

2020 SESSION

LEGISLATION NOT PREPARED BY DLS SENATE SUBSTITUTE

20108172D

SENATE BILL NO. 812

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Lucas
on February 11, 2020)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend and reenact §§ 59.1-510, 59.1-513, 59.1-515, and 59.1-517 of the Code of Virginia, relating to the Virginia Telephone Privacy Protection Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-510, 59.1-513, 59.1-515, and 59.1-517 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-510. Definitions; rule of construction.

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 or initiated based on (i) the called person's purchase from, or transaction with, the person on whose behalf the telephone solicitation call is being made or initiated 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 or initiated within the three months immediately preceding the date of the call.

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

"Responsible person" means either or both of (i) a telephone solicitor or (ii) a seller if the telephone solicitation call offering or advertising the seller's property, goods, or services is presumed to have been made or initiated on behalf of or for the benefit of the seller and the presumption is not rebutted as provided in subsection B of § 59.1-514.1.

"Seller" means any person on whose behalf or for whose benefit a telephone solicitation call offering or advertising the person's property, goods, or services is made or initiated.

"Telephone solicitation call" means (i) any telephone call made or initiated to any natural person's residence in the Commonwealth, or to any landline or wireless telephone with a Virginia area code, or to a landline or wireless telephone registered to any natural person who is a resident of the Commonwealth or (ii) any text message sent to any wireless telephone with a Virginia area code or to a wireless telephone registered to any natural person who is a resident of 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 or for the purpose of fraudulent activity, including engaging in any conduct that results in the display of false or misleading caller identification information on the called person's telephone.

"Telephone solicitor" means any person who makes or initiates, or causes another person to make or initiate, a telephone solicitation call on its own behalf or for its own benefit or on behalf of or for the benefit of a seller.

§ 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 or engage in any conduct that results in the display of false or misleading caller identification information on the called person's telephone.

C. ~~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.~~

§ 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 against any responsible person to enjoin such violation and to recover from any responsible person damages in the amount of \$500 for each such a first violation, \$1,000 for a second violation, and \$5,000 for each subsequent violation.

B. If the court finds a willful violation, the court may, in its discretion, increase the amount of any

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60 damages awarded *for a first or second violation* under subsection A to an amount not exceeding ~~\$1,500~~
61 ~~\$5,000~~.

62 C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded,
63 such person may be awarded under subsection A or B reasonable attorney fees and court costs.

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

69 **§ 59.1-517. Enforcement; civil penalties.**

70 A. The Attorney General, an attorney for the Commonwealth, or the attorney for any locality may
71 cause an action to be brought in the name of the Commonwealth or of the locality, as applicable, to
72 enjoin any violation of this chapter by any responsible person and to recover from any responsible
73 person damages for aggrieved persons in the amount of \$500 for ~~each such~~ *a first violation, \$1,000 for*
74 *a second violation, and \$5,000 for each subsequent violation.*

75 B. If the court finds a willful violation, the court may, in its discretion, also assess against any
76 responsible person a civil penalty of not more than ~~\$1,000~~ *\$5,000* for each such violation.

77 C. In any action brought under this section, the Attorney General, the attorney for the
78 Commonwealth, or the attorney for the locality may recover reasonable expenses incurred by the state or
79 local agency in investigating and preparing the case, and attorney fees.

80 D. Any civil penalties assessed under subsection B in an action brought in the name of the
81 Commonwealth shall be paid into the Literary Fund. Any civil penalties assessed under subsection B in
82 an action brought in the name of a locality shall be paid into the general fund of the locality.