

1 S.72

2 Introduced by Senator Campion

3 Referred to Committee on Finance

4 Date: February 7, 2017

5 Subject: Commerce and trade; consumer protection; telemarketing

6 Statement of purpose of bill as introduced: This bill proposes to require

7 telemarketers to provide accurate caller identification information.

8 An act relating to requiring telemarketers to provide accurate caller
9 identification information

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 9 V.S.A., chapter 63, subchapter 1 is amended to read:~~

12 Subchapter 1: General Provisions

13 * * *

14 § 2464a. PROHIBITED TELEPHONE SOLICITATIONS

15 (a) Definitions. As used in this section, section 2464b, and section 2464c
16 of this title:

17 (1) "Customer" means a customer, residing or located in Vermont, of a
18 company providing telecommunications service as defined in 30 V.S.A.

19 § 203(5).

20 ~~(2) "Caller identification information" means information a caller~~

1 ~~identification service provides regard the name and number of the person~~
2 calling.

3 (3) "Caller identification service" means a service that allows a
4 subscriber of the service to have the telephone number, and where available,
5 the name of the calling party transmitted contemporaneously with the
6 telephone call and displayed on a device in or connected to the subscriber's
7 telephone.

8 (4) "Federal functional regulator" means a federal functional regulator
9 as defined in 15 U.S.C. § 6809(2).

10 ~~(3)~~(5) "Financial institution" means a financial institution as defined in
11 15 U.S.C. § 6809(3).

12 ~~(4)~~(6) "Tax-exempt organization" means an organization described in
13 Section 501(c) of the Internal Revenue Service Code (26 U.S.C. § 501(c)).

14 ~~(5)~~(7) "Telemarketer" means any telephone solicitor. However,
15 "telemarketer" does not include any telephone solicitor who is otherwise
16 registered or licensed with, or regulated or chartered by, the Secretary of State,
17 the Public Service Board, the Department of Financial Regulation, or the
18 Department of Taxes, or is a financial institution subject to regulations adopted
19 pursuant to 15 U.S.C. § 6804(a) by a federal functional regulator. Telephone
20 solicitors registered with the Department of Taxes to collect Vermont income
21 ~~withholding, sales and use, or meals and rooms tax, but not registered with an~~

1 ~~other agency listed in this subdivision, shall provide to the Secretary of State~~
2 an address and agent for the purpose of submitting to the jurisdiction of the
3 Vermont courts in any action brought for violations of this section.

4 ~~(6)(8)~~ “Telephone solicitation”:

5 (A) means the solicitation by telephone of a customer for the purpose
6 of encouraging the customer to contribute to an organization ~~which~~ that is not
7 a tax-exempt organization, or to purchase, lease, or otherwise agree to pay
8 consideration for money, goods, or services; and

9 (B) does not include:

10 (i) telephone calls made in response to a request or inquiry by the
11 called customer;

12 (ii) telephone calls made by or on behalf of a tax-exempt
13 organization, an organization incorporated as a nonprofit organization with the
14 State of Vermont, or an organization in the process of applying for tax-exempt
15 status or nonprofit status;

16 (iii) telephone calls made by a person not regularly engaged in the
17 activities listed in subdivision (A) of this subdivision ~~(6)(8)~~; or

18 (iv) telephone calls made to a person with whom the telephone
19 solicitor has an established business relationship.

20 ~~(7)(9)~~ “Telephone solicitor” means any person placing telephone
21 ~~solicitations, or hiring others, on an hourly, commission, or independent~~

1 ~~contractor basis, to conduct telephone solicitations.~~

2 (b) Prohibition.

3 (1) No telemarketer shall make a telephone solicitation to a telephone
4 number in Vermont without having first registered in accordance with section
5 2464b of this title.

6 (2) No person shall make any telephone call to a telephone number in
7 Vermont ~~which~~ that violates the Federal Trade Commission's Do Not Call
8 Rule, 16 C.F.R. subdivision 310.4(b)(1)(iii), or the Federal Communication
9 Commission's Do Not Call Rule, 47 C.F.R. subdivision 64.1200(c)(2) and
10 subsection (d), as amended from time to time.

11 (3) A telemarketer shall not cause a caller identification service to
12 transmit misleading, inaccurate, or false caller identification information,
13 provided that a telemarketer may substitute the name and telephone number of
14 the person on whose behalf he or she places the call.

(3)(A) A telephone solicitor engaged in a telephone solicitation shall
transmit, or cause to be transmitted, to a caller identification service in use by
a consumer:

(i) the telephone solicitor's telephone number; and

(ii) if made available by the telephone solicitor's carrier, the
telephone solicitor's name.

(B) Notwithstanding subdivision (3)(A) of this subsection, a telephone
solicitor may substitute for its own name and number the name and the
number, which is answered during regular business hours, of the person on
whose behalf the telephone solicitor makes the telephone solicitation.

15 ~~(c) Violation. A violation of this section shall constitute a violation of~~

1 ~~section 2453 of this title. Each prohibited telephone call shall constitute a~~
2 separate violation. In considering a civil penalty for violations of subdivision
3 (b)(2) of this section, the court may consider, among other relevant factors, the
4 extent to which a telephone solicitor maintained and complied with procedures
5 designed to ensure compliance with the rules of the Federal Communications
6 Commission and the Federal Trade Commission.

7 (d) Criminal Penalties. A telemarketer who makes a telephone solicitation
8 in violation of subdivision (b)(1) of this section shall be imprisoned for not
9 more than 18 months or fined not more than \$10,000.00, or both. It shall be
10 an affirmative defense, for a telemarketer with five or fewer employees, that
11 the telemarketer did not know, and did not consciously avoid knowing, that
12 Vermont has a requirement of registration of telemarketers. Each telephone
13 call shall constitute a separate solicitation under this section. This section shall
14 not be construed to limit a person's liability under any other civil or
15 criminal law.

16 § 2464b. REGISTRATION OF TELEMARETERS

17 (a) Every telemarketer shall register with the Secretary of State, on a form
18 approved by the Secretary. In the case of a telemarketer who hires, whether on
19 an hourly, commission, or independent contractor basis, one or more persons
20 to conduct telephone solicitations, only the person who causes others to
21 ~~conduct telephone solicitations need register. The Secretary of State may~~

1 ~~adopt rules prescribing the manner in which registration under this section~~

2 shall be conducted, including a requirement of notice to the Secretary by the
3 telemarketer when the telemarketer ceases to do business in Vermont.

4 (b) The Secretary of State shall require that each telemarketer designate an
5 agent for the purpose of submitting to the jurisdiction of the Vermont courts in
6 any action brought for violations of section 2464a of this title.

7 (c) The Secretary of State shall collect the following fees when a document
8 described in this section is delivered to the Office of the Secretary of State for
9 filing:

10 (1) Registration: \$125.00.

11 (2) Statement of change of designated agent or designated office, or
12 both: \$25.00, not to exceed \$1,000.00 per filer per calendar year.

13 § 2464c. PRIVATE CAUSE OF ACTION

14 Any person who receives a telephone call in violation of subsection
15 2464a(b) of this title may bring an action in Superior Court for damages,
16 injunctive relief, punitive damages in the case of a willful violation, and
17 reasonable costs and attorney's fees. The ~~Court~~ court may issue an award for
18 the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for
19 each subsequent violation, whichever is greater. In considering the amount of
20 punitive damages, the ~~Court~~ court may consider, among other relevant factors,
21 ~~the extent to which a telephone solicitor maintained and complied with~~

1 ~~procedures designed to ensure compliance with the requirements of sections~~
2 2464a and 2464b of this title. This section shall not limit any other claims the
3 person may have under applicable law.

4 * * *

5 Sec. 2. EFFECTIVE DATE

6 ~~This act shall take effect on July 1, 2017.~~

* * * *Telemarketers; Accurate Caller I.D. Information* * * *

Sec. 1. 9 V.S.A. chapter 63, subchapter 1 is amended to read:

Subchapter 1. General Provisions

* * *

§ 2464a. PROHIBITED TELEPHONE SOLICITATIONS

(a) Definitions. As used in this section, section 2464b, and section 2464c of this title:

(1) “Customer” means a customer, residing or located in Vermont, of a company providing telecommunications service as defined in 30 V.S.A. § 203(5).

(2) “Caller identification information” means information a caller identification service provides regarding the name and number of the person calling.

(3) “Caller identification service” means a service that allows a subscriber of the service to have the telephone number, and where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber’s telephone.

(4) “Federal functional regulator” means a federal functional regulator as defined in 15 U.S.C. § 6809(2).

~~(3)~~(5) “Financial institution” means a financial institution as defined in 15 U.S.C. § 6809(3).

~~(4)~~(6) “Tax-exempt organization” means an organization described in Section 501(c) of the Internal Revenue Service Code (26 U.S.C. § 501(c)).

~~(5)~~(7) “Telemarketer” means any telephone solicitor. However,

“telemarketer” does not include any telephone solicitor who is otherwise registered or licensed with, or regulated or chartered by, the Secretary of State, the Public Service Board, the Department of Financial Regulation, or the Department of Taxes, or is a financial institution subject to regulations adopted pursuant to 15 U.S.C. § 6804(a) by a federal functional regulator. Telephone solicitors registered with the Department of Taxes to collect Vermont income withholding, sales and use, or meals and rooms tax, but not registered with any other agency listed in this subdivision, shall provide to the Secretary of State an address and agent for the purpose of submitting to the jurisdiction of the Vermont courts in any action brought for violations of this section.

~~(6)~~(8) “Telephone solicitation”:

(A) means the solicitation by telephone of a customer for the purpose of encouraging the customer to contribute to an organization ~~which~~ that is not a tax-exempt organization, or to purchase, lease, or otherwise agree to pay consideration for money, goods, or services; and

(B) does not include:

(i) telephone calls made in response to a request or inquiry by the called customer;

(ii) telephone calls made by or on behalf of a tax-exempt organization, an organization incorporated as a nonprofit organization with the State of Vermont, or an organization in the process of applying for tax-exempt status or nonprofit status;

(iii) telephone calls made by a person not regularly engaged in the activities listed in subdivision (A) of this subdivision ~~(6)~~(8); or

(iv) telephone calls made to a person with whom the telephone solicitor has an established business relationship.

~~(7)~~(9) “Telephone solicitor” means any person placing telephone solicitations, or hiring others, on an hourly, commission, or independent contractor basis, to conduct telephone solicitations.

(b) Prohibition; Caller Identification Information.

(1) No telemarketer shall make a telephone solicitation to a telephone number in Vermont without having first registered in accordance with section 2464b of this title.

(2) No person shall make any telephone call to a telephone number in Vermont ~~which~~ that violates the Federal Trade Commission’s Do Not Call Rule, 16 C.F.R. subdivision 310.4(b)(1)(iii), or the Federal Communication Commission’s Do Not Call Rule, 47 C.F.R. subdivision 64.1200(c)(2) and

subsection (d), as amended from time to time.

(3)(A) A person who places a telephone call to make a telephone solicitation, or to induce a charitable contribution, donation, or gift of money or other thing of value, shall transmit or cause to be transmitted to a caller identification service in use by the recipient of the call:

(i) the caller's telephone number; and

(ii) if made available by the caller's carrier, the caller's name.

(B) Notwithstanding subdivision (A) of this subdivision (3), a caller may substitute for its own name and number the name and the number, which is answered during regular business hours, of the person on whose behalf the caller places the call.

(c) Violation. A violation of this section shall constitute a violation of section 2453 of this title. Each prohibited telephone call shall constitute a separate violation. In considering a civil penalty for violations of subdivision (b)(2) of this section, the court may consider, among other relevant factors, the extent to which a telephone solicitor maintained and complied with procedures designed to ensure compliance with the rules of the Federal Communications Commission and the Federal Trade Commission.

(d) Criminal Penalties. A telemarketer who makes a telephone solicitation in violation of subdivision (b)(1) of this section shall be imprisoned for not more than 18 months or fined not more than \$10,000.00, or both. It shall be an affirmative defense, for a telemarketer with five or fewer employees, that the telemarketer did not know, and did not consciously avoid knowing, that Vermont has a requirement of registration of telemarketers. Each telephone call shall constitute a separate solicitation under this section. This section shall not be construed to limit a person's liability under any other civil or criminal law.

§ 2464b. REGISTRATION OF TELEMARKETERS

(a) Every telemarketer shall register with the Secretary of State, on a form approved by the Secretary. In the case of a telemarketer who hires, whether on an hourly, commission, or independent contractor basis, one or more persons to conduct telephone solicitations, only the person who causes others to conduct telephone solicitations need register. The Secretary of State may adopt rules prescribing the manner in which registration under this section shall be conducted, including a requirement of notice to the Secretary by the telemarketer when the telemarketer ceases to do business in Vermont.

(b) The Secretary of State shall require that each telemarketer designate an agent for the purpose of submitting to the jurisdiction of the Vermont courts in

any action brought for violations of section 2464a of this title.

(c) The Secretary of State shall collect the following fees when a document described in this section is delivered to the Office of the Secretary of State for filing:

(1) Registration: \$125.00.

(2) Statement of change of designated agent or designated office, or both: \$25.00, not to exceed \$1,000.00 per filer per calendar year.

§ 2464c. PRIVATE CAUSE OF ACTION

Any person who receives a telephone call in violation of subsection 2464a(b) of this title may bring an action in Superior Court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. The ~~Court~~ court may issue an award for the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for each subsequent violation, whichever is greater. In considering the amount of punitive damages, the ~~Court~~ court may consider, among other relevant factors, the extent to which a telephone solicitor maintained and complied with procedures designed to ensure compliance with the requirements of sections 2464a and 2464b of this title. This section shall not limit any other claims the person may have under applicable law.

** * **

** * * AG Recommendations; Data Brokers; Privacy Rules for Internet Service Providers and Edge Providers * * **

*Sec. 2. ATTORNEY GENERAL; CONSUMER PROTECTION;
RECOMMENDATIONS; DATA BROKERS; INTERNET SERVICE
PROVIDERS AND EDGE PROVIDERS*

(a)(1) Data broker findings. The General Assembly finds that:

(A) The data broker industry brings benefits to society by:

(i) providing data necessary for the operation of both the public and private sectors;

(ii) supporting the critical flow of information for interstate and intrastate commerce; and

(iii) aiding in securing and protecting consumer identities.

(B) Despite these benefits, concerns have arisen about the data broker industry, including:

(i) how the data broker industry or persons accessing the industry may directly or indirectly harm vulnerable populations;

(ii) the use of the data broker industry by those who harass, stalk, and otherwise harm others;

(iii) whether appropriate safeguards are in place to ensure that our most sensitive information is not sold to identity thieves, scammers, and other criminals; and

(iv) the impact of the data broker industry on the privacy, dignity, and well-being of the people of Vermont.

(2) Data broker recommendation. On or before December 15, 2017, the Commissioner of Financial Regulation and the Attorney General, in consultation with industry and consumer stakeholders, shall submit a recommendation or draft legislation to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs reflecting:

(A) an appropriate definition of the term “data broker”;

(B) whether and, if so, to what extent the data broker industry should be regulated by the Commissioner of Financial Regulation or the Attorney General;

(C) additional consumer protections that data broker legislation should seek to include that are not addressed within the framework of existing federal and State consumer protection laws; and

(D) proposed courses of action that balance the benefits to society that the data broker industry brings with actual and potential harms the industry may pose to consumers.

(b)(1) Telecommunications privacy rule recommendation. On or before December 15, 2018, the Attorney General, in consultation with the Commissioner of Public Service, and in consultation with industry and consumer stakeholders, shall submit a recommendation or draft legislation to the Senate Committees on Finance and on Economic Development, Housing and General Affairs and the House Committees on Commerce and Economic Development and on Energy and Technology reflecting whether and to what extent the State should adopt privacy and data security rules applicable to telecommunications service providers subject to the jurisdiction of the Public Service Board under 30 V.S.A. § 203(5), including:

(A) broadband Internet access service providers; and

(B) to the extent permitted by federal law, “edge providers,” which shall include any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.

(2) In making the recommendation, the Attorney General shall consider the following:

(A) Whether any proposed rules should be modeled after the Federal Communications Commission's 2016 Privacy Order, WC Docket No. 16-106, FCC 16-148, adopted October 27, 2016 and released November 2, 2016.

(B) Whether any rules should include:

(i) disclosure requirements pertaining to a provider's privacy policies;

(ii) opt-in or opt-out procedures for obtaining customer approval to use and share sensitive or nonsensitive customer proprietary information, respectively; and

(iii) data security and data breach notification requirements.

(C) Proposed courses of action that balance the benefits to society that the telecommunications industry brings with actual and potential harms the industry may pose to consumers.

(D) Such other factors and considerations the Attorney General deems relevant to making recommendations pursuant to this section.

(3) Working group coordination. The Attorney General in consultation with the Commissioner of Public Service, at their discretion, may consult with or otherwise incorporate this review into the working group process established in subsection (a) of this section.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.