

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

595-03064-22

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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.

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

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14 Section 1. Paragraphs (g), (h), 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 (h) "Signature" includes an electronic or digital
48 signature, including when such signature is made on agreements
49 obtained by a compliant e-mail, website form, text message,
50 telephone keypress, or voice recording, to the extent that such
51 form of signature is recognized as a valid signature under
52 applicable federal law or state contract law.

53 (k) "Unsolicited telephonic sales call" means a telephonic
54 sales call other than a call made:

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

57 2. Primarily in connection with an existing debt or
58 contract, if payment or performance of such debt or contract has

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59 not been completed at the time of such call;

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

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

64 5. For the purpose of polling or soliciting the expression
65 of ideas, opinions, or votes, including when such polling or
66 soliciting is made by text message.

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

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

80 (11) (a) In any civil litigation resulting from a
81 ~~transaction involving a~~ violation of this section, the
82 prevailing party, after judgment in the trial court and
83 exhaustion of all appeals, if any, shall receive his or her
84 reasonable attorney ~~attorney's~~ fees and costs from the
85 nonprevailing party.

86 (b) The attorney for the prevailing party shall submit a
87 sworn affidavit of his or her time spent on the case and his or

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88 her costs incurred for all the motions, hearings, and appeals to
89 the trial judge who presided over the civil case.

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

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

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

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

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