



183960

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

501.059 Telephone solicitation.—

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



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- 11 (g) "Prior express written consent" means a written
12 agreement that:
- 13 1. Bears the signature of the called party;
 - 14 2. Clearly authorizes the person making or allowing the
15 placement of a telephonic sales call by telephone call, text
16 message, or voicemail transmission to deliver or cause to be
17 delivered to the called party a telephonic sales call using an
18 automated system for the selection and ~~or~~ dialing of telephone
19 numbers, the playing of a recorded message when a connection is
20 completed to a number called, the transmission of a text
21 message, or the transmission of a prerecorded voicemail;
 - 22 3. Includes the telephone number to which the signatory
23 authorizes a telephonic sales call to be delivered; and
 - 24 4. Includes a clear and conspicuous disclosure informing
25 the called party that:
 - 26 a. By executing the agreement, the called party authorizes
27 the person making or allowing the placement of a telephonic
28 sales call to deliver or cause to be delivered a telephonic
29 sales call to the called party using an automated system for the
30 selection and ~~or~~ dialing of telephone numbers or the playing of
31 a recorded message when a connection is completed to a number
32 called; and
 - 33 b. He or she is not required to directly or indirectly sign
34 the written agreement or to agree to enter into such an
35 agreement as a condition of purchasing any property, goods, or
36 services.
- 37 (k) "Unsolicited telephonic sales call" means a telephonic
38 sales call other than a call made:
- 39 1. Within 120 days after ~~In response to~~ an express request



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40 of the ~~person~~ called party;

41 2. Primarily in connection with an existing debt or
42 contract, if payment or performance of such debt or contract has
43 not been completed at the time of such call;

44 3. To a person with whom the telephone solicitor has a
45 prior or existing business relationship; ~~or~~

46 4. By a newspaper publisher or his or her agent or employee
47 in connection with his or her business; or

48 5. Limited to polling or soliciting the expression of
49 ideas, opinions, or votes, including when such polling or
50 soliciting is made by text message.

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

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

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

68 (b) The attorney for the prevailing party shall submit a



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69 sworn affidavit of his or her time spent on the case and his or
70 her costs incurred for all the motions, hearings, and appeals to
71 the trial judge who presided over the civil case.

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

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

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

86 Section 2. The amendments made by this act to s. 501.059,
87 Florida Statutes, are remedial in nature and apply retroactively
88 to July 1, 2021, and to any proceeding pending or commenced on
89 or after July 1, 2021.

90 Section 3. This act shall take effect July 1, 2022.

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92 ===== T I T L E A M E N D M E N T =====

93 And the title is amended as follows:

94 Delete everything before the enacting clause
95 and insert:

96 A bill to be entitled
97 An act relating to telephone solicitation; amending s.



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98 501.059, F.S.; redefining terms; conforming a
99 provision to changes made by the act; authorizing the
100 use of automated telephone dialing systems with live
101 messages in response to certain inquiries; providing a
102 limitation; revising provisions for the award of
103 attorney fees and costs; providing for retroactive
104 application; providing an effective date.