

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 59.1-510 through 59.1-514.1 of the Code of Virginia, relating to Virginia*
 3 *Telephone Privacy Protection Act; telephone solicitations via text message.*

4 [S 1339]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 59.1-510 through 59.1-514.1 of the Code of Virginia are amended and reenacted as follows:**
 8 **§ 59.1-510. Definitions.**

9 As used in this chapter, *unless the context requires a different meaning:*

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

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

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

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

25 "Telephone solicitation ~~call~~" means (i) any telephone call made or initiated to any natural person's
 26 residence in the Commonwealth, to any landline or wireless telephone with a Virginia area code, or to a
 27 landline or wireless telephone registered to any natural person who is a resident of the Commonwealth or (ii)
 28 any text message sent to any wireless telephone with a Virginia area code or to a wireless telephone
 29 registered to any natural person who is a resident of the Commonwealth, for the purpose of offering or
 30 advertising any property, goods, or services for sale, lease, license, or investment, including offering or
 31 advertising an extension of credit or for the purpose of fraudulent activity, including engaging in any conduct
 32 that results in the display of false or misleading caller identification information on the ~~called~~ *contacted*
 33 person's telephone.

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

37 **§ 59.1-511. Solicitation time restrictions.**

38 No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation ~~call~~ at any time other
 39 than between 8:00 a.m. and 9:00 p.m. local time at the ~~called~~ *contacted* person's location, unless the
 40 telephone solicitor has obtained the prior consent of the ~~called~~ *contacted* person.

41 **§ 59.1-512. Identification of telephone solicitor required.**

42 A telephone solicitor who makes a telephone solicitation *via telephone* call shall identify himself by his
 43 first and last names and the name of the person on whose behalf the telephone solicitation ~~call~~ is being made
 44 promptly upon making contact with the ~~called person~~ *recipient of such solicitation*.

45 **§ 59.1-513. Transmission of solicitor identification information required.**

46 A. A telephone solicitor who makes a telephone solicitation ~~call~~ shall transmit the telephone number, and,
 47 when available by the telephone solicitor's carrier, the name of the telephone solicitor. The number so
 48 provided must permit, during regular business hours, any individual to make a request not to receive
 49 telephone ~~solicitation calls~~ *solicitations*. *In the case of a telephone solicitation via text message, this*
 50 *requirement is satisfied if the number so provided accepts a request by reply text message not to receive*
 51 *future text messages as provided in subsection A of § 59.1-514.*

52 B. No telephone solicitor shall take any intentional action to prevent the transmission of the telephone
 53 solicitor's name or telephone number to any person receiving a telephone solicitation ~~call~~ or engage in any
 54 conduct that results in the display of false or misleading ~~caller~~ identification information on the ~~called~~
 55 *contacted* person's telephone.

56 C. It shall not be a violation of this section to substitute for the name and telephone number used in, or

57 billed for, making the ~~call~~ *solicitation* the name of the person on whose behalf the telephone solicitation ~~call~~
58 is being made and that person's customer service telephone number.

59 **§ 59.1-513.1. Abandoned telephone solicitations.**

60 Whenever a live sales representative is not available to speak with the person answering a telephone
61 solicitation *via telephone* call within two seconds of the person's completed greeting, the telephone solicitor
62 shall play a prerecorded identification message that states the name and telephone number of the person on
63 whose behalf the telephone solicitation ~~call~~ was being made. The number so provided shall permit, during
64 regular business hours, any individual to make a request not to receive telephone ~~solicitation calls~~
65 *solicitations*.

66 **§ 59.1-514. Unwanted telephone solicitations prohibited.**

67 A. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation ~~call~~ to a telephone
68 number when a person at such telephone number previously has stated that he does not wish to receive a
69 telephone solicitation ~~call~~ made by or on behalf of the person on whose behalf the telephone solicitation ~~call~~
70 is being made. Such statement may be made to a telephone solicitor or to the person on whose behalf the
71 telephone solicitation ~~call~~ is being made if that person is different from the telephone solicitor. *In the case of*
72 *a telephone solicitation via text message, such statement shall be made by replying to the text message with*
73 *the word "UNSUBSCRIBE" or "STOP."* Any such request not to receive telephone ~~solicitation calls~~
74 *solicitations* shall be honored for at least 10 years from the time the request is made.

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

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

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

92 **§ 59.1-514.1. Joint liability of seller and telephone solicitor for prohibited acts; rebuttable**
93 **presumption.**

94 A. A seller on whose behalf or for whose benefit a telephone solicitor makes or initiates a telephone
95 solicitation ~~call~~ in violation of any provision of § 59.1-511, 59.1-512, 59.1-513, or 59.1-514 and the
96 telephone solicitor making or initiating the telephone ~~call~~ *solicitation* shall be jointly and severally liable for
97 such violation.

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