</sup> The Federal Communications Commission (FCC) reports that unwanted calls constitute their top consumer complaint.<sup>2</sup> Unwanted calls can come in many forms, including robocalls<sup>3</sup>, which use an “automatic telephone dialing system,”<sup>4</sup> referred to as an autodialer, and play a recorded message upon connection with the consumer; “spoofing” or “spoofed calls,” which transmit falsified information to a consumer’s caller ID to disguise the solicitor’s identity; and unwanted telemarketing calls.<sup>5</sup>

State and federal action to combat these issues are limited because there are legitimate and legal uses of this technology. For example, a doctor’s office may legally use a robocall to remind one of an upcoming appointment.<sup>6</sup> Additionally, some solicitors act outside the scope of federal or state enforcement authority.

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<sup>1</sup> Federal Trade Commission, *Do Not Call Data Book 2020* (Nov. 2021), [https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2021/dnc\\_data\\_book\\_2021.pdf](https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2021/dnc_data_book_2021.pdf) (last visited Jan. 24, 2022).

<sup>2</sup> Federal Communications Commission, *Stop Unwanted Robocalls and Texts* (Mar. 17, 2021), <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Jan. 24, 2022).

<sup>3</sup> “At the FCC, we use the term ‘robocalls’ to refer not to just prerecorded calls but also autodialed calls, regardless of whether the call is live or prerecorded.” *Stopping Fraudulent Robocall Scams: Can More Be Done?*, Hearing Before the Senate Subcomm. on Cons. Protect., Product Safety, and Ins. of the Comm. on Commerce, Science, and Transportation, 130th Cong. (July 10, 2013) (Statement of Eric J. Bash, Associate Chief, Enforcement Bureau, Federal Communications Commission) <https://www.govinfo.gov/content/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf> (last visited Jan. 24, 2022).

<sup>4</sup> An “automatic telephone dialing system” or “autodialer” is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

<sup>5</sup> “Fraudsters have also further exploited caller ID spoofing, which induces the consumer to pick up the phone, while at the same time enabling the scammer to hide its identity and location.” *Stopping Fraudulent Robocall Scams*, Hearing, *supra* note 3, Statement of Lois Greisman, Associate Director, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission.

<sup>6</sup> Federal Communication Commission, Consumer and Governmental Affairs Bureau, *Report on Robocalls* (Feb. 2019), CG Docket No. 17-59, <https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls> (last visited Jan. 24, 2022). *See also*, Federal Communications Commission, *Stop Unwanted Calls and Texts--Spoofing*, *supra* note 2. (Mar. 2, 2021) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 24, 2022).

## Florida's SB 1120 (2021)

In 2021, the Florida Legislature updated s. 501.059, F.S., and the Florida Telemarketing Act, s. 501.601, F.S., et. seq, to further address some of these issues facing consumers.<sup>7</sup>

Section 501.059, F.S., currently requires all sales telephone calls, text messages, and direct-to-voicemail transmissions made with an autodialer that is capable of either selecting *or* dialing the recipient's number to have the receiving consumer's prior express written consent. Additionally, such calls require prior consent if they will play a recorded message upon connection with the recipient. Aggrieved parties can sue under this section to recover actual monetary damages or \$500, plus attorney fees and costs. Additionally, a court may triple these damages if the underlying violation is willfully or knowingly performed.

One entity reports that this 2021 change to the FTSA has resulted in at least 100 class action complaints against those who make telephone sales calls since July 2021.<sup>8</sup>

## Florida Law (Section 501.059, F.S.)

### *Generally*

Section 501.059, F.S., governs telephone solicitors—those who make or cause to be made telephonic sales calls in this state.<sup>9</sup> A telephonic sales call includes solicitations via telephone calls, text messages, and direct-to-voicemail transmissions.<sup>10</sup>

For example, the section requires telephone solicitors to:

- Identify themselves and the businesses on whose behalf they make a telephone solicitation call immediately upon making contact with the person called;
- Adhere to the Do Not Call lists maintained by the Florida Department of Agriculture Consumer Services<sup>11</sup> and the Federal Trade Commission;<sup>12,13</sup>
- Honor consumers' requests to not receive any further telephone calls, text messages, or voice mail transmissions. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.<sup>14</sup>

Additionally, section 501.059(8), F.S., prohibits telephonic sales calls that:

- Use an automated system for the selection *or* dialing of telephone numbers or playing a recorded message to a number without the prior express written consent<sup>15</sup> of the called party;

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<sup>7</sup> Chapter 2021-185, s. 1, Laws of Fla.

<sup>8</sup> Eric Troutman, TCPAWorld, *The FTSA Claims are Still Pouring In: Florida Mini TCPA Continues to Generate Huge Volume of Litigation* (Dec. 13, 2021), <https://tcpaworld.com/2021/12/13/the-fts-claims-are-still-pouring-in-florida-mini-tcpa-continues-to-generate-huge-volume-of-litigation/> (last visited Jan. 24, 2022).

<sup>9</sup> Section 501.059(1)(i), F.S.

<sup>10</sup> Section 501.059(1)(j), F.S.

<sup>11</sup> Florida Department of Agriculture and Consumer Services (DACS), *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 24, 2022).

<sup>12</sup> Federal Trade Commission, *National Do Not Call Registry*, <https://www.donotcall.gov/> (last visited Jan. 24, 2022).

<sup>13</sup> *See*, ss. 501.059(3)-(4), F.S.

<sup>14</sup> Section 501.059(5), F.S.

<sup>15</sup> "Prior express written consent" is defined by s. 501.059(1)(g) as "a written agreement that bears the signature of the called party; clearly authorizes receipt of a telephonic sales call made using an automated system to selected or dial the telephone

- Fail to transmit the originating telephone number and, when possible, name of the solicitor; or
- Alter the voice of the caller in order to defraud, confuse, or injure the telephone call recipient.

### ***Florida Do Not Call Act***

#### **Do Not Call List**

The Department also administers the Florida Do Not Call Act (also called the “Do Not Call List”), which prohibits unsolicited phone calls and text messages.<sup>16</sup> Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the department’s list.<sup>17</sup>

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer’s request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- To a person with whom the telephone solicitor has a prior existing business relationship;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher’s business.<sup>18</sup>

#### **Continued Solicitations**

Section 501.059, F.S., further prohibits a telephone solicitor<sup>19</sup> from calling, text messaging, sending a direct voicemail transmission, or using automated telephone equipment to contact any consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

#### ***Penalties***

Either the Department of Agriculture and Consumer Services or the Office of the Attorney General may bring an action against a telephone solicitor who violates the provisions of s, 501.059, F.S. Each violation is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney’s fees and costs.<sup>20</sup>

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numbers, or to play a recorded message; includes the telephone number authorized to be called; and includes a specific informed disclosure statement.”

<sup>16</sup> See, s. 501.059, F.S. DACS, *Florida Do Not Call*, <https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 24, 2022).

<sup>17</sup> Section 501.059(3)-(4), F.S.

<sup>18</sup> Section 501.059(1)(k), F.S.

<sup>19</sup> Section 501.059(1)(i), F.S., defines a “telephone solicitor” as a natural person or business that does business in this state by making or causing to be made a telephone sales call.

<sup>20</sup> Section 501.059(9), F.S.

In addition, a private citizen may file a private civil action to either enjoin the violation or recover actual damages, or \$500, whichever is greater, in addition to attorney's fees and costs. This civil penalty may be tripled by the court if it finds that the defendant knowingly or willfully committed the violation.<sup>21</sup>

## Federal Law

### *Telephone Consumer Protection Act*<sup>22</sup>

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:

- Are made to residences before 8 a.m. and after 9 p.m.;
- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,<sup>23</sup> and an opportunity to opt out of the current call, and all future calls, made by that solicitor;
- Send pre-recorded messages to a residential line without the consumer's prior express consent, which may be on paper or through electronic means, including website forms or a telephone keypress;<sup>24</sup> and
- Use an autodialer or pre-recorded messages to a cellular, emergency, or hospital room line without prior express consent. Any telemarketing calls made to a cellular telephone number require *written* prior express consent; all others require either oral or written consent.<sup>25</sup> This specific provision does not apply to residential phone lines.<sup>26</sup>

The TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.<sup>27</sup>

The TCPA defines autodialers as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial

<sup>21</sup> Sections 501.059(10)-(11), F.S.

<sup>22</sup> 47 U.S.C. § 227. *See also*, 47 CFR § 64.1200 (2012).

<sup>23</sup> 47 U.S.C. § 227(b)(2)(d). *See also*, 47 C.F.R. § 64.1601(e). *See also*, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-04-206A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf) (last visited Jan. 24, 2022).

<sup>24</sup> Federal Communication Commission, *Stop Unwanted Robocalls and Texts*, *supra* note 2. *See also*, 47 CFR § 64.1200(a)(7)(i)(B), (b)(3). Certain calls made to a residential line, such as those by a tax-exempt nonprofit organization or calls that are subject to HIPAA may be made without prior express consent.

<sup>25</sup> FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 4 (Jun. 18, 2015).

<sup>26</sup> In 2015, language was added to the TCPA to allow robocalls and autodialed calls to cell phones for the purpose of collecting a debt owed to the U.S. government. *See* 47 U.S.C. § 227(b)(1)(A)(iii). This provision was severed from the law by the U.S. Supreme Court in 2020 based on their finding that it was a content-specific speech regulation in violation of the first amendment. The Court left the TCPA's prohibition of robocalls and autodialed calls to cell phones intact. *Barr v. American Assc. Of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020). *See also*, 47 CFR § 64.1200(f)(8).

<sup>27</sup> FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 2 (Jun. 18, 2015); FCC, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-333993A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf) (last visited Jan. 24, 2022).

such numbers.”<sup>28</sup> The U.S. Supreme Court recently limited the effect of the TCPA by clarifying that it only regulates autodialers that have the capacity either to store, or to produce, a telephone number using a random or sequential number generator.<sup>29</sup> This limits the TCPA’s regulations to the now obsolete sequential number dialer style of autodialer, versus the predictive dialing technology that most businesses use today.<sup>30</sup>

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.<sup>31</sup> State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.<sup>32</sup>

### ***Federal Do Not Call Program***<sup>33</sup>

The FTC, in concert with the FCC, administers the National Do Not Call Program.<sup>34</sup> Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:<sup>35</sup>

- Made with a consumer’s prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.

### ***Truth in Caller ID Act***<sup>36</sup>

The Truth in Caller ID Act of 2009 protects consumers by prohibiting any person from transmitting misleading or inaccurate caller ID information (call spoofing) with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.<sup>37</sup> The FCC has taken enforcement actions totaling \$450 million in fines, in recent years against telemarketers for call spoofing violations—of note, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.<sup>38</sup>

To protect individual privacy concerns, an individual caller may still request to hide his or her phone number when making a call.<sup>39</sup>

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<sup>28</sup> 47 U.S.C. § 227(b)(1)(A).

<sup>29</sup> *Facebook, Inc. v. Duguid*, 141 S. Ct. 193 (2020).

<sup>30</sup> Amanda Shanor, SCOTUSblog, *Supreme Court Sides with Facebook in Narrowing the Federal Robocall Ban* (Apr. 1, 2021), <https://www.scotusblog.com/2021/04/supreme-court-sides-with-facebook-in-narrowing-the-federal-robocall-ban/> (last visited Jan. 24, 2022).

<sup>31</sup> 47 U.S.C. § 227 (c)(5).

<sup>32</sup> 47 U.S.C. § 227 (f).

<sup>33</sup> *See*, 15 U.S.C. § 6101.

<sup>34</sup> Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 24, 2022).

<sup>35</sup> 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

<sup>36</sup> 47 U.S.C. § 227 (e).

<sup>37</sup> *See*, 47 CFR § 64.1604.

<sup>38</sup> Federal Communications Commission, *The FCC’s Push to Combat Robocalls & Spoofing*, <https://www.fcc.gov/spoofed-robocalls> (last visited Jan. 24, 2022). *See also*, Federal Communications Commission, *FCC Fines Massive Neighbor Spoofing Robocall Operation \$120 Million* (May 10, 2018) <https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million> (last visited Jan. 24, 2022).

<sup>39</sup> 47 CFR § 64.1601.

### III. Effect of Proposed Changes:

#### Prior Written Consent

The 2021 changes to s. 501.059, F.S., require prior express written consent to place a telephonic sales call to any consumer if the call would be made using an automated system to select *or* dial the telephone number, or to play a recorded message. This consent is required whether or not the caller and consumer had a prior business relationship.

CS/SB 1546 narrows the scope of those telephonic sales calls that are required to obtain the called party's prior express written consent prior to being placed by limiting the types of automated systems subject to s. 501.059, F.S., to those that select *and* dial telephone numbers, rather than those that select *or* dial the telephone numbers.<sup>40</sup>

The bill clarifies that prior express written consent is an agreement that allows telephonic sales calls that use an automated system to *transmit text messages* in addition to telephonic sales calls that use an automated system to select *and* dial telephone numbers, play a recorded message, or transmit a prerecorded voicemail.

Additionally, the bill adds a provision that permits the use of an automated telephone dialing system with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only two of these calls or messages may be made in response to each inquiry. This language is substantively similar to language deleted by SB 1120 (2021). It is unclear how this provision will interact with s. 501.059(8)(a), F.S.'s prohibition of telephonic sales calls that involve an automated system for the selection and dialing of telephone numbers...without the prior express written consent of the called party, since the terminology is similar, but not consistent.

#### Unsolicited Telephonic Sales Calls

The bill amends the term “unsolicited telephonic sales call” to additionally exclude:

- Telephonic sales calls made within 120 days after an express request of the called party, rather than “in response to the request;” and
- Telephonic sales calls other than those “limited to polling or soliciting the expression of ideas, opinions, or votes, including when such polling or soliciting is made by text message.”

Therefore, a person who makes a telephonic sales call that falls into one of the above exclusions from the definition of an “unsolicited telephonic sales call” is no longer required to:

- Identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation;<sup>41</sup> or

<sup>40</sup> According to one article, the “or” definition is less likely to capture automated systems that select telephone numbers and then allow a human to dial the number. See Daniel Blynn and Liz Clark Rinehart, *Florida Legislature to the Rescue? House Bill Proposed to Fix the Florida Telephone Solicitation Act's Autodialer Provision* (Jan. 14, 2022), <https://www.jdsupra.com/legalnews/florida-legislature-to-the-rescue-house-7860376/> (last visited Jan. 24, 2022).

<sup>41</sup> Section 501.059(2), F.S.

- Adhere to Florida’s Do-Not-Call list regulations.<sup>42</sup>

### **Clarifications**

The bill clarifies a term by substituting “person called” with the defined term, “called party.”

The bill clarifies that in order for a prevailing party to be awarded attorney fees and costs from a non-prevailing party in civil litigation cases, such litigation must result from a violation, instead of a transaction involving a violation.

### **Effective Date and Retroactivity**

The bill provides that it is remedial in nature and applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

The bill takes effect upon becoming law.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

### **Retroactive Application of Law and Expression of Remedial Nature**

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for

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<sup>42</sup> Section 501.059(3)-(4), F.S.



the statute to be valid.<sup>43</sup> When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute is remedial in nature so as to require application to cases that were pending at the time the statute went into effect. Generally, “the presumption applied to procedural and remedial statutes is that they are to apply to pending cases.”<sup>44</sup> Conversely, a law that affects substantive rights by creating substantive new rights or imposing new legal burdens is presumed to apply prospectively.<sup>45</sup>

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural (remedial) law is neither simple nor certain.”<sup>46</sup> The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.<sup>47</sup>

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.<sup>48</sup> Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.<sup>49</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

The bill adds language to subsection 501.059(8)(e), F.S., which permits the use of “automated telephone dialing system with live messages or text messages” in specific instances. It is unclear how this will interact with the similar, but inconsistent, terminology found in section 501.059(8)(a), F.S., which requires prior express written consent to make a telephonic sales call

<sup>43</sup> *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977). *See also, Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994). However, “[j]ust because the Legislature labels something as being remedial, however, does not make it so.” *See, e.g., State v. Smith*, 547 So2d 613 (Fla. 1989); *State, Dep’t of Transp. v. Knowles*, 402 So.2d 1155 (Fla. 1981).

<sup>44</sup> *Love* at 181, *citing Arrow Air, Inc. v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).

<sup>45</sup> *Arrow Air, Inc.*, at 424.

<sup>46</sup> *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fa. 2000).

<sup>47</sup> *Love* at 184.

<sup>48</sup> *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

<sup>49</sup> *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

using an “automated system for the selection and dialing of telephone numbers or the playing of a recorded message...”.

The bill clarifies that prior express written consent means an agreement that authorizes the person to place a telephonic sales call using an automated system for transmissions of *text messages*, in addition to dialing telephone numbers, playing a recorded message, or transmitting prerecorded voicemails. However, when the same reference to an automated system is used elsewhere in 501.059, F.S., it does not make the same clarification.

The new language that excludes polling telephonic sales calls from the definition of an unsolicited telephonic sales call is not grammatically consistent with the other provisions.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 501.059 of the Florida Statutes.

## IX. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Commerce and Tourism on January 24, 2022:**

- Adds clarifying language that “prior express written consent” is an agreement that authorizes a telephonic sales call, which includes text messages;
- Exempts from the definition of an “unsolicited telephonic sales call” those calls and text messages that are made to poll or solicit the expression of ideas, opinions, or votes;
- Re-instates the 2021 requirement that a consumer’s prior express written consent is needed to place a telephonic sales call that uses an automated system for the selection and dialing of telephone numbers, or playing of a recorded message;
- Expresses that s. 501.059(8), F.S.’s prohibited actions do not prohibit the use of an automated telephone dialing system with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only two calls or messages are permitted in response to each inquiry;
- Narrows the provision that permits an award of attorney fees and costs from those civil actions “resulting from a transaction involving a violation of this section” to those “resulting from a violation of this section”; and
- Makes the proposed language retroactive to July 1, 2021, and specifically applies to “any proceeding pending or commenced on or after July 1, 2021.”

### B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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