

By Senator Polsky

30-00754-25

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1                   A bill to be entitled  
2       An act relating to telephone solicitation; amending s.  
3       501.059, F.S.; revising the definition of the terms  
4       "telephone solicitor" and "telephonic sales call";  
5       revising the conditions for awarding attorney fees in  
6       civil actions relating to telephone solicitation;  
7       making technical changes; providing construction and  
8       retroactive application; reenacting s. 517.0615(2)(c),  
9       F.S., relating to solicitations of interest, to  
10      incorporate the amendment made to s. 501.059, F.S., in  
11      a reference thereto; providing an effective date.

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

14  
15       Section 1. Paragraphs (i) and (j) of subsection (1) and  
16      paragraphs (a), (d), and (e) of subsection (11) of section  
17      501.059, Florida Statutes, are amended to read:

18       501.059 Telephone solicitation.—

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

20       (i) "Telephone solicitor" means a natural person, firm,  
21      organization, partnership, association, or corporation, or a  
22      subsidiary or affiliate thereof, doing business in this state,  
23      who makes or causes to be made a telephonic sales call,  
24      including, but not limited to, calls made by use of automated  
25      dialing or recorded message devices. The term does not include a  
26      tax-exempt nonprofit organization or a person or an organization  
27      acting on its behalf.

28       (j) "Telephonic sales call" means a telephone call, text  
29      message, or voicemail transmission to a consumer for the purpose

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30 of soliciting a sale of any consumer goods or services,  
31 soliciting an extension of credit for consumer goods or  
32 services, or obtaining information that will or may be used for  
33 the direct solicitation of a sale of consumer goods or services  
34 or an extension of credit for such purposes. A phone call, text  
35 message, or voicemail transmission is not considered a  
36 telephonic sales call if it is made by a tax-exempt nonprofit  
37 organization for a religious, charitable, political, or  
38 educational purpose.

39 (11) (a) In a any civil action alleging litigation ~~resulting~~  
40 ~~from a transaction involving~~ a violation of this section, the  
41 prevailing party, after judgment in the trial court and  
42 exhaustion of all appeals, is entitled to ~~if any, shall receive~~  
43 ~~his or her~~ reasonable attorney fees and costs from the  
44 nonprevailing party.

45 (d) An Any award of attorney fees or costs becomes ~~shall~~  
46 ~~become~~ a part of the judgment and is subject to execution ~~as the~~  
47 ~~law allows.~~

48 (e) In a any civil action ~~litigation~~ initiated by the  
49 department or the Department of Legal Affairs, the court may  
50 award to the prevailing party reasonable attorney fees and costs  
51 if the court finds that there was a complete absence of a  
52 justiciable issue of either law or fact raised by the losing  
53 party or if the court finds bad faith on the part of the losing  
54 party.

55 Section 2. The amendments made by this act to s. 501.059,  
56 Florida Statutes, are remedial in nature and apply  
57 retroactively.

58 Section 3. For the purpose of incorporating the amendment

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59 made by this act to section 501.059, Florida Statutes, in a  
60 reference thereto, paragraph (c) of subsection (2) of section  
61 517.0615, Florida Statutes, is reenacted to read:

62 517.0615 Solicitations of interest.—

63 (2) Before any offers or sales are made in connection with  
64 an offering, communications by an issuer or any person  
65 authorized to act on behalf of the issuer are not deemed to  
66 constitute general solicitation or general advertising if the  
67 communication is solely for the purpose of determining whether  
68 there is any interest in a contemplated securities offering.  
69 Requirements imposed under this chapter on written or oral  
70 statements made in the course of such communication may be  
71 enforced as provided in this chapter. The solicitation or  
72 acceptance of money or other consideration or of any commitment,  
73 binding or otherwise, from any person is prohibited.

74 (c) A communication in accordance with this subsection is  
75 not subject to s. 501.059, regarding telephone solicitations.

76 Section 4. This act shall take effect upon becoming a law.