

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

H.47

Introduced by Representatives Sibia of Dover, Browning of Arlington,
Burditt of West Rutland, Carr of Brandon, Chesnut-Tangerman
of Middletown Springs, Christie of Hartford, Colburn of
Burlington, Conquest of Newbury, Copeland-Hanzas of
Bradford, Donovan of Burlington, Fagan of Rutland City,
Forguites of Springfield, Gannon of Wilmington, Hebert of
Vernon, Hubert of Milton, Jickling of Brookfield, Keefe of
Manchester, Long of Newfane, Morris of Bennington, Olsen of
Londonderry, Parent of St. Albans Town, Quimby of Concord,
Sullivan of Dorset, Toleno of Brattleboro, Troiano of Stannard,
Van Wyck of Ferrisburgh, Viens of Newport City, Weed of
Enosburgh, Willhoit of St. Johnsbury, and Yantachka of
Charlotte

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection; telemarketing

Statement of purpose of bill as introduced: This bill proposes to require
telemarketers to provide accurate caller identification information.

1 An act relating to requiring telemarketers to provide accurate caller
2 identification information

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

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

5 Subchapter 1: General Provisions

6 * * *

7 § 2464a. PROHIBITED TELEPHONE SOLICITATIONS

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

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

12 § 203(5).

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

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

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

1 ~~(3)~~(5) “Financial institution” means a financial institution as defined in
2 15 U.S.C. § 6809(3).

3 ~~(4)~~(6) “Tax-exempt organization” means an organization described in
4 Section 501(c) of the Internal Revenue Service Code (26 U.S.C. § 501(c)).

5 ~~(5)~~(7) “Telemarketer” means any telephone solicitor. However,
6 “telemarketer” does not include any telephone solicitor who is otherwise
7 registered or licensed with, or regulated or chartered by, the Secretary of State,
8 the Public Service Board, the Department of Financial Regulation, or the
9 Department of Taxes; or is a financial institution subject to regulations adopted
10 pursuant to 15 U.S.C. § 6804(a) by a federal functional regulator. Telephone
11 solicitors registered with the Department of Taxes to collect Vermont income
12 withholding, sales and use, or meals and rooms tax, but not registered with any
13 other agency listed in this subdivision, shall provide to the Secretary of State
14 an address and agent for the purpose of submitting to the jurisdiction of the
15 Vermont courts in any action brought for violations of this section.

16 ~~(6)~~(8) “Telephone solicitation”:

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

21 (B) does not include:

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

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

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

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

11 ~~(7)~~(9) “Telephone solicitor” means any person placing telephone
12 solicitations, or hiring others, on an hourly, commission, or independent
13 contractor basis; to conduct telephone solicitations.

14 (b) Prohibition.

15 (1) No telemarketer shall make a telephone solicitation to a telephone
16 number in Vermont without having first registered in accordance with section
17 2464b of this title.

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

1 Commission's Do Not Call Rule, 47 C.F.R. subdivision 64.1200(c)(2) and
2 subsection (d), as amended from time to time.

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

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

14 (d) Criminal Penalties. A telemarketer who makes a telephone solicitation
15 in violation of subdivision (b)(1) of this section shall be imprisoned for not
16 more than 18 months or fined not more than \$10,000.00, or both. It shall be an
17 affirmative defense, for a telemarketer with five or fewer employees, that the
18 telemarketer did not know, and did not consciously avoid knowing, that
19 Vermont has a requirement of registration of telemarketers. Each telephone
20 call shall constitute a separate solicitation under this section. This section shall

1 not be construed to limit a person's liability under any other civil or
2 criminal law.

3 § 2464b. REGISTRATION OF TELEMARKETERS

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

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

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

18 (1) Registration: \$125.00.

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

1 § 2464c. PRIVATE CAUSE OF ACTION

2 Any person who receives a telephone call in violation of subsection
3 2464a(b) of this title may bring an action in Superior Court for damages,
4 injunctive relief, punitive damages in the case of a willful violation, and
5 reasonable costs and attorney's fees. The ~~Court~~ court may issue an award for
6 the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for
7 each subsequent violation, whichever is greater. In considering the amount of
8 punitive damages, the ~~Court~~ court may consider, among other relevant factors,
9 the extent to which a telephone solicitor maintained and complied with
10 procedures designed to ensure compliance with the requirements of sections
11 2464a and 2464b of this title. This section shall not limit any other claims the
12 person may have under applicable law.

13 * * *

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2017.