

By the Committee on Regulated Industries; and Senators Gibson and Powell

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1 A bill to be entitled
2 An act relating to telephone solicitation; amending s.
3 501.059, F.S.; defining terms; prohibiting certain
4 telephonic sales calls without the prior express
5 written consent of the called party; removing
6 provisions authorizing the use of certain automated
7 telephone dialing systems; providing a rebuttable
8 presumption for certain calls made to any area code in
9 this state; providing a cause of action for aggrieved
10 called parties; authorizing a court to increase an
11 award for willful and knowing violations; revising
12 awards of attorney fees and costs for violations to
13 authorize only a prevailing plaintiff to receive such
14 an award; amending s. 501.616, F.S.; prohibiting a
15 commercial telephone seller or salesperson from using
16 automated dialing or recorded messages to make certain
17 commercial telephone solicitation phone calls;
18 revising the timeframe during which a commercial
19 telephone seller or salesperson may make commercial
20 solicitation phone calls; prohibiting commercial
21 telephone sellers or salespersons from making a
22 specified number of commercial telephone solicitation
23 phone calls to a person over a specified timeframe;
24 reenacting s. 501.604, F.S., relating to exemptions to
25 the Florida Telemarketing Act, to incorporate the
26 amendment made to s. 501.616, F.S., in a reference
27 thereto; reenacting s. 648.44(1)(c), F.S., relating to
28 prohibitions regarding bail bond agent telephone
29 solicitations, to incorporate the amendment made to s.

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30 501.616, F.S., in a reference thereto; providing an
31 effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Present paragraphs (a) through (e) and (f)
36 through (i) of subsection (1) of section 501.059, Florida
37 Statutes, are redesignated as paragraphs (b) through (f) and (i)
38 through (l), respectively, new paragraphs (a), (g), and (h) are
39 added to that subsection, and subsections (8) and (10) and
40 present subsections (11) and (12) are amended, to read:

41 501.059 Telephone solicitation.—

42 (1) As used in this section, the term:

43 (a) "Called party" means a person who is the regular user
44 of the telephone number that receives a telephonic sales call.

45 (g) "Prior express written consent" means a written
46 agreement that:

47 1. Bears the signature of the called party;

48 2. Clearly authorizes the person making or allowing the
49 placement of a telephonic sales call by telephone call, text
50 message, or voicemail transmission to deliver or cause to be
51 delivered to the called party a telephonic sales call using an
52 automated system for the selection or dialing of telephone
53 numbers, the playing of a recorded message when a connection is
54 completed to a number called, or the transmission of a
55 prerecorded voicemail;

56 3. Includes the telephone number to which the signatory
57 authorizes a telephonic sales call to be delivered; and

58 4. Includes a clear and conspicuous disclosure informing

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59 the called party that:

60 a. By executing the agreement, the called party authorizes
61 the person making or allowing the placement of a telephonic
62 sales call to deliver or cause to be delivered a telephonic
63 sales call to the called party using an automated system for the
64 selection or dialing of telephone numbers or the playing of a
65 recorded message when a connection is completed to a number
66 called; and

67 b. He or she is not required to directly or indirectly sign
68 the written agreement or to agree to enter into such an
69 agreement as a condition of purchasing any property, goods, or
70 services.

71 (h) "Signature" includes an electronic or digital
72 signature, to the extent that such form of signature is
73 recognized as a valid signature under applicable federal law or
74 state contract law.

75 (8) (a) A No person may not shall make or knowingly allow a
76 telephonic sales call to be made if such call involves an
77 automated system for the selection or dialing of telephone
78 numbers or the playing of a recorded message when a connection
79 is completed to a number called without the prior express
80 written consent of the called party.

81 (b) ~~Nothing herein prohibits the use of an automated~~
82 ~~telephone dialing system with live messages if the calls are~~
83 ~~made or messages given solely in response to calls initiated by~~
84 ~~the persons to whom the automatic calls or live messages are~~
85 ~~directed or if the telephone numbers selected for automatic~~
86 ~~dialing have been screened to exclude any telephone subscriber~~
87 ~~who is included on the department's then-current "no sales~~

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88 ~~solicitation calls" listing or any unlisted telephone number, or~~
89 ~~if the calls made concern goods or services that have been~~
90 ~~previously ordered or purchased.~~

91 ~~(e)~~ It shall be unlawful for any person who makes a
92 telephonic sales call or causes a telephonic sales call to be
93 made to fail to transmit or cause not to be transmitted the
94 originating telephone number and, when made available by the
95 telephone solicitor's carrier, the name of the telephone
96 solicitor to any caller identification service in use by a
97 recipient of a telephonic sales call. However, it is ~~shall~~ not
98 ~~be~~ a violation to substitute, for the name and telephone number
99 used in or billed for making the call, the name of the seller on
100 behalf of which a telephonic sales call is placed and the
101 seller's customer service telephone number, which is answered
102 during regular business hours. If a telephone number is made
103 available through a caller identification service as a result of
104 a telephonic sales call, the solicitor must ensure that
105 telephone number is capable of receiving telephone calls and
106 must connect the original call recipient, upon calling such
107 number, to the telephone solicitor or to the seller on behalf of
108 which a telephonic sales call was placed. For purposes of this
109 section, the term "caller identification service" means a
110 service that allows a telephone subscriber to have the telephone
111 number and, where available, the name of the calling party
112 transmitted contemporaneously with the telephone call and
113 displayed on a device in or connected to the subscriber's
114 telephone.

115 (c) ~~(d)~~ It shall be unlawful for any person who makes a
116 telephonic sales call or causes a telephonic sales call to be

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117 made to intentionally alter the voice of the caller in an
118 attempt to disguise or conceal the identity of the caller in
119 order to defraud, confuse, or financially or otherwise injure
120 the recipient of a telephonic sales call or in order to obtain
121 personal information from the recipient of a telephonic sales
122 call which may be used in a fraudulent or unlawful manner.

123 (d) There is a rebuttable presumption that a telephonic
124 sales call made to any area code in this state is made to a
125 Florida resident or to a person in this state at the time of the
126 call.

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

129 1. Enjoin such violation.

130 2. Recover actual damages or \$500, whichever is greater.

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

136 (11) (a) If a plaintiff prevails in any civil litigation
137 resulting from a ~~transaction involving~~ a violation of this
138 section, ~~the prevailing party,~~ after judgment in the trial court
139 and exhaustion of all appeals, if any, the plaintiff shall
140 receive his or her reasonable attorney ~~attorney's~~ fees and costs
141 from the ~~defendant nonprevailing party.~~

142 (b) The attorney for the prevailing plaintiff ~~party~~ shall
143 submit a sworn affidavit of his or her time spent on the case
144 and his or her costs incurred for all the motions, hearings, and
145 appeals to the trial judge who presided over the civil case.

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146 (c) The trial judge shall award the prevailing plaintiff
147 ~~party~~ the sum of reasonable costs incurred in the action plus a
148 reasonable legal fee for the hours actually spent on the case as
149 sworn to in an affidavit.

150 (d) Any award of attorney ~~attorney's~~ fees or costs shall
151 become a part of the judgment and subject to execution as the
152 law allows.

153 (e) In any civil litigation initiated by the department or
154 the Department of Legal Affairs, the court may award to the
155 prevailing party reasonable attorney ~~attorney's~~ fees and costs
156 if the court finds that there was a complete absence of a
157 justiciable issue of either law or fact raised by the losing
158 party or if the court finds bad faith on the part of the losing
159 party.

160 (12) ~~(11)~~ Telecommunications companies shall inform their
161 customers of the provisions of this section. The notification
162 may be made by:

163 (a) Annual inserts in the billing statements mailed to
164 customers; and

165 (b) Conspicuous publication of the notice in the consumer
166 information pages of the local telephone directories.

167 (13) ~~(12)~~ The department may adopt rules to implement this
168 section.

169 Section 2. Subsection (6) of section 501.616, Florida
170 Statutes, is amended to read:

171 501.616 Unlawful acts and practices.—

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

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

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

182 Section 3. For the purpose of incorporating the amendment
183 made by this act to section 501.616, Florida Statutes, in a
184 reference thereto, section 501.604, Florida Statutes, is
185 reenacted to read:

186 501.604 Exemptions.—The provisions of this part, except ss.
187 501.608 and 501.616(6) and (7), do not apply to:

188 (1) A person engaging in commercial telephone solicitation
189 where the solicitation is an isolated transaction and not done
190 in the course of a pattern of repeated transactions of like
191 nature.

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

199 (3) A person who does not make the major sales presentation
200 during the telephone solicitation and who does not intend to,
201 and does not actually, complete or obtain provisional acceptance
202 of a sale during the telephone solicitation, but who makes the
203 major sales presentation and completes the sale at a later face-

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204 to-face meeting between the seller and the prospective purchaser
205 in accordance with the home solicitation provisions in this
206 chapter. However, if a seller, directly following a telephone
207 solicitation, causes an individual whose primary purpose it is
208 to go to the prospective purchaser to collect the payment or
209 deliver any item purchased, this exemption does not apply.

210 (4) A licensed securities, commodities, or investment
211 broker, dealer, or investment adviser, when soliciting within
212 the scope of his or her license, or a licensed associated person
213 of a securities, commodities, or investment broker, dealer, or
214 investment adviser, when soliciting within the scope of his or
215 her license. As used in this section, "licensed securities,
216 commodities, or investment broker, dealer, or investment
217 adviser" means a person subject to license or registration as
218 such by the Securities and Exchange Commission, by the Financial
219 Industry Regulatory Authority or other self-regulatory
220 organization as defined by the Securities Exchange Act of 1934,
221 15 U.S.C. s. 781, or by an official or agency of this state or
222 of any state of the United States. As used in this section,
223 "licensed associated person of a securities, commodities, or
224 investment broker, dealer, or investment adviser" means an
225 associated person registered or licensed by the Financial
226 Industry Regulatory Authority or other self-regulatory
227 organization as defined by the Securities Exchange Act of 1934,
228 15 U.S.C. s. 781, or by an official or agency of this state or
229 of any state of the United States.

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

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

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233 arrangement:

234 (a) Under which the seller provides the consumer with a
235 form which the consumer may use to instruct the seller not to
236 ship the offered merchandise.

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

240 (c) Which provides for the sale of books, records, or
241 videos which are not covered under paragraph (a) or paragraph
242 (b), including continuity plans, subscription arrangements,
243 standing order arrangements, supplements, and series
244 arrangements under which the seller periodically ships
245 merchandise to a consumer who has consented in advance to
246 receive such merchandise on a periodic basis.

247 (7) A supervised financial institution or parent,
248 subsidiary, or affiliate thereof operating within the scope of
249 supervised activity. As used in this section, "supervised
250 financial institution" means a commercial bank, trust company,
251 savings and loan association, mutual savings bank, credit union,
252 industrial loan company, consumer finance lender, commercial
253 finance lender, or insurer, provided that the institution is
254 subject to supervision by an official or agency of this state,
255 of any state, or of the United States. For the purposes of this
256 exemption, "affiliate" means a person who directly, or
257 indirectly through one or more intermediaries, controls or is
258 controlled by, or is under common control with, a supervised
259 financial institution.

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

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262 his or her license. As used in this section, "licensed insurance
263 broker, agent, customer representative, or solicitor" means any
264 insurance broker, agent, customer representative, or solicitor
265 licensed by an official or agency of this state or of any state
266 of the United States.

267 (9) A person soliciting the sale of services provided by a
268 cable television system operating under authority of a franchise
269 or permit.

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

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

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

278 (c) The purchaser business intends to use the property or
279 goods purchased in a recycling, reuse, remanufacturing, or
280 manufacturing process.

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

284 (a) Contains a written description or illustration of each
285 item offered for sale.

286 (b) Includes the business address or home office address of
287 the seller.

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

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

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291 150,000.

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

295 (13) A commercial telephone seller licensed pursuant to
296 chapter 516 or part III of chapter 520. For purposes of this
297 exemption, the seller must solicit to sell a consumer good or
298 service within the scope of his or her license and the completed
299 transaction must be subject to the provisions of chapter 516 or
300 part III of chapter 520.

301 (14) A telephone company subject to chapter 364, or
302 affiliate thereof or its agents, or a telecommunications
303 business that is regulated by the Florida Public Service
304 Commission, or a Federal Communications Commission licensed
305 cellular telephone company or other bona fide radio
306 telecommunication services provider. For the purposes of this
307 exemption, "affiliate" means a person who directly, or
308 indirectly through one or more intermediaries, controls or is
309 controlled by, or is under common control with, a telephone
310 company subject to chapter 364.

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

313 (16) An issuer or a subsidiary of an issuer that has a
314 class of securities which is subject to s. 12 of the Securities
315 Exchange Act of 1934, 15 U.S.C. s. 781, and which is either
316 registered or exempt from registration under paragraph (A),
317 paragraph (B), paragraph (C), paragraph (E), paragraph (F),
318 paragraph (G), or paragraph (H) of subsection (g)(2) of that
319 section.

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320 (17) A business soliciting exclusively the sale of
321 telephone answering services provided that the telephone
322 answering services will be supplied by the solicitor.

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

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

333 (20) A person who is registered pursuant to part XI of
334 chapter 559 and who is soliciting within the scope of the
335 registration.

336 (21) A person soliciting business from prospective
337 consumers who have an existing business relationship with or who
338 have previously purchased from the business enterprise for which
339 the solicitor is calling, if the solicitor is operating under
340 the same exact business name.

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

345 (a) Either products are displayed and offered for sale or
346 services are offered for sale and provided at the business
347 establishment.

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

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

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

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

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

360 (26) A publisher, or an agent of a publisher by written
361 agreement, who solicits the sale of his or her periodical or
362 magazine of general, paid circulation. The term "paid
363 circulation" shall not include magazines that are only
364 circulated as part of a membership package or that are given as
365 a free gift or prize from the publisher or agent of the
366 publisher by written agreement.

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

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

373 Section 4. For the purpose of incorporating the amendment
374 made by this act to section 501.616, Florida Statutes, in a
375 reference thereto, paragraph (c) of subsection (1) of section
376 648.44, Florida Statutes, is reenacted to read:

377 648.44 Prohibitions; penalty.—

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

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

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

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

382 family. Any solicitation not prohibited by this chapter must

383 comply with the telephone solicitation requirements in ss.

384 501.059(2) and (4), 501.613, and 501.616(6).

385 Section 5. This act shall take effect July 1, 2021.