

CHAPTER 2018-23

Committee Substitute for Committee Substitute for Senate Bill No. 568

An act relating to telephone solicitation; amending s. 501.059, F.S.; revising the definition of the term “telephonic sales call” to include voicemail transmissions; defining the term “voicemail transmission”; prohibiting the transmission of voicemails to specified persons who communicate to a telephone solicitor that they would not like to receive certain voicemail solicitations or requests for donations; requiring a solicitor to ensure that if a telephone number is available through a caller identification system, that telephone number must be capable of receiving calls and must connect the original call recipient to the solicitor; revising penalties; providing an effective date.

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

Section 1. Paragraph (g) of subsection (1) of section 501.059, Florida Statutes, is amended, a new paragraph (i) is added to that subsection, and subsection (5), paragraph (c) of subsection (8), and subsection (9) of that section are amended, to read:

501.059 Telephone solicitation.—

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

(g) “Telephonic sales call” means a telephone call, ~~or text message, or voicemail transmission~~ to a consumer for the purpose 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.

(i) “Voicemail transmission” means technologies that deliver a voice message directly to a voicemail application, service, or device.

(5) A telephone solicitor or other person may not initiate an outbound telephone call, ~~or text message, or voicemail transmission~~ to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, ~~or text message, or voicemail transmission~~:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

(8)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving phone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(9)(a) The department shall investigate any complaints received concerning violations of this section. If, after investigating a complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class ~~IV~~ ~~III~~ category pursuant to s. 570.971 for each violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil penalties provided in paragraph (a), impose an administrative fine in the Class ~~III~~ ~~I~~ category pursuant to s. 570.971 for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to chapter 120.

Section 2. This act shall take effect July 1, 2018.

Approved by the Governor March 19, 2018.

Filed in Office Secretary of State March 19, 2018.