

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:

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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:

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

33 | (b) More than three commercial telephone solicitation
 34 | phone calls from any number to a person over a 24-hour period on
 35 | the 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
 42 | ss. 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
55 presentation during the telephone solicitation and who does not
56 intend to, and does not actually, complete or obtain provisional
57 acceptance of a sale during the telephone solicitation, but who
58 makes the major sales presentation and completes the sale at a
59 later face-to-face meeting between the seller and the
60 prospective purchaser in accordance with the home solicitation
61 provisions in this chapter. However, if a seller, directly
62 following a telephone solicitation, causes an individual whose
63 primary purpose it is to go to the prospective purchaser to
64 collect the payment or deliver any item purchased, this
65 exemption does not apply.

66 (4) A licensed securities, commodities, or investment
67 broker, dealer, or investment adviser, when soliciting within
68 the scope of his or her license, or a licensed associated person
69 of a securities, commodities, or investment broker, dealer, or
70 investment adviser, when soliciting within the scope of his or
71 her license. As used in this section, "licensed securities,
72 commodities, or investment broker, dealer, or investment
73 adviser" means a person subject to license or registration as
74 such by the Securities and Exchange Commission, by the Financial
75 Industry Regulatory Authority or other self-regulatory

76 organization as defined by the Securities Exchange Act of 1934,
77 15 U.S.C. s. 781, or by an official or agency of this state or
78 of any state of the United States. As used in this section,
79 "licensed associated person of a securities, commodities, or
80 investment broker, dealer, or investment adviser" means an
81 associated person registered or licensed by the Financial
82 Industry Regulatory Authority or other self-regulatory
83 organization as defined by the Securities Exchange Act of 1934,
84 15 U.S.C. s. 781, or by an official or agency of this state or
85 of any state of the United States.

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

88 (6) A book, video, or record club or contractual plan or
89 arrangement:

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

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

96 (c) Which provides for the sale of books, records, or
97 videos which are not covered under paragraph (a) or paragraph
98 (b), including continuity plans, subscription arrangements,
99 standing order arrangements, supplements, and series
100 arrangements under which the seller periodically ships

101 merchandise to a consumer who has consented in advance to
102 receive such merchandise on a periodic basis.

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

116 (8) Any licensed insurance broker, agent, customer
117 representative, or solicitor when soliciting within the scope of
118 his or her license. As used in this section, "licensed insurance
119 broker, agent, customer representative, or solicitor" means any
120 insurance broker, agent, customer representative, or solicitor
121 licensed by an official or agency of this state or of any state
122 of the United States.

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

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

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

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

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

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

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

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

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

146 (d) Has an annual circulation by mailing of not less than
 147 150,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

229 Section 3. For the purpose of incorporating the amendment
230 made by this act to section 501.616, Florida Statutes, in a
231 reference thereto, paragraph (c) of subsection (1) of section
232 648.44, Florida Statutes, is reenacted to read:

233 648.44 Prohibitions; penalty.—

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

236 (c) Initiate in-person or telephone solicitation after
237 9:00 p.m. or before 8:00 a.m., in the case of domestic violence
238 cases, at the residence of the detainee or the detainee's
239 family. Any solicitation not prohibited by this chapter must
240 comply with the telephone solicitation requirements in ss.
241 501.059(2) and (4), 501.613, and 501.616(6).

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