

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 553

An Act to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 44, consisting of sections numbered 59.1-510 through 59.1-518, relating to the Virginia Telephone Privacy Protection Act.

[H 2427]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 44, consisting of sections numbered 59.1-510 through 59.1-518, as follows:

CHAPTER 44.

VIRGINIA TELEPHONE PRIVACY PROTECTION ACT.

§ 59.1-510. *Definitions.*

As used in this chapter:

"Telephone solicitation call" means any telephone call made to any natural person's residence in the Commonwealth for the purpose of offering or advertising any property, goods or services for sale, lease, license or investment, including offering or advertising an extension of credit. "Telephone solicitation call" shall not include a telephone call made to any person: (i) with that person's prior express invitation or permission or (ii) with whom the person on whose behalf the telephone call is being made has an established business relationship that has not been terminated by either party.

"Telephone solicitor" means any person who makes, or causes another person to make, a telephone solicitation call.

§ 59.1-511. *Calling time restrictions.*

No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a natural person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location, unless the telephone solicitor has obtained the prior consent of the called person.

§ 59.1-512. *Identification of telephone solicitor required.*

A telephone solicitor who makes a telephone solicitation call shall identify himself by his first and last names and the name of the person on whose behalf the telephone solicitation call is being made promptly upon making contact with the called person.

§ 59.1-513. *Blocking of caller identification services prohibited.*

No telephone solicitor shall take any intentional action to prevent the transmission of the telephone solicitor's name or telephone number to any person receiving a telephone solicitation call when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

§ 59.1-514. *Unwanted telephone solicitation calls prohibited.*

A. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number when a person at such telephone number previously has stated that he does not wish to receive a telephone solicitation call made by or on behalf of the person on whose behalf the telephone solicitation call is being made. Such statement may be made to a telephone solicitor or to the person on whose behalf the telephone solicitation call is being made if that person is different from the telephone solicitor.

B. Any such request not to receive telephone solicitation calls shall be honored for at least ten years from the time the request is made.

C. It shall be an affirmative defense in any action brought under § 59.1-515 or § 59.1-517 for a violation of this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitation calls in violation of this section.

§ 59.1-515. *Individual action for damages.*

A. Any natural person who is aggrieved by a violation of this chapter shall be entitled to initiate an action to enjoin such violation and to recover damages in the amount of \$500 for each such violation.

B. If the court finds a willful violation, the court may, in its discretion, increase the amount of the award to an amount not exceeding \$1,500.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person may be awarded reasonable attorneys' fees and court costs.

D. An action for damages, attorneys' fees, and costs brought under this section may be filed in an appropriate general district court or small claims court so long as the amount claimed does not exceed the jurisdictional limits set forth in § 16.1-77 or § 16.1-122.2, as applicable. Any action brought under this section that includes a request for an injunction shall be filed in an appropriate circuit court.

§ 59.1-516. *Investigative authority.*

A. The Commissioner of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of this chapter, and to request, but not to require, an appropriate legal official to bring an action under § 59.1-517 with respect to such violation.

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is engaging in or is about to engage in any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

§ 59.1-517. Enforcement; penalties.

A. The Attorney General, an attorney for the Commonwealth or the attorney for any county, city or town may cause an action to be brought in the name of the Commonwealth or of the county, city or town to enjoin any violation of this chapter by any person and to recover damages for aggrieved persons in the amount of \$500 for each such violation.

B. If the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than \$1,000 for each such violation.

C. In any action brought under this section, the Attorney General, the attorney for the Commonwealth or the attorney for the county, city or town may recover reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorneys' fees.

D. Any civil penalties awarded under this section in an action brought in the name of the Commonwealth shall be paid into the Literary Fund. Any civil penalties awarded under this section in an action brought in the name of a county, city or town shall be paid into the general fund of the county, city or town.

§ 59.1-518. Effect on other remedies, causes of action or penalties.

Nothing in this chapter shall be construed to limit any remedies, causes of action or penalties available to any person or governmental agency under any other federal or state law.