

By the Committee on Commerce and Tourism; and Senator Hutson

577-02247-22

20221564c1

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

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

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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;

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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 sign
42 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 employee
55 in connection with his or her business; or

56 5. Limited to polling or soliciting the expression of
57 ideas, opinions, or votes, including when such polling or
58 soliciting is made by text message.

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

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

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

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

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

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

87 (e) In any civil litigation initiated by the department or

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88 the Department of Legal Affairs, the court may award to the
89 prevailing party reasonable attorney ~~attorney's~~ fees and costs
90 if the court finds that there was a complete absence of a
91 justiciable issue of either law or fact raised by the losing
92 party or if the court finds bad faith on the part of the losing
93 party.

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

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