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SENATE BILL NO. 1264

Senate Amendments in [] — February 2, 2017

A *BILL to amend and reenact §§ 59.1-510 and 59.1-514 of the Code of Virginia, relating to the Virginia Telephone Privacy Protection Act; telephone solicitation calls.*

Patron Prior to Engrossment—Senator Black

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-510 and 59.1-514 of the Code of Virginia are amended and reenacted 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.

"Seller" means any entity that benefits from the sale of property or services marketed by a telephone solicitation call. "Seller" includes an entity that engages in the marketing or selling of names or data containing the identity of potential customers or sales leads.

"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" also means any telephone call made for any such purpose to a [~~cellular~~ wireless] phone registered to any natural person who is a resident of the Commonwealth.

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

§ 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. Any such request not to receive telephone solicitation calls shall be honored for at least 10 years from the time the request is made.

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

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, including using in accordance with applicable federal regulations a version of the National Do Not Call Registry obtained from the administrator of the registry no more than 31 days prior to the date any telephone solicitation call is made.

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

E. [*Notwithstanding that a seller is not generally deemed to initiate telephone solicitation calls that*

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60 ~~are made through a third-party telemarketer under the federal Telephone Consumer Protection Act of~~
61 ~~1991, 47 U.S.C. § 227, a seller nonetheless~~ A seller] may be held liable under common law principles
62 of agency for violations of this [~~chapter~~ section] that are committed by a third-party telemarketer when
63 the third-party telemarketer initiates telephone solicitation calls on behalf of or for the benefit of the
64 seller [; provided however, that a seller shall not be held liable if the third-party telemarketer fails to
65 follow its contractual obligations with the seller or fails to adhere to any guidelines, directions,
66 practices or policies of the seller for conducting telephone solicitations and communications] .