

By Senator Polsky

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

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

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

501.059 Telephone solicitation.—

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

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

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

30-00110-26

2026134__

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

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

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

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

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

Section 3. For the purpose of incorporating the amendment

30-00110-26

2026134__

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

517.0615 Solicitations of interest.—

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

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

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