

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Fabricio offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

6 Section 1. Paragraphs (g) and (h) of subsection (1) of  
 7 section 501.059, Florida Statutes, are amended, and paragraph  
 8 (a) of subsection (8) and subsection (10) of that section are  
 9 amended 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

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17 message, or voicemail transmission to deliver or cause to be  
18 delivered to the called party a telephonic sales call using an  
19 automated system for the selection and ~~or~~ dialing of telephone  
20 numbers, the playing of a recorded message when a connection is  
21 completed to a number called, or the transmission of a  
22 prerecorded voicemail;

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

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

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

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

41 (h) "Signature" includes:

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Published On: 3/24/2023 3:28:37 PM

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

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

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

55           (10) (a) A called party who is aggrieved by a violation of  
56 this section may bring an action to:

- 57           1. Enjoin such violation.  
58           2. Recover actual damages or \$500, whichever is greater.

59           (b) If the court finds that the defendant willfully or  
60 knowingly violated this section or rules adopted pursuant to  
61 this section, the court may, in its discretion, increase the  
62 amount of the award to an amount equal to not more than three  
63 times the amount available under paragraph (a).

64           (c) Notwithstanding any other provision within this  
65 section, no action shall lie for a violation of subsection (8)  
66 for any communication made within 30 days of:

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67       1. The called party or consumer communicating with a  
68 telephone solicitor or other person, orally or by text message,  
69 that such called party or consumer does not wish to receive any  
70 communications from that telephone solicitor or person or the  
71 seller or organization represented by that telephone solicitor  
72 or person.

73       2. The called party or consumer effectively withdrawing a  
74 previously given valid consent.

75       Section 2. This act shall take effect upon becoming a law.

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**T I T L E   A M E N D M E N T**

80

Remove everything before the enacting clause and insert:

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An act relating to telephone solicitation; amending s. 501.059,

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F.S.; providing and revising definitions; prohibiting certain

83

telephonic sales calls; providing for a safe harbor in certain

84

situations; providing an effective date.