

721-110AX-27

Bill No. HB 1655

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Business Regulation & Consumer Affairs offered the following:

Substitute Amendment for Amendment (445367) (with title amendment)

remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Section 501.602, Florida Statutes, is amended to read:

501.602 Purpose.--The provisions of this part shall be construed liberally to promote the general welfare of the public and the integrity of the telemarketing industry. It is the intent of the Legislature in enacting the provisions of this part to protect consumers from unwanted telephone solicitations and afford consumers as much possible information regarding the identity of any commercial telephone seller or salesperson who places a call to that consumer.

Section 2. The introductory paragraph of section 501.604, Florida Statutes, is amended to read:

501.604 Exemptions.--The provisions of this part,

1 except ~~ss.~~501.608 and 501.616(6), do not apply to:

2 (1) A person engaging in commercial telephone
3 solicitation where the solicitation is an isolated transaction
4 and not done in the course of a pattern of repeated
5 transactions of like nature.

6 (2) A person soliciting for religious, charitable,
7 political, or educational purposes. A person soliciting for
8 other noncommercial purposes is exempt only if that person is
9 soliciting for a nonprofit corporation and if that corporation
10 is properly registered as such with the Secretary of State and
11 is included within the exemption of s. 501(c)(3) or (6) of the
12 Internal Revenue Code.

13 (3) A person who does not make the major sales
14 presentation during the telephone solicitation and who does
15 not intend to, and does not actually, complete or obtain
16 provisional acceptance of a sale during the telephone
17 solicitation, but who makes the major sales presentation and
18 completes the sale at a later face-to-face meeting between the
19 seller and the prospective purchaser in accordance with the
20 home solicitation provisions in this chapter. However, if a
21 seller, directly following a telephone solicitation, causes an
22 individual whose primary purpose it is to go to the
23 prospective purchaser to collect the payment or deliver any
24 item purchased, this exemption does not apply.

25 (4) Any licensed securities, commodities, or
26 investment broker, dealer, or investment adviser, when
27 soliciting within the scope of his or her license, or any
28 licensed associated person of a securities, commodities, or
29 investment broker, dealer, or investment adviser, when
30 soliciting within the scope of his or her license. As used in
31 this section, "licensed securities, commodities, or investment

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1 broker, dealer, or investment adviser" means a person subject
2 to license or registration as such by the Securities and
3 Exchange Commission, by the National Association of Securities
4 Dealers or other self-regulatory organization as defined by
5 the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by
6 an official or agency of this state or of any state of the
7 United States. As used in this section, "licensed associated
8 person of a securities, commodities, or investment broker,
9 dealer, or investment adviser" means any associated person
10 registered or licensed by the National Association of
11 Securities Dealers or other self-regulatory organization as
12 defined by the Securities Exchange Act of 1934, 15 U.S.C. s.
13 78l, or by an official or agency of this state or of any state
14 of the United States.

15 (5) A person primarily soliciting the sale of a
16 newspaper of general circulation.

17 (6) A book, video, or record club or contractual plan
18 or arrangement:

19 (a) Under which the seller provides the consumer with
20 a form which the consumer may use to instruct the seller not
21 to ship the offered merchandise.

22 (b) Which is regulated by the Federal Trade Commission
23 trade regulation concerning "use of negative option plans by
24 sellers in commerce."

25 (c) Which provides for the sale of books, records, or
26 videos which are not covered under paragraph (a) or paragraph
27 (b), including continuity plans, subscription arrangements,
28 standing order arrangements, supplements, and series
29 arrangements under which the seller periodically ships
30 merchandise to a consumer who has consented in advance to
31 receive such merchandise on a periodic basis.

1 (7) Any supervised financial institution or parent,
2 subsidiary, or affiliate thereof. As used in this section,
3 "supervised financial institution" means any commercial bank,
4 trust company, savings and loan association, mutual savings
5 bank, credit union, industrial loan company, consumer finance
6 lender, commercial finance lender, or insurer, provided that
7 the institution is subject to supervision by an official or
8 agency of this state, of any state, or of the United States.
9 For the purposes of this exemption, "affiliate" means a person
10 who directly, or indirectly through one or more
11 intermediaries, controls or is controlled by, or is under
12 common control with, a supervised financial institution.

13 (8) Any licensed insurance broker, agent, customer
14 representative, or solicitor when soliciting within the scope
15 of his or her license. As used in this section, "licensed
16 insurance broker, agent, customer representative, or
17 solicitor" means any insurance broker, agent, customer
18 representative, or solicitor licensed by an official or agency
19 of this state or of any state of the United States.

20 (9) A person soliciting the sale of services provided
21 by a cable television system operating under authority of a
22 franchise or permit.

23 (10) A business-to-business sale where:

24 (a) The commercial telephone seller has been operating
25 continuously for at least 3 years under the same business name
26 and has at least 50 percent of its dollar volume consisting of
27 repeat sales to existing businesses;

28 (b) The purchaser business intends to resell or offer
29 for purposes of advertisement or as a promotional item the
30 property or goods purchased; or

31 (c) The purchaser business intends to use the property

1 or goods purchased in a recycling, reuse, remanufacturing, or
2 manufacturing process.

3 (11) A person who solicits sales by periodically
4 publishing and delivering a catalog of the seller's
5 merchandise to prospective purchasers, if the catalog:

6 (a) Contains a written description or illustration of
7 each item offered for sale.

8 (b) Includes the business address or home office
9 address of the seller.

10 (c) Includes at least 20 pages of written material and
11 illustrations and is distributed in more than one state.

12 (d) Has an annual circulation by mailing of not less
13 than 150,000.

14 (12) A person who solicits contracts for the
15 maintenance or repair of goods previously purchased from the
16 person making the solicitation or on whose behalf the
17 solicitation is made.

18 (13) A commercial telephone seller licensed pursuant
19 to chapter 516 or part II of chapter 520. For purposes of this
20 exemption, the seller must solicit to sell a consumer good or
21 service within the scope of his or her license and the
22 completed transaction must be subject to the provisions of
23 chapter 516 or part II of chapter 520.

24 (14) A telephone company subject to the provisions of
25 chapter 364, or affiliate thereof or its agents, or a business
26 which is regulated by the Florida Public Service Commission,
27 or a Federal Communications Commission licensed cellular
28 telephone company or other bona fide radio telecommunication
29 services provider. For the purposes of this exemption,
30 "affiliate" means a person who directly, or indirectly through
31 one or more intermediaries, controls or is controlled by, or

1 is under common control with, a telephone company subject to
2 the provisions of chapter 364.

3 (15) A person who is licensed pursuant to chapter 470
4 or chapter 497 and who is soliciting within the scope of the
5 license.

6 (16) An issuer or a subsidiary of an issuer that has a
7 class of securities which is subject to s. 12 of the
8 Securities Exchange Act of 1934, 15 U.S.C. s. 781, and which
9 is either registered or exempt from registration under
10 paragraph (A), paragraph (B), paragraph (C), paragraph (E),
11 paragraph (F), paragraph (G), or paragraph (H) of subsection
12 (g)(2) of that section.

13 (17) A business soliciting exclusively the sale of
14 telephone answering services provided that the telephone
15 answering services will be supplied by the solicitor.

16 (18) A person soliciting a transaction regulated by
17 the Commodity Futures Trading Commission if the person is
18 registered or temporarily licensed for this activity with the
19 Commodity Futures Trading Commission under the Commodity
20 Exchange Act, 7 U.S.C. ss. 1 et seq., and the registration or
21 license has not expired or been suspended or revoked.

22 (19) A person soliciting the sale of food or produce
23 as defined in chapter 500 or chapter 504 if the solicitation
24 neither intends to result in, or actually results in, a sale
25 which costs the purchaser in excess of \$500.

26 (20) A person who is registered pursuant to part XI of
27 chapter 559 and who is soliciting within the scope of the
28 registration.

29 (21) A person soliciting business from prospective
30 consumers who have an existing business relationship with or
31 who have previously purchased from the business enterprise for

1 which the solicitor is calling, if the solicitor is operating
2 under the same exact business name.

3 (22) A person who has been operating, for at least 1
4 year, a retail business establishment under the same name as
5 that used in connection with telemarketing, and both of the
6 following occur on a continuing basis:

7 (a) Either products are displayed and offered for sale
8 or services are offered for sale and provided at the business
9 establishment.

10 (b) A majority of the seller's business involves the
11 buyer obtaining such products or services at the seller's
12 location.

13 (23) A person who is a registered developer or
14 exchange company pursuant to chapter 721 and who is soliciting
15 within the scope of the chapter.

16 (24) Any person which has been providing telemarketing
17 sales services continuously for at least 5 years under the
18 same ownership and control and which derives 75 percent of its
19 gross telemarketing sales revenues from contracts with persons
20 exempted in this section.

21 (25) A person who is a licensed real estate
22 salesperson or broker pursuant to chapter 475 and who is
23 soliciting within the scope of the chapter.

24 (26) A publisher, or an agent of a publisher by
25 written agreement, who solicits the sale of his or her
26 periodical or magazine of general, paid circulation. The term
27 "paid circulation" shall not include magazines that are only
28 circulated as part of a membership package or that are given
29 as a free gift or prize from the publisher or agent of the
30 publisher by written agreement.

31 (27) A person who is a licensed operator or an

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1 identification cardholder as defined in chapter 482, and who
2 is soliciting within the scope of the chapter.

3 (28) A licensee, or an affiliate of a licensee,
4 regulated under chapter 560, the Money Transmitters' Code, for
5 foreign currency exchange services.

6 Section 3. Subsection (6) is added to section 501.616,
7 Florida Statutes, to read:

8 501.616 Unlawful acts and practices.--

9 (6) It shall be unlawful for any commercial telephone
10 seller or salesperson making telephonic solicitations to:

11 (a) Take any intentional action to prevent
12 transmission of the telephone solicitor's name or telephone
13 number to the party called when the equipment or service used
14 by the telephone solicitor is capable of creating and
15 transmitting the telephone solicitor's name or telephone
16 number; or

17 (b) Knowingly provide a false or fictitious telephone
18 number to the called party.

19 Section 4. This act shall take effect October 1, 1999.

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22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 remove from the title of the bill: the entire title

25

26 and insert in lieu thereof:

27

A bill to be entitled

28

An act relating to telephone solicitation;

29

amending s. 501.602, F.S.; providing

30

legislative intent; amending s. 501.604, F.S.;

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providing additional exclusions from the

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exemptions to pt. IV of ch. 501, F.S., the
Florida Telemarketing Act; amending s. 501.616,
F.S.; prohibiting specified intentional actions
by commercial telephone sellers or
salespersons; providing an effective date.