

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 72 entitled “An act relating to requiring telemarketers
4 to provide accurate caller identification information” respectfully reports that it
5 has considered the same and recommends that the House propose to the Senate
6 that the bill be amended by striking out all after the enacting clause and
7 inserting in lieu thereof the following:

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

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

10 Subchapter 1. General Provisions

11 * * *

12 § 2464a. PROHIBITED TELEPHONE SOLICITATIONS

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

15 (1) “Customer” means a customer, residing or located in Vermont, of a
16 company providing telecommunications service as defined in 30 V.S.A.
17 § 203(5).

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

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

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

8 ~~(3)~~(5) “Financial institution” means a financial institution as defined in
9 15 U.S.C. § 6809(3).

10 ~~(4)~~(6) “Tax-exempt organization” means an organization described in
11 Section 501(c) of the Internal Revenue Service Code (26 U.S.C. § 501(c)).

12 ~~(5)~~(7) “Telemarketer” means any telephone solicitor. However,
13 “telemarketer” does not include any telephone solicitor who is otherwise
14 registered or licensed with, or regulated or chartered by, the Secretary of State,
15 the Public Service Board, the Department of Financial Regulation, or the
16 Department of Taxes; or is a financial institution subject to regulations adopted
17 pursuant to 15 U.S.C. § 6804(a) by a federal functional regulator. Telephone
18 solicitors registered with the Department of Taxes to collect Vermont income
19 withholding, sales and use, or meals and rooms tax, but not registered with any
20 other agency listed in this subdivision, shall provide to the Secretary of State

1 an address and agent for the purpose of submitting to the jurisdiction of the
2 Vermont courts in any action brought for violations of this section.

3 ~~(6)~~(8) “Telephone solicitation”:

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

8 (B) does not include:

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

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

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

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

19 ~~(7)~~(9) “Telephone solicitor” means any person placing telephone
20 solicitations, or hiring others, on an hourly, commission, or independent
21 contractor basis, to conduct telephone solicitations.

1 (b) Prohibition; Caller Identification Information.

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

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

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

14 (i) the caller's telephone number; and

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

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

20 (c) Violation. A violation of this section shall constitute a violation of
21 section 2453 of this title. Each prohibited telephone call shall constitute a

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

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

15 § 2464b. REGISTRATION OF TELEMARETERS

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

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

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

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

9 (1) Registration: \$125.00.

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

12 § 2464c. PRIVATE CAUSE OF ACTION

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

1 2464a and 2464b of this title. This section shall not limit any other claims the
2 person may have under applicable law.

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4 * * * Data Brokers * * *

5 Sec. 2. DATA BROKERS; RECOMMENDATION

6 (a) Findings. The General Assembly finds that:

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

8 (A) providing data necessary for the operation of both the public and
9 private sectors;

10 (B) supporting the critical flow of information for interstate and
11 intrastate commerce; and

12 (C) aiding in securing and protecting consumer identities.

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

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

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

19 (C) whether appropriate safeguards are in place to assure that our
20 most sensitive information is not sold to identity thieves, scammers, and other
21 criminals; and

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

3 (b) Recommendation. On or before December 15, 2017, the
4 Commissioner of Financial Regulation and the Attorney General, in
5 consultation with industry and consumer stakeholders, shall submit a
6 recommendation or draft legislation to the House Committee on Commerce
7 and Economic Development and the Senate Committee on Economic
8 Development, Housing and General Affairs reflecting:

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

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

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

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

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on passage.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE