

1 S.72

2 Introduced by Senator Campion

3 Referred to Committee on

4 Date:

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).

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

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

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

11           ~~(3)~~(5) “Financial institution” means a financial institution as defined in  
12 15 U.S.C. § 6809(3).

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

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

1 withholding, sales and use, or meals and rooms tax, but not registered with any  
2 other agency listed in this subdivision, shall provide to the Secretary of State  
3 an address and agent for the purpose of submitting to the jurisdiction of the  
4 Vermont courts in any action brought for violations of this section.

5 ~~(6)~~(8) “Telephone solicitation”:

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

10 (B) does not include:

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

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

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

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

1           ~~(7)~~(9) “Telephone solicitor” means any person placing telephone  
2           solicitations, or hiring others, on an hourly, commission, or independent  
3           contractor basis, to conduct telephone solicitations.

4           (b) Prohibition.

5           (1) No telemarketer shall make a telephone solicitation to a telephone  
6           number in Vermont without having first registered in accordance with section  
7           2464b of this title.

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

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

17          (c) Violation. A violation of this section shall constitute a violation of  
18          section 2453 of this title. Each prohibited telephone call shall constitute a  
19          separate violation. In considering a civil penalty for violations of subdivision  
20          (b)(2) of this section, the court may consider, among other relevant factors, the  
21          extent to which a telephone solicitor maintained and complied with procedures

1 designed to ensure compliance with the rules of the Federal Communications  
2 Commission and the Federal Trade Commission.

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

12 § 2464b. REGISTRATION OF TELEMARETERS

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

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

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

7 (1) Registration: \$125.00.

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

10 § 2464c. PRIVATE CAUSE OF ACTION

11 Any person who receives a telephone call in violation of subsection  
12 2464a(b) of this title may bring an action in Superior Court for damages,  
13 injunctive relief, punitive damages in the case of a willful violation, and  
14 reasonable costs and attorney's fees. The ~~Court~~ court may issue an award for  
15 the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for  
16 each subsequent violation, whichever is greater. In considering the amount of  
17 punitive damages, the ~~Court~~ court may consider, among other relevant factors,  
18 the extent to which a telephone solicitor maintained and complied with  
19 procedures designed to ensure compliance with the requirements of sections  
20 2464a and 2464b of this title. This section shall not limit any other claims the  
21 person may have under applicable law.

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Sec. 2. EFFECTIVE DATE

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This act shall take effect on July 1, 2017.