

CHAPTER 2023-150

Committee Substitute for Committee Substitute for House Bill No. 761

An act relating to telephone solicitation; amending s. 501.059, F.S.; revising definitions; prohibiting certain telephonic sales calls; providing conditions under which civil actions may be brought for text message solicitations; providing applicability; providing an effective date.

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

Section 1. Paragraphs (g) and (h) of subsection (1) and paragraph (a) of subsection (8) of section 501.059, Florida Statutes, are amended, and paragraph (c) is added to subsection (10) of that section, to read:

501.059 Telephone solicitation.—

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

(g) “Prior express written consent” means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the called party ~~signatory~~ authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing ~~the placement of a telephonic sales call to be made by telephone call, text message, or voicemail transmission~~ to deliver or cause to be delivered a telephonic sales call to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, if applicable, ~~or~~ the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and

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

(h) “Signature” includes:

1. An electronic or digital signature if, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law; or

2. An act that demonstrates express consent, including, but not limited to, checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.

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

(10)

(c) Before the commencement of any action for damages under this section for text message solicitations, the called party must notify the telephone solicitor that the called party does not wish to receive text messages from the telephone solicitor by replying “STOP” to the number from which the called party received text messages from the telephone solicitor. Within 15 days after receipt of such notice, the telephone solicitor shall cease sending text message solicitations to the called party and may not send text messages to the called party thereafter, except that the telephone solicitor may send the called party a text message to confirm receipt of the notice. The called party may bring an action under this section only if the called party does not consent to receive text messages from the telephone solicitor and the telephone solicitor continues to send text messages to the called party 15 days after the called party provided notice to the telephone solicitor to cease such text messages.

Section 2. The amendments made by this act apply to any suit filed on or after the effective date of this act and to any putative class action not certified on or before the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor May 25, 2023.

Filed in Office Secretary of State May 25, 2023.