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H.47

Introduced by Representatives Sabilia 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.