

By the Committees on Regulated Industries; and Commerce and Tourism; and Senator Hutson

580-02820-22

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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; prohibiting the
5 use of automated telephone dialing systems using
6 certain types of messages under certain circumstances;
7 authorizing such use in response to certain inquiries;
8 providing a limitation; revising provisions for the
9 award of attorney fees and costs; providing for
10 retroactive application; providing an effective date.

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

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

18 501.059 Telephone solicitation.—

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

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

22 1. Bears the signature of the called party;

23 2. Clearly authorizes the person making or allowing the
24 placement of a telephonic sales call by telephone call, text
25 message, or voicemail transmission to deliver or cause to be
26 delivered to the called party a telephonic sales call using an
27 automated system for the selection and ~~or~~ dialing of telephone
28 numbers, the playing of a recorded message when a connection is
29 completed to a number called, the transmission of a text

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30 message, or the transmission of a prerecorded voicemail;

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

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

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

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

47 (k) "Unsolicited telephonic sales call" means a telephonic
48 sales call other than a call made:

49 1. Within 120 days after ~~In response to~~ an express request
50 of the ~~person~~ called party;

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

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

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

58 5. For the purpose of polling or soliciting the expression

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59 of ideas, opinions, or votes, including when such polling or
60 soliciting is made by text message.

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

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

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

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

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

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

91 (e) In any civil litigation initiated by the department or
92 the Department of Legal Affairs, the court may award to the
93 prevailing party reasonable attorney ~~attorney's~~ fees and costs
94 if the court finds that there was a complete absence of a
95 justiciable issue of either law or fact raised by the losing
96 party or if the court finds bad faith on the part of the losing
97 party.

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

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