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HOUSE BILL NO. 1112

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 59.1-510, 59.1-512, 59.1-514, and 59.1-516 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 59.1-513.1 and 59.1-514.1, and by adding in Chapter 44 of Title 59.1 sections numbered 59.1-519 and 59.1-520, relating to telephone solicitation practices; consumer protection.

Patrons—Plum, Christian, Crittenden, Darner, Jones, D.C., Moran, Pollard and Van Yahres

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-510, 59.1-512, 59.1-514, and 59.1-516 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 59.1-513.1 and 59.1-514.1 and by adding in Chapter 44 of Title 59.1 sections numbered 59.1-519 and 59.1-520, as follows:

§ 59.1-510. Definitions.

As used in this chapter:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Consumer goods or services" means any real property or any tangible personal property or service, including a loan or extension of credit, that is normally used for personal, family, or household purposes.

"List administrator" means a nonprofit organization designated by contract entered into by the Office, that accepts individual names, addresses and telephone numbers of persons who do not wish to receive telephone solicitation calls and that has been in existence for ten or more years.

"Office" means the Office of Consumer Affairs of the Department of Agriculture and Consumer Services.

"Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person.

"Telephone solicitation call" means any telephone call made to any natural person's residence by any person transacting any business in the Commonwealth to any residential subscriber in Virginia for the purpose of offering or advertising any property, goods or services for sale, lease, license or investment, including offering or advertising (i) soliciting or encouraging the purchase or rental of any consumer goods or services or an extension of credit for such purposes; or (ii) obtaining information that will or may be used for the purpose of soliciting or encouraging the purchase or rental of, or investment in, any consumer goods or services or an extension of credit for such purposes. "Telephone solicitation call" shall not include a telephone call made to any person residential subscriber: (i) with that person's prior express invitation or permission or; (ii) in reference to an existing debt, contract, payment of performance; (iii) 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 within the 12 months preceding the telephone solicitation call; (iv) on behalf of a charitable organization granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code or a veteran's organization chartered by the Congress of the United States; or (v) on behalf of a political candidate or a political party.

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

"Transacting any business in the Commonwealth" refers to the conduct of telephone solicitations from a location in Virginia or from any other state to a residential subscriber located within Virginia.

§ 59.1-512. Identification of telephone solicitor required.

A Any telephone solicitor who makes a telephone solicitation call to the telephone number of any residential subscriber shall identify himself by his true first and last names and the name of the person or entity on whose behalf the telephone solicitation call is being made promptly upon making contact by telephone with the called person a residential subscriber who is the object of the telephone solicitation.

§ 59.1-513.1. Do-Not-Call List.

A. No person shall initiate or cause to be initiated a telephone solicitation call to a residential telephone number of a person who does not wish to receive telephone solicitation calls and has caused his name, address and telephone number to be enrolled on a do-not-call list maintained by the list

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59 administrator. This prohibition shall be effective thirty days after a quarterly do-not-call list is issued by
60 the list administrator which first contains a person's name, address and residential telephone number.

61 B. Persons making telephone solicitation calls shall quarterly obtain listings of residential telephone
62 consumers in this commonwealth who have arranged to have their names, addresses and telephone
63 numbers enrolled on the list administrator's do-not-call list or shall utilize a service provider who has
64 quarterly obtained and will use such listings.

65 C. A listing on a do-not-call list shall be honored for a minimum of five years from the date of the
66 enrollment.

67 D. No list administrator may impose a fee for copies of a do-not-call list which exceeds the costs
68 incurred by the list administrator in the production, preparation and distribution of that list.

69 E. A person is not in violation of this section if all of the following are satisfied:

70 1. He has established and implemented written procedures to comply with this section.

71 2. He has trained his personnel in the procedures.

72 3. The person acting on behalf of the seller has maintained and recorded lists of persons who may
73 not be contacted.

74 4. Any subsequent call is the result of error.

75 F. The list administrator shall provide the office with a copy of each quarterly do-not-call list.

76 G. No person shall use a list administrator's do-not-call list for any purpose other than to remove
77 residential telephone customers from telephone sales call lists.

78 H. Each local exchange telephone company, competitive local exchange telephone company, long
79 distance interexchange carrier company, internet service provider that provides telephone service and
80 affiliated companies providing telecommunications billing service shall clearly notify its residential
81 subscribers of their ability to contact the list administrator which accepts individual names, addresses
82 and telephone numbers of persons who do not wish to receive telephone solicitation calls. The method
83 of notification shall include, but not be limited to, placing the notice in billing statements mailed to
84 subscribers and publication of notice in the consumer information pages of a local telephone directory
85 of general circulation. The notification shall specify the methods by which subscribers may place their
86 names on the list and how often renewal is necessary.

87 I. If the Office has not entered into a contract with a national association within ninety days of the
88 effective date of this section after a good faith effort to do so, the Office may contract with any
89 nonprofit organization to carry out the provisions of this section.

90 § 59.1-514. Certain telephone solicitations prohibited.

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

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

99 C. No telephone solicitor shall make or cause to be made any telephone solicitation call to the
100 telephone number of any residential subscriber whose telephone number is included on the Do-Not-Call
101 List for such calendar quarter; however, a telephone solicitation made within thirty days after the end
102 of a calendar quarter and made in reliance upon the most recently prepared quarterly Do-Not-Call List
103 shall not constitute a violation of this section.

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

108 § 59.1-514.1. Notification to residential subscribers.

109 A. Every provider of local telephone service shall notify its residential subscribers of the provisions
110 of this chapter by displaying such information in the consumer information pages of its local telephone
111 directories.

112 B. The State Corporation Commission is authorized to promulgate regulations in order to implement
113 and enforce the provisions of this section.

114 § 59.1-516. Investigative authority.

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

119 B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is
120 engaging in or is about to engage in any violation of this chapter, the Attorney General is empowered to

121 issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil
122 investigative demands issued pursuant to this section.

123 § 59.1-519. Regulations.

124 *Except as provided in § 59.1-514.1, the Board is authorized to promulgate reasonable regulations,*
125 *including any fees or charges, in order to implement the provisions of this chapter. These regulations*
126 *shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et*
127 *seq.).*

128 § 59.1-520. Jurisdiction over nonresident defendants.

129 *A court of this Commonwealth may exercise personal jurisdiction over any nonresident transacting*
130 *any business in the Commonwealth as to an action or proceeding authorized by this chapter in*
131 *accordance with the provisions of § 8.01-328.1.*