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SENATE BILL NO. 344

Senate Amendments in [] — February 5, 2004

A BILL to amend and reenact §§ 59.1-510, 59.1-511, 59.1-513, and 59.1-514 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-513.1, relating to the Virginia Telephone Privacy Protection Act.

Patron Prior to Engrossment—Senator Williams

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-510, 59.1-511, 59.1-513, and 59.1-514 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 59.1-513.1 as follows:

§ 59.1-510. Definitions.

As used in this chapter:

"Established business relationship" means a relationship between the called person and the person on whose behalf the telephone solicitation call is being made based on: (i) the called person's purchase from, or transaction with, the person on whose behalf the telephone solicitation call is being made within the 18 months immediately preceding the date of the call or (ii) the called person's inquiry or application regarding any property, good, or service offered by the person on whose behalf the telephone solicitation call is being made within the three months immediately preceding the date of the call.

"Personal relationship" means the relationship between a telephone solicitor making a telephone solicitation call and any family member, friend, or acquaintance of that telephone solicitor.

"Telephone solicitation call" means any telephone call made to any natural person's residence in the Commonwealth, or to any wireless telephone with a Virginia area code, 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.

§ 59.1-513. Transmission of caller identification information required.

A. A telephone solicitor who makes a telephone solicitation call shall transmit the telephone number, and, when available by the telephone solicitor's carrier, the name of the telephone solicitor. It shall not be a violation of this section to substitute (for the name and telephone number used in, or billed for, making the call) the name of the person on whose behalf the telephone solicitation call is being made and that person's customer service telephone number. The number so provided must permit, during regular business hours, any individual to make a request not to receive telephone solicitation calls.

B. 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.

§ 59.1-513.1. Abandoned telephone solicitation calls.

Whenever a live sales representative is not available to speak with the person answering a telephone solicitation call within two seconds of the person's completed greeting, the telephone solicitor shall play a prerecorded identification message that states [~~only~~] the name and telephone number of the person on whose behalf the telephone solicitation call was being made [; and that the call was for "telemarketing purposes." .] The number so provided must permit, during regular business hours, any individual to make a request not to receive telephone solicitation calls.

§ 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

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59 to receive a telephone solicitation call made by or on behalf of the person on whose behalf the
60 telephone solicitation call is being made. Such statement may be made to a telephone solicitor or to the
61 person on whose behalf the telephone solicitation call is being made if that person is different from the
62 telephone solicitor. ~~B.~~ Any such request not to receive telephone solicitation calls shall be honored for at
63 least ~~ten~~ 10 years from the time the request is made.

64 *B. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a*
65 *telephone number on the National Do Not Call Registry maintained by the federal government pursuant*
66 *to the Telemarketing Sales Rule, 16 C.F.R. Part 310, and 47 C.F.R. § 64.1200.*

67 C. It shall be an affirmative defense in any action brought under § 59.1-515 or § 59.1-517 for a
68 violation of this section that the defendant has established and implemented, with due care, reasonable
69 practices and procedures to effectively prevent telephone solicitation calls in violation of this section,
70 including using [in accordance with applicable federal regulations] a version of the National Do Not
71 Call Registry obtained from the administrator of the registry no more than three months prior to the
72 date any telephone solicitation call is made.

73 *D. For purposes of this section, "telephone solicitation call" shall not include a telephone call made*
74 *to any person: (i) with that person's prior express invitation or permission as evidenced by a signed,*
75 *written agreement stating that the person agrees to be contacted by or on behalf of a specific party and*
76 *including the telephone number to which the call may be placed, (ii) with whom the person on whose*
77 *behalf the telephone call is made has an established business relationship, or (iii) with whom the*
78 *telephone solicitor making the telephone call has a personal relationship. The exemption for an*
79 *established business relationship or a personal relationship shall not apply when the person called*
80 *previously has stated that he does not wish to receive telephone solicitation calls as provided in*
81 *subsection A.*