

1                                   A bill to be entitled  
 2           An act relating to telephone solicitation; amending s.  
 3           501.059, F.S.; providing and revising definitions;  
 4           conforming provisions; authorizing the use of  
 5           automated systems with live callers or text messages  
 6           in response to certain requests and consent; providing  
 7           a limitation and an exception; prohibiting certain  
 8           telephonic sales calls; revising provisions for the  
 9           award of attorney fees and costs; providing  
 10          retroactive applicability; providing severability;  
 11          providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14

15           Section 1. Subsections (9) through (13) of section  
 16          501.059, Florida Statutes, are renumbered as subsections (10)  
 17          through (14), respectively, subsections (1) and (2), paragraph  
 18          (a) of subsection (8), and paragraphs (a), (c), (d), and (e) of  
 19          present subsection (11) are amended, paragraphs (e) and (f) are  
 20          added to subsection (8), and a new subsection (9) is added to  
 21          that section, to read:

22           501.059 Telephone solicitation.—

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

24           (a) "Automated system" means a computerized, mechanical,  
 25           or other technological system or device that creates a telephone

26 | number, or stores or selects any telephone number from any  
27 | database or list, and then causes that telephone number to be  
28 | called. The term includes any system which the live caller or  
29 | any other person operates by click-to-call. The term does not  
30 | include a live caller manually selecting and calling telephone  
31 | numbers using only a contact list or telephone log.

32 | (b)-(a) "Called party" means a person who is the regular  
33 | user of the telephone number that receives a telephonic sales  
34 | call.

35 | (c) "Express request" means a prior oral or written  
36 | request, invitation, consent, or permission from a called party  
37 | made directly or indirectly to the live caller or telephone  
38 | solicitor for calls or text messages regarding the goods,  
39 | services, or products offered by the live caller or telephone  
40 | solicitor.

41 | (d)-(b) "Consumer" means an actual or prospective  
42 | purchaser, lessee, or recipient of consumer goods or services.

43 | (e)-(e) "Consumer goods or services" means real property or  
44 | tangible or intangible personal property or services that are ~~is~~  
45 | normally used for personal, family, or household purposes. The  
46 | term includes, including, but is not limited to, any such  
47 | property intended to be attached to or installed in any real  
48 | property without regard to whether it is so attached or  
49 | installed, as well as cemetery lots and timeshare estates, and  
50 | any related services ~~related to such property.~~

51        (f)~~(d)~~ "Department" means the Department of Agriculture  
 52 and Consumer Services.

53        (g)~~(e)~~ "Doing business in this state" means businesses  
 54 that conduct telephonic sales calls from a location in Florida  
 55 or from other states or nations to consumers located in Florida.

56        (h) "Live caller" means a natural person who causes a call  
 57 to be made and who is ready to speak to the called party at the  
 58 time the call is made.

59        (i)~~(f)~~ "Merchant" means a person who, directly or  
 60 indirectly, offers or makes available to consumers any consumer  
 61 goods or services.

62        (j)~~(g)~~ "Prior express written consent" means a written  
 63 agreement that:

- 64            1. Bears the signature of the called party;
- 65            2. Clearly authorizes the person making or allowing the  
 66 placement of a telephonic sales call by telephone call, text  
 67 message, or voicemail transmission to deliver or cause to be  
 68 delivered to the called party a telephonic sales call using an  
 69 automated system for the selection and ~~or~~ dialing of telephone  
 70 numbers, the playing of a recorded message when a connection is  
 71 completed to a number called, the transmission of a text  
 72 message, or the transmission of a prerecorded voicemail;
- 73            3. Includes the telephone number to which the signatory  
 74 authorizes a telephonic sales call to be delivered; and
- 75            4. Includes a clear and conspicuous disclosure informing

76 | the called party that:

77 |       a. By executing the agreement, the called party authorizes  
 78 | the person making or allowing the placement of a telephonic  
 79 | sales call to deliver or cause to be delivered a telephonic  
 80 | sales call to the called party using an automated system for the  
 81 | selection and ~~or~~ dialing of telephone numbers or the playing of  
 82 | a recorded message when a connection is completed to a number  
 83 | called, the transmission of a text message, or the transmission  
 84 | of a prerecorded voicemail; and

85 |       b. He or she is not required to directly or indirectly  
 86 | sign the written agreement or to agree to enter into such an  
 87 | agreement as a condition of purchasing any property, goods, or  
 88 | services.

89 |  
 90 | For purposes of subparagraph 4., a designated signature line  
 91 | with the following notice, placed directly above the designated  
 92 | signature line, that is prominent and robust in at least 12-  
 93 | point bold font is presumptively compliant:

94 |  
 95 |       By signing below, you authorize [NAME] to place a  
 96 | telephonic sales call to you at [TELEPHONE NUMBER] by way  
 97 | of telephone calls, text messages, or voicemail  
 98 | transmissions using an automated system for the selection  
 99 | and/or dialing of telephone numbers or the playing of a  
 100 | recorded message when a connection is completed to your

101 telephone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH  
 102 AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY,  
 103 GOODS, OR SERVICES.

104  
 105 (k)-(h) "Signature" includes an electronic or digital  
 106 signature, including agreements obtained through a compliant e-  
 107 mail, website form, text message, telephone keypress, or voice  
 108 recording, or any to the extent that such form of signature that  
 109 is recognized as a valid signature under applicable federal law  
 110 or state contract law.

111 (l)-(i) "Telephone solicitor" means a natural person, firm,  
 112 organization, partnership, association, or corporation, or a  
 113 subsidiary or affiliate thereof, doing business in this state,  
 114 who makes or causes to be made a telephonic sales call,  
 115 including, but not limited to, calls made by the use of  
 116 automated systems or automated dialing or recorded message  
 117 devices.

118 (m)-(j) "Telephonic sales call" means a telephone call,  
 119 text message, or voicemail transmission, including, but not  
 120 limited to, calls made by the use of automated systems or  
 121 automated dialing or recorded message devices, to a consumer for  
 122 the purpose of soliciting a sale, lease, or acquisition of any  
 123 consumer goods or services, soliciting an extension of credit  
 124 for consumer goods or services, or obtaining information that  
 125 will or may be used for the direct solicitation of a sale,

126 | lease, or acquisition of consumer goods or services or an  
 127 | extension of credit for such purposes.

128 | (n)-(k) "Unsolicited telephonic sales call" means a  
 129 | telephonic sales call other than a call made:

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

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

135 | 3. To a person with whom the telephone solicitor has a  
 136 | prior or existing business relationship; ~~or~~

137 | 4. By a newspaper publisher or his or her agent or  
 138 | employee in connection with his or her business;

139 | 5. To a person who has provided prior express written  
 140 | consent to be contacted; or

141 | 6. For the purpose of polling or soliciting the expression  
 142 | of ideas, opinions, or votes, including when such polling or  
 143 | soliciting is made by text message.

144 | (o)-(l) "Voicemail transmission" means technologies that  
 145 | deliver a voice message directly to a voicemail application,  
 146 | service, or device.

147 | (2) Any telephone solicitor who makes an unsolicited  
 148 | telephonic sales call to a called party ~~residential, mobile, or~~  
 149 | ~~telephonic paging device telephone number~~ shall identify himself  
 150 | or herself by his or her true first and last names and the

151 business on whose behalf he or she is soliciting immediately  
152 upon making contact by telephone with the called party ~~person~~  
153 ~~who is the object of the telephone solicitation.~~

154 (8)(a) A telephone solicitor or live caller ~~person~~ may not  
155 make or knowingly allow an unsolicited ~~a~~ telephonic sales call  
156 to be made if such call involves an automated system for the  
157 selection and ~~or~~ dialing of telephone numbers or the playing of  
158 a recorded message when a connection is completed to a number  
159 called, the transmission of a text message, or the transmission  
160 of a prerecorded voicemail ~~without the prior express written~~  
161 ~~consent of the called party.~~

162 (e) This subsection does not prohibit the use of an  
163 automated system for the selection and dialing of telephone  
164 numbers with a live caller or text messages if the call or  
165 message is made solely in response to an express request  
166 initiated by the called party or prior express written consent  
167 by the called party and the live caller or telephone solicitor  
168 maintains evidence of the express request or prior express  
169 written consent. However, only three such calls or messages may  
170 be made in response to each express request or prior express  
171 written consent, unless the express request or prior express  
172 written consent specifically authorizes a different number of  
173 calls or messages or a specific time period that such calls or  
174 messages may be made.

175 (f) A merchant, telephone solicitor, live caller, or other

176 person may not require any consumer or called party to provide  
177 an express request or prior express written consent as a  
178 condition of any transaction.

179 (9) (a) A telephone solicitor may not cause any unsolicited  
180 telephonic sales call to be initiated by use of any automated  
181 system.

182 (b) A telephone solicitor may not cause any telephonic  
183 sales call to be initiated by any person or device other than a  
184 live caller.

185 (12) ~~(11)~~ (a) In any civil litigation resulting from a  
186 transaction involving a violation of this section, the  
187 prevailing party, after judgment in the trial court and  
188 exhaustion of all appeals, if any, may ~~shall~~ receive his or her  
189 reasonable attorney ~~attorney's~~ fees and costs from the  
190 nonprevailing party.

191 (c) The trial judge may ~~shall~~ award the prevailing party  
192 the sum of reasonable costs incurred in the action plus a  
193 reasonable legal fee for the hours actually spent on the case as  
194 sworn to in an affidavit.

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

198 (e) In any civil litigation initiated by the department or  
199 the Department of Legal Affairs, the court may award to the  
200 prevailing party reasonable attorney ~~attorney's~~ fees and costs



201 if the court finds that there was a complete absence of a  
202 justiciable issue of either law or fact raised by the losing  
203 party or if the court finds bad faith on the part of the losing  
204 party.

205       Section 2. The amendments made by this act are remedial in  
206 nature and apply retroactively to July 1, 2021, and to any  
207 proceeding pending or commenced on or after July 1, 2021, except  
208 that the amendments made by this act do not apply retroactively  
209 to s. 501.059(8)(e) and (9), Florida Statutes, relating to  
210 prohibited acts, and s. 501.059(12), Florida Statutes, relating  
211 to attorney fees and costs.

212       Section 3. If any provision of this act or its application  
213 to any person or circumstance is held invalid, the invalidity  
214 does not affect other provisions or applications of this act  
215 that can be given effect without the invalid provision or  
216 application, and to this end the provisions of this act are  
217 severable.

218       Section 4. This act shall take effect July 1, 2022.