

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 and inserting in lieu thereof the
7 following:

8 * * * Telemarketers; Accurate Caller I.D. Information; S.72 * * *

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 regard 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.

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 telephone solicitor engaged in a telephone solicitation shall
11 transmit, or cause to be transmitted, to a caller identification service in use by a
12 consumer:

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

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

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

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.

3 * * *

4 * * * Data Brokers; H.467 * * *

5 Sec. 2. 9 V.S.A. chapter 62, subchapter 5 is added to read:

6 Subchapter 5. Data Broker Protection Act

7 § 2446a. DEFINITIONS

8 As used in this section:

9 (1) “Data broker” means a commercial entity that collects, assembles, or
10 maintains personal information concerning individuals residing in Vermont
11 who are not customers or employees of that entity for the purposes of selling or
12 offering for sale, or other consideration, the personal information of a third
13 party.

14 (2) “Personal information” means the following information that
15 identifies, relates to, describes, or is capable of being associated with a
16 particular individual:

17 (A) Social Security number, passport number, driver’s license or
18 State identification card number, insurance policy number, bank account
19 number, credit card number, debit card number, or any other financial
20 information;

21 (B) physical characteristics or description;

- 1 (C) purchasing history;
2 (D) charitable contribution history;
3 (E) medical history or status as derived from purchase history;
4 (F) legal history, including criminal record, civil actions and
5 judgments;
6 (G) profile that includes personality, characteristics, or mental health;
7 (H) social media history;
8 (I) Internet usage history;
9 (J) licensing or real property history;
10 (K) driving record; and
11 (L) vital statistics, including birth, marriage, divorce, and death
12 records.

13 (3) “Public agency” has the same meaning as in 1 V.S.A. § 317.

14 § 2446b. DATA BROKER REGISTRATION; REPORTING

15 (a) A data broker shall register with the Department of Financial

16 Regulation in the form and manner prescribed by the Department.

17 (b) Annually, on or before January 15 each year, a data broker shall submit

18 a report to the Department of Financial Regulation on its activities in the State.

19 The report shall include the source of the personal information, the nature of

20 the personal information, and a description of the data broker’s vetting

21 procedures.

1 § 2446c. CUSTOMER IDENTIFICATION PROGRAM

2 A data broker shall have a written customer identification program that
3 includes certain minimum requirements, as set forth in guidelines established
4 by the Department of Financial Regulation. A data broker’s customer
5 identification program is intended to enable the data broker to form a
6 reasonable belief that it knows the true identity of any customer purchasing
7 personal information, and that the customer is not purchasing the information
8 for an illegal purpose

9 § 2446d. PUBLIC AGENCY; SALE OF DATA; RECORDKEEPING

10 REQUIREMENTS

11 Any public agency that sells personal information to a data broker shall
12 maintain a record of the sale, including the name of the data broker and the
13 nature of the personal information sold. Nothing in this section shall be
14 construed to authorize a public agency to sell personal information the sale or
15 release of which is prohibited by law.

16 § 2446e. ENFORCEMENT

17 With respect to a data broker registered pursuant to this subchapter, the
18 Department of Financial Regulation and the Attorney General shall have full
19 authority to investigate potential violations of this subchapter and to prosecute,
20 obtain, and impose remedies for a violation of this subchapter or any rules or

1 regulations adopted pursuant to this subchapter, as the Department has under
2 Title 8 or this title and the Attorney General has under chapter 63 of this title.

3 Sec. 3. EFFECTIVE DATE

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

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10 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE