

1                   A bill to be entitled  
2           An act relating to telephone solicitation; amending s.  
3           501.059, F.S.; prohibiting certain telephonic sales  
4           calls without the prior express written consent of the  
5           called party; providing definitions; providing  
6           requirements for written consent agreements; providing  
7           that a called party may revoke express written  
8           consent; providing a rebuttable presumption for  
9           telephonic sales calls made to specified area codes;  
10          removing the requirement that certain telephone  
11          numbers be excluded from calls made by automated  
12          telephone dialing systems with live messages;  
13          providing construction; amending s. 501.616, F.S.;  
14          prohibiting a commercial telephone seller or  
15          salesperson from using automated dialing or recorded  
16          messages to make certain commercial telephone  
17          solicitation phone calls; revising the timeframe  
18          during which a commercial telephone seller or  
19          salesperson may make commercial solicitation phone  
20          calls; prohibiting commercial telephone sellers or  
21          salespersons from making a specified number of  
22          commercial telephone solicitation phone calls to a  
23          person over a specified timeframe; reenacting s.  
24          501.604, F.S., relating to exemptions to the Florida  
25          Telemarketing Act, to incorporate the amendment made

26 | to s. 501.616, F.S., in a reference thereto;  
 27 | 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.  
 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. Subsection (8) of section 501.059, Florida  
 36 | Statutes, is amended to read:

37 | 501.059 Telephone solicitation.—

38 | (8) (a) A ~~No~~ person may not ~~shall~~ make or knowingly allow a  
 39 | telephonic sales call to be made if such call involves an  
 40 | automated system for the selection or dialing of telephone  
 41 | numbers or the playing of a recorded message when a connection  
 42 | is completed to a number called without the prior express  
 43 | written consent of the called party.

44 | (b) As used in this subsection, the term:

45 | 1. "Called party" means a person who is the regular user  
 46 | of the telephone number that is delivered a telephonic sales  
 47 | call.

48 | 2. "Express written consent" means a written consent  
 49 | agreement bearing the handwritten, electronic, or digital  
 50 | signature of a called party that states the telephone number to

51 which the called party authorizes a telephonic sales call to be  
52 delivered and clearly authorizes a person to make or knowingly  
53 allow a telephonic sales call to be made using an automated  
54 system for selecting or dialing telephone numbers, playing a  
55 recorded message when a connection is completed to a telephone  
56 number called, transmitting a text message, or transmitting a  
57 prerecorded voicemail.

58 (c) The express written consent must include a clear and  
59 conspicuous disclosure informing the called party that:

60 1. By executing the agreement, the called party authorizes  
61 a person to make or knowingly allow a telephonic sales call to  
62 be made using an automated system for selecting or dialing  
63 telephone numbers, playing a recorded message when a connection  
64 is completed to a telephone number called, transmitting a text  
65 message, or transmitting a prerecorded voicemail.

66 2. The called party is not required to sign the agreement  
67 or consent to enter into such an agreement as a condition of  
68 purchasing any property, goods, or services.

69 (d) A called party may revoke express written consent  
70 through any reasonable means clearly expressing a desire to not  
71 receive further calls, recorded messages, text messages, or  
72 prerecorded voicemails.

73 (e) There is a rebuttable presumption that any telephonic  
74 sales call made to a Florida area code is made to a resident of  
75 this state or to a person who is in this state at the time of

76 | the telephonic sales call.

77 |       (f) This subsection does not prohibit ~~Nothing herein~~  
78 | ~~prohibits~~ the use of an automated telephone dialing system ~~with~~  
79 | ~~live messages~~ if the calls are made or messages are given solely  
80 | in response to calls originally initiated by the persons to whom  
81 | the automatic calls or live messages are directed. This  
82 | paragraph does not authorize repeated calls in response to a  
83 | call made by a called party to the person who originally  
84 | initiated a telephonic sales call to the called party.

85 |       (g) This subsection does not prohibit the use of an  
86 | automated telephone dialing system ~~or if the telephone numbers~~  
87 | ~~selected for automatic dialing have been screened to exclude any~~  
88 | ~~telephone subscriber who is included on the department's then-~~  
89 | ~~current "no sales solicitation calls" listing or any unlisted~~  
90 | ~~telephone number, or if the calls made concern goods or services~~  
91 | that have been previously ordered or purchased by the called  
92 | party and concern the order, purchase, or delivery of, or  
93 | payment for, such goods or services. This paragraph does not  
94 | authorize telephonic sales calls to a called party solely  
95 | because the called party has previously conducted business with  
96 | the person initiating the telephonic sales call.

97 |       (h) (e) It is ~~shall be~~ unlawful for any person who makes a  
98 | telephonic sales call or causes a telephonic sales call to be  
99 | made to fail to transmit or cause not to be transmitted the  
100 | originating telephone number and, when made available by the

101 telephone solicitor's carrier, the name of the telephone  
102 solicitor to any caller identification service in use by a  
103 recipient of a telephonic sales call. However, it is ~~shall~~ not  
104 ~~be~~ a violation to substitute, for the name and telephone number  
105 used in or billed for making the call, the name of the seller on  
106 behalf of which a telephonic sales call is placed and the  
107 seller's customer service telephone number, which is answered  
108 during regular business hours. If a telephone number is made  
109 available through a caller identification service as a result of  
110 a telephonic sales call, the solicitor must ensure that  
111 telephone number is capable of receiving telephone calls and  
112 must connect the original call recipient, upon calling such  
113 number, to the telephone solicitor or to the seller on behalf of  
114 which a telephonic sales call was placed. For purposes of this  
115 section, the term "caller identification service" means a  
116 service that allows a telephone subscriber to have the telephone  
117 number and, where available, the name of the calling party  
118 transmitted contemporaneously with the telephone call and  
119 displayed on a device in or connected to the subscriber's  
120 telephone.

121 (i) ~~(d)~~ It is ~~shall be~~ unlawful for any person who makes a  
122 telephonic sales call or causes a telephonic sales call to be  
123 made to intentionally alter the voice of the caller in an  
124 attempt to disguise or conceal the identity of the caller in  
125 order to defraud, confuse, or financially or otherwise injure

126 the recipient of a telephonic sales call or in order to obtain  
127 personal information from the recipient of a telephonic sales  
128 call which may be used in a fraudulent or unlawful manner.

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

131 501.616 Unlawful acts and practices.—

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

135 (a) A commercial telephone solicitation phone call before  
136 8 a.m. or after 8 ~~9~~ p.m. local time in ~~at~~ the called person's  
137 time zone location.

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

142 Section 3. For the purpose of incorporating the amendment  
143 made by this act to section 501.616, Florida Statutes, in a  
144 reference thereto, section 501.604, Florida Statutes, is  
145 reenacted to read:

146 501.604 Exemptions.—The provisions of this part, except  
147 ss. 501.608 and 501.616(6) and (7), do not apply to:

148 (1) A person engaging in commercial telephone solicitation  
149 where the solicitation is an isolated transaction and not done

150 in the course of a pattern of repeated transactions of like  
151 nature.

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

159 (3) A person who does not make the major sales  
160 presentation during the telephone solicitation and who does not  
161 intend to, and does not actually, complete or obtain provisional  
162 acceptance of a sale during the telephone solicitation, but who  
163 makes the major sales presentation and completes the sale at a  
164 later face-to-face meeting between the seller and the  
165 prospective purchaser in accordance with the home solicitation  
166 provisions in this chapter. However, if a seller, directly  
167 following a telephone solicitation, causes an individual whose  
168 primary purpose it is to go to the prospective purchaser to  
169 collect the payment or deliver any item purchased, this  
170 exemption does not apply.

171 (4) A licensed securities, commodities, or investment  
172 broker, dealer, or investment adviser, when soliciting within  
173 the scope of his or her license, or a licensed associated person  
174 of a securities, commodities, or investment broker, dealer, or

175 investment adviser, when soliciting within the scope of his or  
176 her license. As used in this section, "licensed securities,  
177 commodities, or investment broker, dealer, or investment  
178 adviser" means a person subject to license or registration as  
179 such by the Securities and Exchange Commission, by the Financial  
180 Industry Regulatory Authority or other self-regulatory  
181 organization as defined by the Securities Exchange Act of 1934,  
182 15 U.S.C. s. 781, or by an official or agency of this state or  
183 of any state of the United States. As used in this section,  
184 "licensed associated person of a securities, commodities, or  
185 investment broker, dealer, or investment adviser" means an  
186 associated person registered or licensed by the Financial  
187 Industry Regulatory Authority or other self-regulatory  
188 organization as defined by the Securities Exchange Act of 1934,  
189 15 U.S.C. s. 781, or by an official or agency of this state or  
190 of any state of the United States.

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

193 (6) A book, video, or record club or contractual plan or  
194 arrangement:

195 (a) Under which the seller provides the consumer with a  
196 form which the consumer may use to instruct the seller not to  
197 ship the offered merchandise.

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

201 (c) Which provides for the sale of books, records, or  
202 videos which are not covered under paragraph (a) or paragraph  
203 (b), including continuity plans, subscription arrangements,  
204 standing order arrangements, supplements, and series  
205 arrangements under which the seller periodically ships  
206 merchandise to a consumer who has consented in advance to  
207 receive such merchandise on a periodic basis.

208 (7) A supervised financial institution or parent,  
209 subsidiary, or affiliate thereof operating within the scope of  
210 supervised activity. As used in this section, "supervised  
211 financial institution" means a commercial bank, trust company,  
212 savings and loan association, mutual savings bank, credit union,  
213 industrial loan company, consumer finance lender, commercial  
214 finance lender, or insurer, provided that the institution is  
215 subject to supervision by an official or agency of this state,  
216 of any state, or of the United States. For the purposes of this  
217 exemption, "affiliate" means a person who directly, or  
218 indirectly through one or more intermediaries, controls or is  
219 controlled by, or is under common control with, a supervised  
220 financial institution.

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

223 his or her license. As used in this section, "licensed insurance  
224 broker, agent, customer representative, or solicitor" means any  
225 insurance broker, agent, customer representative, or solicitor  
226 licensed by an official or agency of this state or of any state  
227 of the United States.

228 (9) A person soliciting the sale of services provided by a  
229 cable television system operating under authority of a franchise  
230 or permit.

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

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

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

239 (c) The purchaser business intends to use the property or  
240 goods purchased in a recycling, reuse, remanufacturing, or  
241 manufacturing process.

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

245 (a) Contains a written description or illustration of each  
246 item offered for sale.

247 (b) Includes the business address or home office address  
 248 of the seller.

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

251 (d) Has an annual circulation by mailing of not less than  
 252 150,000.

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

256 (13) A commercial telephone seller licensed pursuant to  
 257 chapter 516 or part III of chapter 520. For purposes of this  
 258 exemption, the seller must solicit to sell a consumer good or  
 259 service within the scope of his or her license and the completed  
 260 transaction must be subject to the provisions of chapter 516 or  
 261 part III of chapter 520.

262 (14) A telephone company subject to chapter 364, or  
 263 affiliate thereof or its agents, or a telecommunications  
 264 business that is regulated by the Florida Public Service  
 265 Commission, or a Federal Communications Commission licensed  
 266 cellular telephone company or other bona fide radio  
 267 telecommunication services provider. For the purposes of this  
 268 exemption, "affiliate" means a person who directly, or  
 269 indirectly through one or more intermediaries, controls or is  
 270 controlled by, or is under common control with, a telephone  
 271 company subject to chapter 364.

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

274 (16) An issuer or a subsidiary of an issuer that has a  
 275 class of securities which is subject to s. 12 of the Securities  
 276 Exchange Act of 1934, 15 U.S.C. s. 781, and which is either  
 277 registered or exempt from registration under paragraph (A),  
 278 paragraph (B), paragraph (C), paragraph (E), paragraph (F),  
 279 paragraph (G), or paragraph (H) of subsection (g)(2) of that  
 280 section.

281 (17) A business soliciting exclusively the sale of  
 282 telephone answering services provided that the telephone  
 283 answering services will be supplied by the solicitor.

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

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

294 (20) A person who is registered pursuant to part XI of  
 295 chapter 559 and who is soliciting within the scope of the  
 296 registration.

297 (21) A person soliciting business from prospective  
298 consumers who have an existing business relationship with or who  
299 have previously purchased from the business enterprise for which  
300 the solicitor is calling, if the solicitor is operating under  
301 the same exact business name.

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

306 (a) Either products are displayed and offered for sale or  
307 services are offered for sale and provided at the business  
308 establishment.

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

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

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

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

321 (26) A publisher, or an agent of a publisher by written  
 322 agreement, who solicits the sale of his or her periodical or  
 323 magazine of general, paid circulation. The term "paid  
 324 circulation" shall not include magazines that are only  
 325 circulated as part of a membership package or that are given as  
 326 a free gift or prize from the publisher or agent of the  
 327 publisher by written agreement.

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

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

334 Section 4. For the purpose of incorporating the amendment  
 335 made by this act to section 501.616, Florida Statutes, in a  
 336 reference thereto, paragraph (c) of subsection (1) of section  
 337 648.44, Florida Statutes, is reenacted to read:

338 648.44 Prohibitions; penalty.—

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

341 (c) Initiate in-person or telephone solicitation after  
 342 9:00 p.m. or before 8:00 a.m., in the case of domestic violence  
 343 cases, at the residence of the detainee or the detainee's  
 344 family. Any solicitation not prohibited by this chapter must  
 345 comply with the telephone solicitation requirements in ss.

CS/CS/HB 1307

2021

346 | 501.059(2) and (4), 501.613, and 501.616(6).

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