

By Senator Gibson

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1 A bill to be entitled
2 An act relating to commercial telephone solicitation;
3 amending s. 501.616, F.S.; prohibiting a commercial
4 telephone seller or salesperson from using automated
5 dialing or recorded messages to make certain
6 commercial telephone solicitation phone calls;
7 revising the timeframe during which a commercial
8 telephone seller or salesperson may make commercial
9 solicitation phone calls; prohibiting commercial
10 telephone sellers or salespersons from making a
11 specified number of commercial telephone solicitation
12 phone calls to a person over a specified timeframe;
13 reenacting s. 501.604, F.S., relating to exemptions to
14 the Florida Telemarketing Act, to incorporate the
15 amendment made to s. 501.616, F.S., in a reference
16 thereto; reenacting s. 648.44(1)(c), F.S., relating to
17 prohibitions regarding bail bond agent telephone
18 solicitations, to incorporate the amendment made to s.
19 501.616, F.S., in a reference thereto; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (6) of section 501.616, Florida
25 Statutes, is amended to read:

26 501.616 Unlawful acts and practices.—

27 (6) A commercial telephone seller or salesperson may not
28 make any of the following types of phone calls, including calls
29 made through automated dialing or recorded messages:

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30 (a) A commercial telephone solicitation phone call before 8
31 a.m. or after 8 ~~9~~ p.m. local time in ~~at~~ the called person's time
32 zone ~~location~~.

33 (b) More than three commercial telephone solicitation phone
34 calls from any number to a person over a 24-hour period on the
35 same subject matter or issue, regardless of the phone number
36 used to make the call.

37 Section 2. For the purpose of incorporating the amendment
38 made by this act to section 501.616, Florida Statutes, in a
39 reference thereto, section 501.604, Florida Statutes, is
40 reenacted to read:

41 501.604 Exemptions.—The provisions of this part, except ss.
42 501.608 and 501.616(6) and (7), do not apply to:

43 (1) A person engaging in commercial telephone solicitation
44 where the solicitation is an isolated transaction and not done
45 in the course of a pattern of repeated transactions of like
46 nature.

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

54 (3) A person who does not make the major sales presentation
55 during the telephone solicitation and who does not intend to,
56 and does not actually, complete or obtain provisional acceptance
57 of a sale during the telephone solicitation, but who makes the
58 major sales presentation and completes the sale at a later face-

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59 to-face meeting between the seller and the prospective purchaser
60 in accordance with the home solicitation provisions in this
61 chapter. However, if a seller, directly following a telephone
62 solicitation, causes an individual whose primary purpose it is
63 to go to the prospective purchaser to collect the payment or
64 deliver any item purchased, this exemption does not apply.

65 (4) A licensed securities, commodities, or investment
66 broker, dealer, or investment adviser, when soliciting within
67 the scope of his or her license, or a licensed associated person
68 of a securities, commodities, or investment broker, dealer, or
69 investment adviser, when soliciting within the scope of his or
70 her license. As used in this section, "licensed securities,
71 commodities, or investment broker, dealer, or investment
72 adviser" means a person subject to license or registration as
73 such by the Securities and Exchange Commission, by the Financial
74 Industry Regulatory Authority or other self-regulatory
75 organization as defined by the Securities Exchange Act of 1934,
76 15 U.S.C. s. 781, or by an official or agency of this state or
77 of any state of the United States. As used in this section,
78 "licensed associated person of a securities, commodities, or
79 investment broker, dealer, or investment adviser" means an
80 associated person registered or licensed by the Financial
81 Industry Regulatory Authority or other self-regulatory
82 organization as defined by the Securities Exchange Act of 1934,
83 15 U.S.C. s. 781, or by an official or agency of this state or
84 of any state of the United States.

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

87 (6) A book, video, or record club or contractual plan or

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88 arrangement:

89 (a) Under which the seller provides the consumer with a
90 form which the consumer may use to instruct the seller not to
91 ship the offered merchandise.

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

95 (c) Which provides for the sale of books, records, or
96 videos which are not covered under paragraph (a) or paragraph
97 (b), including continuity plans, subscription arrangements,
98 standing order arrangements, supplements, and series
99 arrangements under which the seller periodically ships
100 merchandise to a consumer who has consented in advance to
101 receive such merchandise on a periodic basis.

102 (7) A supervised financial institution or parent,
103 subsidiary, or affiliate thereof operating within the scope of
104 supervised activity. As used in this section, "supervised
105 financial institution" means a commercial bank, trust company,
106 savings and loan association, mutual savings bank, credit union,
107 industrial loan company, consumer finance lender, commercial
108 finance lender, or insurer, provided that the institution is
109 subject to supervision by an official or agency of this state,
110 of any state, or of the United States. For the purposes of this
111 exemption, "affiliate" means a person who directly, or
112 indirectly through one or more intermediaries, controls or is
113 controlled by, or is under common control with, a supervised
114 financial institution.

115 (8) Any licensed insurance broker, agent, customer
116 representative, or solicitor when soliciting within the scope of

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117 his or her license. As used in this section, "licensed insurance
118 broker, agent, customer representative, or solicitor" means any
119 insurance broker, agent, customer representative, or solicitor
120 licensed by an official or agency of this state or of any state
121 of the United States.

122 (9) A person soliciting the sale of services provided by a
123 cable television system operating under authority of a franchise
124 or permit.

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

126 (a) The commercial telephone seller has been lawfully
127 operating continuously for at least 3 years under the same
128 business name and has at least 50 percent of its dollar volume
129 consisting of repeat sales to existing businesses;

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

133 (c) The purchaser business intends to use the property or
134 goods purchased in a recycling, reuse, remanufacturing, or
135 manufacturing process.

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

139 (a) Contains a written description or illustration of each
140 item offered for sale.

141 (b) Includes the business address or home office address of
142 the seller.

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

145 (d) Has an annual circulation by mailing of not less than

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146 150,000.

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

150 (13) A commercial telephone seller licensed pursuant to
151 chapter 516 or part III of chapter 520. For purposes of this
152 exemption, the seller must solicit to sell a consumer good or
153 service within the scope of his or her license and the completed
154 transaction must be subject to the provisions of chapter 516 or
155 part III of chapter 520.

156 (14) A telephone company subject to chapter 364, or
157 affiliate thereof or its agents, or a telecommunications
158 business that is regulated by the Florida Public Service
159 Commission, or a Federal Communications Commission licensed
160 cellular telephone company or other bona fide radio
161 telecommunication services provider. For the purposes of this
162 exemption, "affiliate" means a person who directly, or
163 indirectly through one or more intermediaries, controls or is
164 controlled by, or is under common control with, a telephone
165 company subject to chapter 364.

166 (15) A person who is licensed pursuant to chapter 497 and
167 who is soliciting within the scope of the license.

168 (16) An issuer or a subsidiary of an issuer that has a
169 class of securities which is subject to s. 12 of the Securities
170 Exchange Act of 1934, 15 U.S.C. s. 781, and which is either
171 registered or exempt from registration under paragraph (A),
172 paragraph (B), paragraph (C), paragraph (E), paragraph (F),
173 paragraph (G), or paragraph (H) of subsection (g)(2) of that
174 section.

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175 (17) A business soliciting exclusively the sale of
176 telephone answering services provided that the telephone
177 answering services will be supplied by the solicitor.

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

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

188 (20) A person who is registered pursuant to part XI of
189 chapter 559 and who is soliciting within the scope of the
190 registration.

191 (21) A person soliciting business from prospective
192 consumers who have an existing business relationship with or who
193 have previously purchased from the business enterprise for which
194 the solicitor is calling, if the solicitor is operating under
195 the same exact business name.

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

200 (a) Either products are displayed and offered for sale or
201 services are offered for sale and provided at the business
202 establishment.

203 (b) A majority of the seller's business involves the buyer

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204 obtaining such products or services at the seller's location.

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

208 (24) Any person who has been lawfully providing
209 telemarketing sales services continuously for at least 5 years
210 under the same ownership and control and who derives 75 percent
211 of its gross telemarketing sales revenues from contracts with
212 persons exempted in this section.

213 (25) A person licensed pursuant to chapter 475 and who is
214 soliciting within the scope of the chapter.

215 (26) A publisher, or an agent of a publisher by written
216 agreement, who solicits the sale of his or her periodical or
217 magazine of general, paid circulation. The term "paid
218 circulation" shall not include magazines that are only
219 circulated as part of a membership package or that are given as
220 a free gift or prize from the publisher or agent of the
221 publisher by written agreement.

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

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

228 Section 3. For the purpose of incorporating the amendment
229 made by this act to section 501.616, Florida Statutes, in a
230 reference thereto, paragraph (c) of subsection (1) of section
231 648.44, Florida Statutes, is reenacted to read:

232 648.44 Prohibitions; penalty.—

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233 (1) A bail bond agent or temporary bail bond agent may not:

234 (c) Initiate in-person or telephone solicitation after 9:00

235 p.m. or before 8:00 a.m., in the case of domestic violence

236 cases, at the residence of the detainee or the detainee's

237 family. Any solicitation not prohibited by this chapter must

238 comply with the telephone solicitation requirements in ss.

239 501.059(2) and (4), 501.613, and 501.616(6).

240 Section 4. This act shall take effect July 1, 2021.