

By the Fiscal Responsibility Council and Representative
Dockery

1 A bill to be entitled
2 An act relating to telemarketing; repealing ss.
3 501.605, 501.606, 501.607, 501.608, 501.609,
4 501.612, 501.622, and 501.626, F.S., to remove
5 all provisions of the Florida Telemarketing Act
6 relating to licensure and regulation of
7 commercial telephone sellers and salespersons
8 by the Department of Agriculture and Consumer
9 Services; amending ss. 501.603, 501.604,
10 501.611, 501.613, 501.614, 501.615, 501.616,
11 501.618, 501.619, 501.621, and 501.623, F.S.,
12 to provide for enforcement of commercial
13 telephone solicitation by the state attorneys,
14 to conform; repealing s. 205.1973, F.S.,
15 relating to the issuance or renewal of local
16 occupational licenses to telemarketing
17 businesses, to conform; providing an effective
18 date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Sections 501.605, 501.606, 501.607,
23 501.608, 501.609, 501.612, 501.622, and 501.626, Florida
24 Statutes, are repealed.

25 Section 2. Section 501.603, Florida Statutes, is
26 amended to read:

27 501.603 Definitions.--As used in this part, unless the
28 context otherwise requires, the term:

29 (1) "Commercial telephone solicitation" means:

30 (a) An unsolicited telephone call to a person
31 initiated by a commercial telephone seller or salesperson, or

1 an automated dialing machine used in accordance with the
2 provisions of s. 501.059(7) for the purpose of inducing the
3 person to purchase or invest in consumer goods or services;
4 (b) Other communication with a person where:
5 1. A gift, award, or prize is offered; or
6 2. A telephone call response is invited; and
7 3. The salesperson intends to complete a sale or enter
8 into an agreement to purchase during the course of the
9 telephone call; or
10 (c) Other communication with a person which represents
11 a price, quality, or availability of consumer goods or
12 services and which invites a response by telephone or which is
13 followed by a call to the person by a salesperson.
14
15 For purposes of this section, "other communication" means a
16 written or oral notification or advertisement transmitted
17 through any means. Also, for purposes of this section,
18 "invites a response by telephone" does not mean the mere
19 listing or including of a telephone number in a notification
20 or advertisement.
21 (2) "Commercial telephone seller" means any person who
22 engages in commercial telephone solicitation on his or her own
23 behalf or through salespersons, except that a commercial
24 telephone seller does not include any of the persons or
25 entities exempted from this part by s. 501.604. A commercial
26 telephone seller does not include a salesperson as defined in
27 subsection (10). A commercial telephone seller includes, but
28 is not limited to, owners, operators, officers, directors,
29 partners, or other individuals engaged in the management
30 activities of a business entity pursuant to this part.
31

1 (3) "Consumer goods or services" means any real
2 property or any tangible or intangible personal property which
3 is normally used for personal, family, or household purposes
4 or any property of any nature which is solicited for the
5 purpose of providing a profit or investment opportunity,
6 including, without limitation, any such property intended to
7 be attached to or installed in any real property, without
8 regard to whether it is so attached or installed, as well as
9 timeshare estates and licenses, and any services related to
10 such property.

11 ~~(4) "Department" means the Department of Agriculture~~
12 ~~and Consumer Services.~~

13 (4)~~(5)~~ "Enforcing authority" means the ~~Department of~~
14 ~~Agriculture and Consumer Services or the~~ office of the state
15 attorney if a violation of this part occurs in or affects the
16 judicial circuit under the jurisdiction of the office of the
17 state attorney.

18 (5)~~(6)~~ "Gift, award, or prize" means a gratuity which
19 the purchaser believes to be of value.

20 (6)~~(7)~~ "Individual" means a single human being and
21 does not mean a firm, association of individuals, corporation,
22 partnership, joint venture, sole proprietorship, or any other
23 entity.

24 (7)~~(8)~~ "Person" includes any individual, group of
25 individuals, firm, association, corporation, partnership,
26 joint venture, sole proprietorship, or any other business
27 entity.

28 (8)~~(9)~~ "Purchaser" means a person who is solicited to
29 become or does become obligated to a commercial telephone
30 seller.

31

1 (9)~~(10)~~ "Salesperson" means any individual employed,
2 appointed, or authorized by a commercial telephone seller,
3 regardless of whether the commercial telephone seller refers
4 to the individual as an agent, representative, or independent
5 contractor, who attempts to solicit or solicits a sale on
6 behalf of the commercial telephone seller. A salesperson,
7 however, does not include individuals exempted from this part
8 by s. 501.604 or employees or agents of persons exempted from
9 this part by s. 501.604, or companies and individuals under
10 contract with persons exempted from this part by s. 501.604
11 when liability is assumed by the exempt entity.

12 (10)~~(11)~~ "Solicit" means to initiate contact with a
13 purchaser for the purpose of attempting to sell consumer goods
14 or services, where such purchaser has expressed no previous
15 interest in purchasing, investing in, or obtaining information
16 regarding the property, goods, or services attempted to be
17 sold.

18 Section 3. Section 501.604, Florida Statutes, is
19 amended to read:

20 501.604 Exemptions.--The provisions of this part,
21 except s. ss. 501.608 and 501.616(3)(6)and(4)(7), do not
22 apply to:

23 (1) A person engaging in commercial telephone
24 solicitation where the solicitation is an isolated transaction
25 and not done in the course of a pattern of repeated
26 transactions of like nature.

27 (2) A person soliciting for religious, charitable,
28 political, or educational purposes. A person soliciting for
29 other noncommercial purposes is exempt only if that person is
30 soliciting for a nonprofit corporation and if that corporation
31 is properly registered as such with the Secretary of State and

1 is included within the exemption of s. 501(c)(3) or (6) of the
2 Internal Revenue Code.

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

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

1 Securities Dealers or other self-regulatory organization as
2 defined by the Securities Exchange Act of 1934, 15 U.S.C. s.
3 781, or by an official or agency of this state or of any state
4 of the United States.

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

7 (6) A book, video, or record club or contractual plan
8 or arrangement:

9 (a) Under which the seller provides the consumer with
10 a form which the consumer may use to instruct the seller not
11 to ship the offered merchandise.

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

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

22 (7) Any supervised financial institution or parent,
23 subsidiary, or affiliate thereof. As used in this section,
24 "supervised financial institution" means any commercial bank,
25 trust company, savings and loan association, mutual savings
26 bank, credit union, industrial loan company, consumer finance
27 lender, commercial finance lender, or insurer, provided that
28 the institution is subject to supervision by an official or
29 agency of this state, of any state, or of the United States.
30 For the purposes of this exemption, "affiliate" means a person
31 who directly, or indirectly through one or more

1 intermediaries, controls or is controlled by, or is under
2 common control with, a supervised financial institution.

3 (8) Any licensed insurance broker, agent, customer
4 representative, or solicitor when soliciting within the scope
5 of his or her license. As used in this section, "licensed
6 insurance broker, agent, customer representative, or
7 solicitor" means any insurance broker, agent, customer
8 representative, or solicitor licensed by an official or agency
9 of this state or of any state of the United States.

10 (9) A person soliciting the sale of services provided
11 by a cable television system operating under authority of a
12 franchise or permit.

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

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

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

21 (c) The purchaser business intends to use the property
22 or goods purchased in a recycling, reuse, remanufacturing, or
23 manufacturing process.

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

27 (a) Contains a written description or illustration of
28 each item offered for sale.

29 (b) Includes the business address or home office
30 address of the seller.

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

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

5 (12) A person who solicits contracts for the
6 maintenance or repair of goods previously purchased from the
7 person making the solicitation or on whose behalf the
8 solicitation is made.

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

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

25 (15) A person who is licensed pursuant to chapter 470
26 or chapter 497 and who is soliciting within the scope of the
27 license.

28 (16) An issuer or a subsidiary of an issuer that has a
29 class of securities which is subject to s. 12 of the
30 Securities Exchange Act of 1934, 15 U.S.C. s. 781, and which
31 is either registered or exempt from registration under

1 paragraph (A), paragraph (B), paragraph (C), paragraph (E),
2 paragraph (F), paragraph (G), or paragraph (H) of subsection
3 (g)(2) of that section.

4 (17) A business soliciting exclusively the sale of
5 telephone answering services provided that the telephone
6 answering services will be supplied by the solicitor.

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

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

17 (20) A person who is registered pursuant to part XI of
18 chapter 559 and who is soliciting within the scope of the
19 registration.

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

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

29 (a) Either products are displayed and offered for sale
30 or services are offered for sale and provided at the business
31 establishment.

1 (b) A majority of the seller's business involves the
2 buyer obtaining such products or services at the seller's
3 location.

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

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

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

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

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

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

28 Section 4. Section 501.611, Florida Statutes, is
29 amended to read:

30 501.611 Security.--

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1 (1) A commercial telephone seller must obtain and
2 maintain ~~An application filed pursuant to s. 501.605 must be~~
3 ~~accompanied by:~~
4 (a) A bond executed by a corporate surety ~~approved by~~
5 ~~the department and~~ licensed to do business in this state;
6 (b) An irrevocable letter of credit issued ~~for the~~
7 ~~benefit of the applicant~~ by a bank whose deposits are insured
8 by an agency of the Federal Government; or
9 (c) A certificate of deposit in a financial
10 institution insured by an agency of the Federal Government,
11 ~~which may be withdrawn only on the order of the department,~~
12 ~~except that the interest may accrue to the applicant.~~
13 (2) The amount of the bond, letter of credit, or
14 certificate of deposit must be a minimum of \$50,000, and the
15 bond, letter of credit, or certificate of deposit must be
16 conditioned upon compliance by the commercial telephone seller
17 ~~applicant~~ with the provisions of this part. ~~The department~~
18 ~~may, at its discretion, establish a bond of a greater amount~~
19 ~~to ensure the general welfare of the public and the interests~~
20 ~~of the telemarketing industry.~~
21 ~~(3) The bond shall be posted with the department.~~
22 (3)(4) The enforcing authority ~~department or any~~
23 ~~governmental agency,~~ on behalf of any injured purchaser, or
24 any purchaser herself or himself who is injured by the
25 bankruptcy of the commercial telephone seller ~~applicant~~ or by
26 the commercial telephone seller's ~~her or his~~ breach of any
27 agreement entered into with the purchaser ~~in her or his~~
28 ~~capacity as a licensee,~~ may bring and maintain an action to
29 recover against the bond, letter of credit, or certificate of
30 deposit.
31

1 Section 5. Subsection (2) of section 501.613, Florida
2 Statutes, is amended to read:

3 501.613 General disclosures.--

4 (2) If a sale or an agreement to purchase is
5 completed, the commercial telephone seller must inform the
6 purchaser of her or his cancellation rights as provided in
7 this part, ~~state the license number issued by the department~~
8 ~~for both the commercial telephone seller and the salesperson,~~
9 and give the street address of the commercial telephone
10 seller.

11 Section 6. Section 501.614, Florida Statutes, is
12 amended to read:

13 501.614 Disclosures of gifts and premiums.--If a
14 commercial telephone seller expressly or impliedly represents
15 to any prospective purchaser, directly or through a
16 salesperson, that the purchaser is or may be eligible to
17 receive any gift, premium, bonus, or prize, however
18 denominated, the commercial telephone seller shall, upon
19 request, provide the purchaser ~~submit to the department a~~
20 ~~statement setting forth,~~ for each item mentioned:

21 (1) A description of the item.

22 (2) The value or worth of the item and the basis for
23 the valuation.

24 (3) All terms and conditions a purchaser must satisfy
25 in order to receive the item. The statement must be
26 accompanied by a copy of the written statement of terms and
27 conditions provided to purchasers pursuant to this part.

28 (4) If they are ascertainable, the odds, for a given
29 purchaser, of receiving the item.

30 (5) If a purchaser is to receive fewer than all the
31 items described by the seller:

1 (a) The manner in which the commercial telephone
2 seller decides which item a given purchaser is to receive.

3 (b) If they are ascertainable, the odds, for a given
4 purchaser, of receiving each item described.

5 (c) The name and address of each person who has,
6 during the preceding 12 months or any portion thereof in which
7 the commercial telephone seller has done business, received
8 each gift, premium, bonus, or prize. The provisions of this
9 section shall not apply if the item is unconditionally offered
10 to a purchaser as part of a sale and the buyer has 7 days to
11 return the goods or cancel the services and the right to
12 receive a full refund in 30 days and the right to keep the
13 item in that case without cost.

14 Section 7. Paragraph (c) of subsection (1) of section
15 501.615, Florida Statutes, is amended to read:

16 501.615 Written contract; cancellation; refund.--

17 (1) A purchase of consumer goods or services ordered
18 as a result of a commercial telephone solicitation as defined
19 in this part, if not followed by a signed written contract, is
20 not final. If a contract is not made in compliance with this
21 section, it is not valid and enforceable against the
22 purchaser. The contract made pursuant to a commercial
23 telephone solicitation shall:

24 (c) Contain the name, address, and telephone number,
25 ~~and registration number~~ of the commercial telephone seller and
26 the salesperson, the total price of the contract, and a
27 detailed description of the goods or services being sold.

28 Section 8. Section 501.616, Florida Statutes, is
29 amended to read:

30 501.616 Unlawful acts and practices.--

31

1 (1) It shall be unlawful for any commercial telephone
2 seller or salesperson to require that payment be by credit
3 card authorization or otherwise to announce a preference for
4 that method of payment.

5 ~~(2) It shall be unlawful for any commercial telephone~~
6 ~~seller to employ, or be affiliated with, any unlicensed~~
7 ~~salesperson.~~

8 ~~(3) It shall be unlawful for any salesperson to be~~
9 ~~employed by, or affiliated with, an unlicensed commercial~~
10 ~~telephone seller.~~

11 ~~(4) It shall be unlawful for any commercial telephone~~
12 ~~seller or salesperson to be unlicensed.~~

13 (2)~~(5)~~ It shall be unlawful for any salesperson or
14 commercial telephone seller to otherwise violate the
15 provisions of this part.

16 (3)~~(6)~~ It shall be unlawful for any commercial
17 telephone seller or salesperson to make a commercial telephone
18 solicitation phone call before 8:00 a.m. or after 9:00 p.m.
19 local time at the called person's location.

20 (4)~~(7)~~ It shall be unlawful for any commercial
21 telephone seller or salesperson making telephonic
22 solicitations to take any intentional action to prevent
23 transmission of the telephone solicitor's name or telephone
24 number to the party called when the equipment or service used
25 by the telephone solicitor is capable of creating and
26 transmitting the telephone solicitor's name or telephone
27 number.

28 Section 9. Section 501.618, Florida Statutes, is
29 amended to read:

30 501.618 General civil remedies.--The enforcing
31 authority ~~department~~ may bring:

1 (1) An action to obtain a declaratory judgment that an
2 act or practice violates the provisions of this part.

3 (2) An action to enjoin a person who has violated, is
4 violating, or is otherwise likely to violate the provisions of
5 this part.

6 (3) An action on behalf of one or more purchasers for
7 the actual damages caused by an act or practice performed in
8 violation of the provisions of this part. Such an action may
9 include, but is not limited to, an action to recover against a
10 bond, letter of credit, or certificate of deposit as otherwise
11 provided in this part.

12
13 Upon motion of the enforcing authority in any action brought
14 under this section, the court may make appropriate orders,
15 including appointment of a master or receiver or sequestration
16 of assets, to reimburse consumers found to have been damaged,
17 to carry out a consumer transaction in accordance with the
18 consumer's reasonable expectations, or to grant other
19 appropriate relief. The court may assess the expenses of a
20 master or receiver against a commercial telephone seller. Any
21 injunctive order, whether temporary or permanent, issued by
22 the court shall be effective throughout the state unless
23 otherwise provided in the order.

24 Section 10. Section 501.619, Florida Statutes, is
25 amended to read:

26 501.619 Civil penalties.--Any person who engages in
27 any act or practice declared in this part to be unlawful is
28 liable for a civil penalty of not more than \$10,000 for each
29 such violation. This civil penalty may be recovered in any
30 action brought under this part by the enforcing authority
31 ~~department~~, or the enforcing authority ~~department~~ may

1 terminate any investigation or action upon agreement by the
2 person to pay a stipulated civil penalty. The enforcing
3 authority department or the court may waive any such civil
4 penalty or other fines or costs if the person has previously
5 made full restitution or reimbursement or has paid actual
6 damages to the purchasers who have been injured by the
7 unlawful act or practice.

8 Section 11. Subsections (1) and (3) of section
9 501.621, Florida Statutes, are amended to read:

10 501.621 Attorney's fees and costs.--

11 (1) In any civil action or investigation resulting
12 from a transaction involving a violation of the provisions of
13 this part, except as provided in subsection (3), the enforcing
14 authority department shall receive reasonable attorney's fees
15 and costs from the nonprevailing party.

16 (3) In any civil litigation initiated by the enforcing
17 authority department resulting in a judgment or administrative
18 order, the court may award to the prevailing party reasonable
19 attorney's fees and costs if the court finds that there was a
20 complete absence of a justiciable issue of either law or fact
21 raised by the losing party or if the court finds bad faith on
22 the part of the losing party.

23 Section 12. Section 501.623, Florida Statutes, is
24 amended to read:

25 501.623 Criminal penalties.--

26 ~~(1) No salesperson shall solicit purchasers on behalf~~
27 ~~of a commercial telephone seller who is not currently licensed~~
28 ~~with the department pursuant to the provisions of this part.~~
29 ~~Any person who violates the provisions of this section commits~~
30 ~~a felony of the third degree, punishable as provided in s.~~
31 ~~775.082, s. 775.083, or s. 775.084.~~

1 ~~(2) No commercial telephone seller shall employ or be~~
2 ~~affiliated with a salesperson who is soliciting purchasers and~~
3 ~~who is not currently licensed with the department pursuant to~~
4 ~~the provisions of this part. Any person who violates the~~
5 ~~provisions of this section commits a felony of the third~~
6 ~~degree, punishable as provided in s. 775.082, s. 775.083, or~~
7 ~~s. 775.084.~~

8 ~~(3) No commercial telephone seller or salesperson~~
9 ~~shall solicit without a license. Any person who violates the~~
10 ~~provisions of this section commits a felony of the third~~
11 ~~degree, punishable as provided in s. 775.082, s. 775.083, or~~
12 ~~s. 775.084.~~

13 ~~(4) Any commercial telephone seller or salesperson who~~
14 ~~falsifies information on an application commits a felony of~~
15 ~~the third degree, punishable as provided in s. 775.082, s.~~
16 ~~775.083, or s. 775.084.~~

17 (1)~~(5)~~ Except as provided in subsection (1),
18 subsection (2), subsection (3), or subsection (4), Any person
19 who otherwise violates any provision of this part or who
20 directly or indirectly employs any device, scheme, or artifice
21 to deceive in connection with the offer or sale by any
22 commercial telephone seller commits a felony of the third
23 degree, punishable as provided in s. 775.082, s. 775.083, or
24 s. 775.084.

25 (2)~~(6)~~ Any person who is convicted of a second or
26 subsequent violation of the provisions of this part commits a
27 felony of the second degree, punishable as provided in s.
28 775.082, s. 775.083, or s. 775.084. A conviction shall
29 include a finding of guilt where adjudication has been
30 withheld.

31

