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1
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; amending s.
12 501.616, F.S.; prohibiting a commercial telephone
13 seller or salesperson from using automated dialing or
14 recorded messages to make certain commercial telephone
15 solicitation phone calls; revising the timeframe
16 during which a commercial telephone seller or
17 salesperson may make commercial solicitation phone
18 calls; prohibiting commercial telephone sellers or
19 salespersons from making a specified number of
20 commercial telephone solicitation phone calls to a
21 person over a specified timeframe; prohibiting
22 commercial telephone sellers or salespersons from
23 using certain technology to conceal their true
24 identity; providing criminal penalties; reenacting s.
25 501.604, F.S., relating to exemptions to the Florida
26 Telemarketing Act, to incorporate the amendment made
27 to s. 501.616, F.S., in a reference thereto;
28 reenacting s. 648.44(1)(c), F.S., relating to
29 prohibitions regarding bail bond agent telephone

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30 solicitations, to incorporate the amendment made to s.
31 501.616, F.S., in a reference thereto; providing an
32 effective date.

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

35
36 Section 1. Present paragraphs (a) through (e) and (f)
37 through (i) of subsection (1) and present subsections (10),
38 (11), and (12) of section 501.059, Florida Statutes, are
39 redesignated as paragraphs (b) through (f) and (i) through (l),
40 and subsections (11), (12), and (13), respectively, new
41 paragraphs (a), (g), and (h) are added to subsection (1), a new
42 subsection (10) is added to that section, and subsection (8) of
43 that section is amended, to read:

44 501.059 Telephone solicitation.—

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

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

48 (g) "Prior express written consent" means a written
49 agreement that:

50 1. Bears the signature of the called party;

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

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

61 4. Includes a clear and conspicuous disclosure informing
62 the called party that:

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

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

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

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

84 ~~(b) Nothing herein prohibits the use of an automated~~
85 ~~telephone dialing system with live messages if the calls are~~
86 ~~made or messages given solely in response to calls initiated by~~
87 ~~the persons to whom the automatic calls or live messages are~~

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88 ~~directed or if the telephone numbers selected for automatic~~
89 ~~dialing have been screened to exclude any telephone subscriber~~
90 ~~who is included on the department's then-current "no sales~~
91 ~~solicitation calls" listing or any unlisted telephone number, or~~
92 ~~if the calls made concern goods or services that have been~~
93 ~~previously ordered or purchased.~~

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

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117 telephone.

118 (c) ~~(d)~~ It shall be unlawful for any person who makes a
119 telephonic sales call or causes a telephonic sales call to be
120 made to intentionally alter the voice of the caller in an
121 attempt to disguise or conceal the identity of the caller in
122 order to defraud, confuse, or financially or otherwise injure
123 the recipient of a telephonic sales call or in order to obtain
124 personal information from the recipient of a telephonic sales
125 call which may be used in a fraudulent or unlawful manner.

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

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

132 1. Enjoin such violation.

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

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

139 Section 2. Subsections (6) and (7) of section 501.616,
140 Florida Statutes, are amended to read:

141 501.616 Unlawful acts and practices.—

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

145 (a) A commercial telephone solicitation phone call before 8

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146 a.m. or after 8 9 p.m. local time in at the called person's time
147 zone location.

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

152 (7) A commercial telephone seller or salesperson making a
153 commercial telephone solicitation call may not:

154 (a) Intentionally act to prevent transmission of the
155 telephone solicitor's name or telephone number to the party
156 called when the equipment or service used by the telephone
157 solicitor is capable of creating and transmitting the telephone
158 solicitor's name or telephone number.

159 (b) Use technology that deliberately displays a different
160 caller identification number than the number the call is
161 originating from to conceal the true identity of the caller. A
162 commercial telephone seller or salesperson who makes a call
163 using such technology commits a misdemeanor of the second
164 degree, punishable as provided in s. 775.082 or s. 775.083.

165 Section 3. For the purpose of incorporating the amendment
166 made by this act to section 501.616, Florida Statutes, in a
167 reference thereto, section 501.604, Florida Statutes, is
168 reenacted to read:

169 501.604 Exemptions.—The provisions of this part, except ss.
170 501.608 and 501.616(6) and (7), do not apply to:

171 (1) A person engaging in commercial telephone solicitation
172 where the solicitation is an isolated transaction and not done
173 in the course of a pattern of repeated transactions of like
174 nature.

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175 (2) A person soliciting for religious, charitable,
176 political, or educational purposes. A person soliciting for
177 other noncommercial purposes is exempt only if that person is
178 soliciting for a nonprofit corporation and if that corporation
179 is properly registered as such with the Secretary of State and
180 is included within the exemption of s. 501(c)(3) or (6) of the
181 Internal Revenue Code.

182 (3) A person who does not make the major sales presentation
183 during the telephone solicitation and who does not intend to,
184 and does not actually, complete or obtain provisional acceptance
185 of a sale during the telephone solicitation, but who makes the
186 major sales presentation and completes the sale at a later face-
187 to-face meeting between the seller and the prospective purchaser
188 in accordance with the home solicitation provisions in this
189 chapter. However, if a seller, directly following a telephone
190 solicitation, causes an individual whose primary purpose it is
191 to go to the prospective purchaser to collect the payment or
192 deliver any item purchased, this exemption does not apply.

193 (4) A licensed securities, commodities, or investment
194 broker, dealer, or investment adviser, when soliciting within
195 the scope of his or her license, or a licensed associated person
196 of a securities, commodities, or investment broker, dealer, or
197 investment adviser, when soliciting within the scope of his or
198 her license. As used in this section, "licensed securities,
199 commodities, or investment broker, dealer, or investment
200 adviser" means a person subject to license or registration as
201 such by the Securities and Exchange Commission, by the Financial
202 Industry Regulatory Authority or other self-regulatory
203 organization as defined by the Securities Exchange Act of 1934,

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204 15 U.S.C. s. 781, or by an official or agency of this state or
205 of any state of the United States. As used in this section,
206 "licensed associated person of a securities, commodities, or
207 investment broker, dealer, or investment adviser" means an
208 associated person registered or licensed by the Financial
209 Industry Regulatory Authority or other self-regulatory
210 organization as defined by the Securities Exchange Act of 1934,
211 15 U.S.C. s. 781, or by an official or agency of this state or
212 of any state of the United States.

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

215 (6) A book, video, or record club or contractual plan or
216 arrangement:

217 (a) Under which the seller provides the consumer with a
218 form which the consumer may use to instruct the seller not to
219 ship the offered merchandise.

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

223 (c) Which provides for the sale of books, records, or
224 videos which are not covered under paragraph (a) or paragraph
225 (b), including continuity plans, subscription arrangements,
226 standing order arrangements, supplements, and series
227 arrangements under which the seller periodically ships
228 merchandise to a consumer who has consented in advance to
229 receive such merchandise on a periodic basis.

230 (7) A supervised financial institution or parent,
231 subsidiary, or affiliate thereof operating within the scope of
232 supervised activity. As used in this section, "supervised

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233 financial institution" means a commercial bank, trust company,
234 savings and loan association, mutual savings bank, credit union,
235 industrial loan company, consumer finance lender, commercial
236 finance lender, or insurer, provided that the institution is
237 subject to supervision by an official or agency of this state,
238 of any state, or of the United States. For the purposes of this
239 exemption, "affiliate" means a person who directly, or
240 indirectly through one or more intermediaries, controls or is
241 controlled by, or is under common control with, a supervised
242 financial institution.

243 (8) Any licensed insurance broker, agent, customer
244 representative, or solicitor when soliciting within the scope of
245 his or her license. As used in this section, "licensed insurance
246 broker, agent, customer representative, or solicitor" means any
247 insurance broker, agent, customer representative, or solicitor
248 licensed by an official or agency of this state or of any state
249 of the United States.

250 (9) A person soliciting the sale of services provided by a
251 cable television system operating under authority of a franchise
252 or permit.

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

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

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

261 (c) The purchaser business intends to use the property or

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262 goods purchased in a recycling, reuse, remanufacturing, or
263 manufacturing process.

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

267 (a) Contains a written description or illustration of each
268 item offered for sale.

269 (b) Includes the business address or home office address of
270 the seller.

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

273 (d) Has an annual circulation by mailing of not less than
274 150,000.

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

278 (13) A commercial telephone seller licensed pursuant to
279 chapter 516 or part III of chapter 520. For purposes of this
280 exemption, the seller must solicit to sell a consumer good or
281 service within the scope of his or her license and the completed
282 transaction must be subject to the provisions of chapter 516 or
283 part III of chapter 520.

284 (14) A telephone company subject to chapter 364, or
285 affiliate thereof or its agents, or a telecommunications
286 business that is regulated by the Florida Public Service
287 Commission, or a Federal Communications Commission licensed
288 cellular telephone company or other bona fide radio
289 telecommunication services provider. For the purposes of this
290 exemption, "affiliate" means a person who directly, or

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291 indirectly through one or more intermediaries, controls or is
292 controlled by, or is under common control with, a telephone
293 company subject to chapter 364.

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

296 (16) An issuer or a subsidiary of an issuer that has a
297 class of securities which is subject to s. 12 of the Securities
298 Exchange Act of 1934, 15 U.S.C. s. 781, and which is either
299 registered or exempt from registration under paragraph (A),
300 paragraph (B), paragraph (C), paragraph (E), paragraph (F),
301 paragraph (G), or paragraph (H) of subsection (g)(2) of that
302 section.

303 (17) A business soliciting exclusively the sale of
304 telephone answering services provided that the telephone
305 answering services will be supplied by the solicitor.

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

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

316 (20) A person who is registered pursuant to part XI of
317 chapter 559 and who is soliciting within the scope of the
318 registration.

319 (21) A person soliciting business from prospective

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320 consumers who have an existing business relationship with or who
321 have previously purchased from the business enterprise for which
322 the solicitor is calling, if the solicitor is operating under
323 the same exact business name.

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

328 (a) Either products are displayed and offered for sale or
329 services are offered for sale and provided at the business
330 establishment.

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

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

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

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

343 (26) A publisher, or an agent of a publisher by written
344 agreement, who solicits the sale of his or her periodical or
345 magazine of general, paid circulation. The term "paid
346 circulation" shall not include magazines that are only
347 circulated as part of a membership package or that are given as
348 a free gift or prize from the publisher or agent of the

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349 publisher by written agreement.

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

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

356 Section 4. For the purpose of incorporating the amendment
357 made by this act to section 501.616, Florida Statutes, in a
358 reference thereto, paragraph (c) of subsection (1) of section
359 648.44, Florida Statutes, is reenacted to read:

360 648.44 Prohibitions; penalty.—

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

362 (c) Initiate in-person or telephone solicitation after 9:00
363 p.m. or before 8:00 a.m., in the case of domestic violence
364 cases, at the residence of the detainee or the detainee's
365 family. Any solicitation not prohibited by this chapter must
366 comply with the telephone solicitation requirements in ss.
367 501.059(2) and (4), 501.613, and 501.616(6).

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