



26 | numbers, the playing of a recorded message when a connection is  
 27 | completed to a number called, or the transmission of a  
 28 | prerecorded voicemail;

29 |         3. Includes the telephone number to which the signatory  
 30 | authorizes a telephonic sales call to be delivered; and

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

33 |             a. By executing the agreement, the called party authorizes  
 34 | the person making or allowing the placement of a telephonic  
 35 | sales call to deliver or cause to be delivered a telephonic  
 36 | sales call to the called party using an automated system for the  
 37 | selection and ~~or~~ dialing of telephone numbers or the playing of  
 38 | a recorded message when a connection is completed to a number  
 39 | called; and

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

44 |         (k) "Unsolicited telephonic sales call" means a telephonic  
 45 | sales call other than a call made:

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

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

51 3. To a person with whom the telephone solicitor has a  
 52 prior or existing business relationship; or

53 4. By a newspaper publisher or his or her agent or  
 54 employee in connection with his or her business.

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

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

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

72 (b) The attorney for the prevailing party shall submit a  
 73 sworn affidavit of his or her time spent on the case and his or  
 74 her costs incurred for all the motions, hearings, and appeals to  
 75 the trial judge who presided over the civil case.

HB 1095

2022

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

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

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

90 Section 2. This act shall take effect July 1, 2022.