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CS/CS/HB 761, Engrossed 1

2023 Legislature

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 2 An act relating to telephone solicitation; amending s.
 3 501.059, F.S.; revising definitions; prohibiting
 4 certain telephonic sales calls; providing conditions
 5 under which civil actions may be brought for text
 6 message solicitations; providing applicability;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraphs (g) and (h) of subsection (1) and
 12 paragraph (a) of subsection (8) of section 501.059, Florida
 13 Statutes, are amended, and paragraph (c) is added to subsection
 14 (10) of that section, to read:

15 501.059 Telephone solicitation.—

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

17 (g) "Prior express written consent" means a written
 18 agreement that:

19 1. Bears the signature of the called party;

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

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26 | completed to a number called, or the transmission of a
 27 | prerecorded voicemail;

28 | 3. Includes the telephone number to which the called party
 29 | ~~signatory~~ authorizes a telephonic sales call to be delivered;
 30 | and

31 | 4. Includes a clear and conspicuous disclosure informing
 32 | the called party that:

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

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

46 | (h) "Signature" includes:

47 | 1. An electronic or digital signature if, ~~to the extent~~
 48 | ~~that such~~ form of signature is recognized as a valid signature
 49 | under applicable federal law or state contract law; or

50 | 2. An act that demonstrates express consent, including,

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51 but not limited to, checking a box indicating consent or
52 responding affirmatively to receiving text messages, to an
53 advertising campaign, or to an e-mail solicitation.

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

60 (10)

61 (c) Before the commencement of any action for damages
62 under this section for text message solicitations, the called
63 party must notify the telephone solicitor that the called party
64 does not wish to receive text messages from the telephone
65 solicitor by replying "STOP" to the number from which the called
66 party received text messages from the telephone solicitor.
67 Within 15 days after receipt of such notice, the telephone
68 solicitor shall cease sending text message solicitations to the
69 called party and may not send text messages to the called party
70 thereafter, except that the telephone solicitor may send the
71 called party a text message to confirm receipt of the notice.
72 The called party may bring an action under this section only if
73 the called party does not consent to receive text messages from
74 the telephone solicitor and the telephone solicitor continues to
75 send text messages to the called party 15 days after the called

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76 party provided notice to the telephone solicitor to cease such
77 text messages.

78 Section 2. The amendments made by this act apply to any
79 suit filed on or after the effective date of this act and to any
80 putative class action not certified on or before the effective
81 date of this act.

82 Section 3. This act shall take effect upon becoming a law.