

1                                   A bill to be entitled  
2           An act relating to telephone solicitation;  
3           amending s. 501.602, F.S.; providing  
4           legislative intent; amending s. 501.604, F.S.;  
5           providing additional exclusions from the  
6           exemptions to pt. IV of ch. 501, F.S., the  
7           Florida Telemarketing Act; amending s. 501.616,  
8           F.S.; prohibiting specified intentional actions  
9           by commercial telephone sellers or  
10          salespersons; providing an effective date.

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

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

16           501.602 Purpose.--The provisions of this part shall be  
17 construed liberally to promote the general welfare of the  
18 public and the integrity of the telemarketing industry. It is  
19 the intent of the Legislature in enacting the provisions of  
20 this part to protect consumers from unwanted telephone  
21 solicitations and afford consumers as much possible  
22 information regarding the identity of any commercial telephone  
23 seller or salesperson who places a call to that consumer.

24           Section 2. The introductory paragraph of section  
25 501.604, Florida Statutes, is amended to read:

26           501.604 Exemptions.--The provisions of this part,  
27 except ~~ss.s.~~501.608 and 501.616(6), do not apply to:

28           (1) A person engaging in commercial telephone  
29 solicitation where the solicitation is an isolated transaction  
30 and not done in the course of a pattern of repeated  
31 transactions of like nature.

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

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

20           (4) Any licensed securities, commodities, or  
21 investment broker, dealer, or investment adviser, when  
22 soliciting within the scope of his or her license, or any  
23 licensed associated person of a securities, commodities, or  
24 investment broker, dealer, or investment adviser, when  
25 soliciting within the scope of his or her license. As used in  
26 this section, "licensed securities, commodities, or investment  
27 broker, dealer, or investment adviser" means a person subject  
28 to license or registration as such by the Securities and  
29 Exchange Commission, by the National Association of Securities  
30 Dealers or other self-regulatory organization as defined by  
31 the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by

1 an official or agency of this state or of any state of the  
2 United States. As used in this section, "licensed associated  
3 person of a securities, commodities, or investment broker,  
4 dealer, or investment adviser" means any associated person  
5 registered or licensed by the National Association of  
6 Securities Dealers or other self-regulatory organization as  
7 defined by the Securities Exchange Act of 1934, 15 U.S.C. s.  
8 781, or by an official or agency of this state or of any state  
9 of the United States.

10 (5) A person primarily soliciting the sale of a  
11 newspaper of general circulation.

12 (6) A book, video, or record club or contractual plan  
13 or arrangement:

14 (a) Under which the seller provides the consumer with  
15 a form which the consumer may use to instruct the seller not  
16 to ship the offered merchandise.

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

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

27 (7) Any supervised financial institution or parent,  
28 subsidiary, or affiliate thereof. As used in this section,  
29 "supervised financial institution" means any commercial bank,  
30 trust company, savings and loan association, mutual savings  
31 bank, credit union, industrial loan company, consumer finance

1 lender, commercial finance lender, or insurer, provided that  
2 the institution is subject to supervision by an official or  
3 agency of this state, of any state, or of the United States.  
4 For the purposes of this exemption, "affiliate" means a person  
5 who directly, or indirectly through one or more  
6 intermediaries, controls or is controlled by, or is under  
7 common control with, a supervised financial institution.

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

15 (9) A person soliciting the sale of services provided  
16 by a cable television system operating under authority of a  
17 franchise or permit.

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

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

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

26 (c) The purchaser business intends to use the property  
27 or goods purchased in a recycling, reuse, remanufacturing, or  
28 manufacturing process.

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

1           (a) Contains a written description or illustration of  
2 each item offered for sale.

3           (b) Includes the business address or home office  
4 address of the seller.

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

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

9           (12) A person who solicits contracts for the  
10 maintenance or repair of goods previously purchased from the  
11 person making the solicitation or on whose behalf the  
12 solicitation is made.

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

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

29           (15) A person who is licensed pursuant to chapter 470  
30 or chapter 497 and who is soliciting within the scope of the  
31 license.

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

8           (17) A business soliciting exclusively the sale of  
9 telephone answering services provided that the telephone  
10 answering services will be supplied by the solicitor.

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

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

21           (20) A person who is registered pursuant to part XI of  
22 chapter 559 and who is soliciting within the scope of the  
23 registration.

24           (21) A person soliciting business from prospective  
25 consumers who have an existing business relationship with or  
26 who have previously purchased from the business enterprise for  
27 which the solicitor is calling, if the solicitor is operating  
28 under the same exact business name.

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

3 (a) Either products are displayed and offered for sale  
4 or services are offered for sale and provided at the business  
5 establishment.

6 (b) A majority of the seller's business involves the  
7 buyer obtaining such products or services at the seller's  
8 location.

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

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

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

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

27 (27) A person who is a licensed operator or an  
28 identification cardholder as defined in chapter 482, and who  
29 is soliciting within the scope of the chapter.

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

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

6 501.616 Unlawful acts and practices.--

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

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

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

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