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SENATE BILL NO. 822

Offered January 8, 2020

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A BILL to amend and reenact §§ 59.1-512, 59.1-513, 59.1-514, 59.1-514.1, 59.1-518.1, 59.1-518.2, and 59.1-518.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-513.2, relating to telephone privacy protection.

Patrons—Morrissey and Chase; Delegate: Cole, M.L.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-512, 59.1-513, 59.1-514, 59.1-514.1, 59.1-518.1, 59.1-518.2, and 59.1-518.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-513.2 as follows:

§ 59.1-512. Identification of telephone solicitor required.

A telephone solicitor who makes a telephone solicitation call shall, *immediately upon making contact with the called person*, identify himself:

1. The individual making the telephone solicitation call by his first and last names ~~and the~~;
2. The name of the person on whose behalf the telephone solicitation call is being made ~~promptly upon making contact with the called person; and~~
3. The property, good, or service being offered by the person on whose behalf the telephone solicitation call is being made.

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

A. A telephone solicitor ~~who~~ that 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~~ shall permit, ~~during regular business hours at all times~~, any individual to make a request not to receive telephone solicitation calls.

B. No telephone solicitor shall take any ~~intentional~~ action to prevent, *or fail to take any action within the power of the telephone solicitor that would prevent*, the transmission of the telephone solicitor's name or telephone number to any person receiving a telephone solicitation call.

§ 59.1-513.2. Caller ID spoofing prohibited.

A. As used in this section:

"Call" means any communication, message, signal, or transmission made to a person through the use of a communications service.

"Caller" means a person who makes a call using a communications service.

"Caller identification information" means information provided by a caller identification service regarding the telephone number of, or other information regarding the origin of, a call made using a communications service.

"Caller identification service" means a listing of caller identification information that is shown to a recipient of a call when a call made using a communications service is received.

"Caller ID spoofing" means the practice of using an application or other technology in connection with a communications service to cause any caller identification service to transmit caller identification information that represents or states that the call originates from a telephone with an area code assigned to an area within the Commonwealth or from a location within the Commonwealth if the person on whose behalf the telephone solicitation call is being made does not conduct business from a location within the Commonwealth.

"Communications service" includes any telecommunication service, broadband service, or interconnected Voice-over-Internet Protocol service.

B. No person shall perform caller ID spoofing when making a call to another person in the Commonwealth.

C. This section shall not apply to:

1. The blocking of caller identification information;
2. Any federal, state, or local law-enforcement agency;
3. Any federal intelligence or security agency; or
4. A provider of a communications service that is:

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- 59 a. Acting in the communications service provider's capacity as an intermediary for the transmission
60 of a call between the caller and the call's recipient;
61 b. Providing or configuring a service or service feature as requested by the provider's customer;
62 c. Acting in a manner that is authorized or required by applicable law; or
63 d. Engaging in other conduct that is necessary to provide its communications service.

64 D. A person who is subjected to a violation of this section may file with the Attorney General a
65 written complaint that states the name and address of the person alleged to have committed the
66 violation complained of, the particulars of the violation, and any other information required by the
67 Attorney General. After the filing of a complaint, the Attorney General shall investigate the allegations
68 to ascertain issues and facts. If upon the completion of such investigation the Attorney General
69 determines that a violation of this section has occurred, the Attorney General shall bring an action
70 under § 59.1-517 with respect to such violation, including an action for an award of a civil penalty of
71 not more than \$1,000 for each such violation. This section does not prevent a person from exercising
72 any right or seeking any remedy to which he might otherwise be entitled, including initiating an action
73 to enjoin a violation and to recover damages as provided in § 59.1-515.

74 **§ 59.1-514. Unwanted telephone solicitation calls prohibited.**

75 A. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a
76 telephone number when a person at such telephone number previously has stated that he does not wish
77 to receive a telephone solicitation call made by or on behalf of the person on whose behalf the
78 telephone solicitation call is being made. Such statement may be made to a telephone solicitor or to the
79 person on whose behalf the telephone solicitation call is being made if that person is different from the
80 telephone solicitor. Any such request not to receive telephone solicitation calls shall be honored for at
81 least 10 years from the time the request is made.

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

86 C. It shall be an affirmative defense in any action brought under § 59.1-515 or 59.1-517 for a
87 violation of this section that the defendant has established and implemented, with due care, reasonable
88 practices and procedures to effectively prevent telephone solicitation calls in violation of this section,
89 including using in accordance with applicable federal or state regulations a version of the National Do
90 Not Call Registry or Virginia Do Not Call Registry obtained from the administrator of the registry no
91 more than 31 days prior to the date any telephone solicitation call is made.

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

101 **§ 59.1-514.1. Joint liability of seller and telephone solicitor for prohibited acts; rebuttable**
102 **presumption.**

103 A. A seller on whose behalf or for whose benefit a telephone solicitor makes or initiates a telephone
104 solicitation call in violation of any provision of § 59.1-511, 59.1-512, 59.1-513, 59.1-513.2, or 59.1-514
105 and the telephone solicitor making or initiating the telephone call shall be jointly and severally liable for
106 such violation.

107 B. A telephone solicitation call offering or advertising a seller's property, goods, or services shall be
108 presumed to have been made or initiated on behalf of or for the benefit of the seller, whether or not any
109 agency relationship exists between the telephone solicitor and the seller, whether or not the seller
110 supervised or directed the conduct of the telephone solicitor, and whether or not the telephone solicitor
111 is shown to have acted at the seller's direction and request when making or initiating the telephone
112 solicitation call. The presumption may be rebutted if it is shown by clear and convincing evidence that
113 the seller did not retain or request the telephone solicitor to make telephone solicitation calls on the
114 seller's behalf or for the seller's benefit and that the telephone solicitation calls offering or advertising
115 the seller's property, goods, or services were made by the telephone solicitor without the seller's
116 knowledge or consent.

117 **§ 59.1-518.1. Definitions.**

118 As used in this chapter:

119 "Automatic dialing-announcing device" means a device that (i) selects and dials telephone numbers
120 and (ii) working alone or in conjunction with other equipment, disseminates a prerecorded or

synthesized voice message to the telephone number called.

"Caller" means a person that attempts to contact, or contacts, a subscriber in the Commonwealth by using a telephone or telephone line.

"Commercial telephone solicitation" means any unsolicited call to a subscriber when (i) the person initiating the call has not had a prior business or personal relationship with the subscriber and (ii) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber. The term does not include calls initiated by the Commonwealth or a political subdivision for exclusively public purposes.

"Subscriber" means (i) a person who has subscribed to *or prepaid for* telephone service from a telephone company, *including wireless telephone service from a wireless telephone company*, or (ii) other persons living or residing with the person.

§ 59.1-518.2. When automatic dialing-announcing devices prohibited.

A. A caller shall not use an automatic dialing-announcing device in connection with making a commercial telephone solicitation unless:

1. ~~The subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message, or~~

2. ~~The~~ *the* message is immediately preceded by a live operator who, after disclosing (i) the name of the entity sending the message, (ii) the purpose of the message, (iii) the kinds of goods or services the message is promoting, and (iv), if applicable, the fact that the message intends to solicit payment or the commitment of funds, obtains the subscriber's consent before the commercial telephone solicitation is delivered.

B. *A caller shall not use an automatic dialing-announcing device in connection with making a commercial telephone solicitation if the subscriber has registered with the Virginia Do Not Call Registry unless the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message.*

§ 59.1-518.4. Violations of chapter; joint liability; penalty.

A. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

B. *A seller on whose behalf or for whose benefit a caller makes or initiates a commercial telephone solicitation call in violation of any provision of § 59.1-518.2 and the caller making or initiating the telephone call shall be jointly and severally liable for such violation.*

C. *A commercial telephone solicitation call offering or advertising a seller's property, goods, or services shall be presumed to have been made or initiated on behalf of or for the benefit of the seller, whether or not any agency relationship exists between the caller and the seller, whether or not the seller supervised or directed the conduct of the caller, and whether or not the caller is shown to have acted at the seller's direction and request when making or initiating the commercial telephone solicitation call. The presumption may be rebutted if it is shown by clear and convincing evidence that the seller did not retain or request the caller to make commercial telephone solicitation calls on the seller's behalf or for the seller's benefit and that the commercial telephone solicitation calls offering or advertising the seller's property, goods, or services were made by the caller without the seller's knowledge or consent.*

2. **That by January 1, 2021, the Virginia Department of Agriculture and Consumer Services shall establish the Virginia Do Not Call Registry subject to any restrictions imposed by the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, and other similar federal legislation. The Virginia Do Not Call Registry shall be established for the purpose of creating a registry to which subscribers who wish to block all telephone solicitation calls, as defined in § 59.1-510 of the Code of Virginia, and all calls that use or are made in connection with automatic dialing-announcing devices, as defined in § 59.1-518.1 of the Code of Virginia, as amended by this act, may register.**

3. **That the provisions of the first enactment of this act shall become effective three months after the Virginia Do Not Call Registry established by the Virginia Department of Agriculture and Consumer Services, as required by the second enactment of this act, is operational.**