

1 A bill to be entitled
 2 An act relating to telephone solicitation; amending s.
 3 501.059, F.S.; revising definitions; conforming a
 4 provision; authorizing the use of automated telephone
 5 dialing systems with live messages in response to
 6 certain inquiries; providing a limitation; revising
 7 provisions for the award of attorney fees and costs;
 8 providing an effective date.

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

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

16 501.059 Telephone solicitation.—

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

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

20 1. Bears the signature of the called party;

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

26 | numbers, the playing of a recorded message when a connection is
 27 | completed to a number called, or the transmission of a
 28 | prerecorded voicemail;

29 | 3. Includes the telephone number to which the signatory
 30 | authorizes a telephonic sales call to be delivered; 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 deliver or cause to be delivered a telephonic
 36 | sales call to the called party using an automated system for the
 37 | selection and ~~or~~ dialing of telephone numbers or the playing of
 38 | a recorded message when a connection is completed to a number
 39 | called; and

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

44 | (k) "Unsolicited telephonic sales call" means a telephonic
 45 | sales call other than a call made:

46 | 1. Within 120 days after ~~In response to~~ an express request
 47 | of the ~~person~~ called party;

48 | 2. Primarily in connection with an existing debt or
 49 | contract, if payment or performance of such debt or contract has
 50 | not been completed at the time of such call;

51 3. To a person with whom the telephone solicitor has a
52 prior or existing business relationship; or

53 4. By a newspaper publisher or his or her agent or
54 employee in connection with his or her business.

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

61 (e) This subsection does not prohibit the use of an
62 automated telephone dialing system with live messages if the
63 call is made or message is given solely in response to an
64 inquiry initiated by the called party. However, only two calls
65 may be made or messages given in response to each such inquiry.

66 (11) (a) In any civil litigation resulting from a
67 ~~transaction involving a~~ violation of this section, the
68 prevailing party, after judgment in the trial court and
69 exhaustion of all appeals, if any, shall receive his or her
70 reasonable attorney ~~attorney's~~ fees and costs from the
71 nonprevailing party.

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

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

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

83 (e) In any civil litigation initiated by the department or
84 the Department of Legal Affairs, the court may award to the
85 prevailing party reasonable attorney ~~attorney's~~ fees and costs
86 if the court finds that there was a complete absence of a
87 justiciable issue of either law or fact raised by the losing
88 party or if the court finds bad faith on the part of the losing
89 party.

90 Section 2. This act shall take effect July 1, 2022.