

1 A bill to be entitled
 2 An act relating to telephone solicitation; amending s.
 3 501.059, F.S.; prohibiting certain telephonic sales
 4 calls without the prior express written consent of the
 5 called party; providing definitions; providing
 6 requirements for consent agreements; providing civil
 7 remedies; providing a rebuttable presumption for
 8 telephonic sales calls made to specified area codes;
 9 removing provisions authorizing the use of certain
 10 automated telephone dialing systems; revising
 11 provisions for the award of attorney fees and costs;
 12 providing an effective date.

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

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 16 Section 1. Subsections (8) and (10) of section 501.059,
 17 Florida Statutes, are amended to read:

18 501.059 Telephone solicitation.—

19 (8) (a) A ~~No~~ person may not ~~shall~~ make or knowingly allow a
 20 telephonic sales call to be made if such call involves an
 21 automated system for the selection or dialing of telephone
 22 numbers or the playing of a recorded message when a connection
 23 is completed to a number called without the prior express
 24 written consent of the called party.

25 (b) As used in this subsection, the term:

26 1. "Called party" means a person who is the regular user
27 of the telephone number that is delivered a telephonic sales
28 call.

29 2. "Express written consent" means an agreement bearing
30 the electronic or digital signature of a called party that
31 states the telephone number to which the called party authorizes
32 a telephonic sales call to be delivered and clearly authorizes a
33 person to make or knowingly allow a telephonic sales call to be
34 made using an automated system for selecting or dialing
35 telephone numbers, playing a recorded message when a connection
36 is completed to a telephone number called, transmitting a text
37 message, or transmitting a prerecorded voicemail.

38 (c) The express written consent must include a clear and
39 conspicuous disclosure informing the called party that:

40 1. By executing the agreement, the called party authorizes
41 a person to make or knowingly allow a telephonic sales call to
42 be made using an automated system for selecting or dialing
43 telephone numbers, playing a recorded message when a connection
44 is completed to a telephone number called, transmitting a text
45 message, or transmitting a prerecorded voicemail.

46 2. The called party is not required to sign the agreement
47 or consent to enter into such an agreement as a condition of
48 purchasing any property, goods, or services.

49 (d)1. A called party aggrieved by a violation of this
50 subsection may bring an action to:

51 a. Enjoin such violation.

52 b. Recover actual damages or \$500, whichever is greater.

53 2. If the court finds that the defendant willfully or
54 knowingly violated this section, the court may, in its
55 discretion, increase the amount of the award to an amount equal
56 to not more than three times the amount available under this
57 subsection.

58 (e) There is a rebuttable presumption that any telephonic
59 sales call made to a Florida area code is made to a resident of
60 this state or to a person who is in this state at the time of
61 the telephonic sales call ~~Nothing herein prohibits the use of an~~
62 ~~automated telephone dialing system with live messages if the~~
63 ~~calls are made or messages given solely in response to calls~~
64 ~~initiated by the persons to whom the automatic calls or live~~
65 ~~messages are directed or if the telephone numbers selected for~~
66 ~~automatic dialing have been screened to exclude any telephone~~
67 ~~subscriber who is included on the department's then-current "no~~
68 ~~sales solicitation calls" listing or any unlisted telephone~~
69 ~~number, or if the calls made concern goods or services that have~~
70 ~~been previously ordered or purchased.~~

71 (f)-(e) It shall be unlawful for any person who makes a
72 telephonic sales call or causes a telephonic sales call to be
73 made to fail to transmit or cause not to be transmitted the
74 originating telephone number and, when made available by the
75 telephone solicitor's carrier, the name of the telephone

76 | solicitor to any caller identification service in use by a
77 | recipient of a telephonic sales call. However, it shall not be a
78 | violation to substitute, for the name and telephone number used
79 | in or billed for making the call, the name of the seller on
80 | behalf of which a telephonic sales call is placed and the
81 | seller's customer service telephone number, which is answered
82 | during regular business hours. If a telephone number is made
83 | available through a caller identification service as a result of
84 | a telephonic sales call, the solicitor must ensure that
85 | telephone number is capable of receiving telephone calls and
86 | must connect the original call recipient, upon calling such
87 | number, to the telephone solicitor or to the seller on behalf of
88 | which a telephonic sales call was placed. For purposes of this
89 | section, the term "caller identification service" means a
90 | service that allows a telephone subscriber to have the telephone
91 | number and, where available, the name of the calling party
92 | transmitted contemporaneously with the telephone call and
93 | displayed on a device in or connected to the subscriber's
94 | telephone.

95 | (g)~~(d)~~ It shall be unlawful for any person who makes a
96 | telephonic sales call or causes a telephonic sales call to be
97 | made to intentionally alter the voice of the caller in an
98 | attempt to disguise or conceal the identity of the caller in
99 | order to defraud, confuse, or financially or otherwise injure
100 | the recipient of a telephonic sales call or in order to obtain

101 personal information from the recipient of a telephonic sales
102 call which may be used in a fraudulent or unlawful manner.

103 (10) (a) In any civil litigation resulting from a
104 ~~transaction involving a~~ violation of this section, the
105 prevailing plaintiff party, after judgment in the trial court
106 and exhaustion of all appeals, if any, shall receive his or her
107 reasonable attorney ~~attorney's~~ fees and costs from the
108 nonprevailing defendant party.

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

113 (c) The trial judge shall award the prevailing plaintiff
114 ~~party~~ the sum of reasonable costs incurred in the action plus a
115 reasonable legal fee for the hours actually spent on the case as
116 sworn to in an affidavit.

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

120 (e) In any civil litigation initiated by the department or
121 the Department of Legal Affairs, the court may award to the
122 prevailing plaintiff party reasonable attorney ~~attorney's~~ fees
123 and costs if the court finds that there was a complete absence
124 of a justiciable issue of either law or fact raised by the
125 losing party or if the court finds bad faith on the part of the

HB 1307

2021

126 | losing party.

127 | Section 2. This act shall take effect July 1, 2021.