

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4150

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DEAN, LYNCH, HAMRICK, WARD, ATKINSON, QUEEN AND
MAYNARD

[Introduced January 16, 2018; Referred to the
Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, to amend and reenact §46A-6F-
2 501; all relating to prohibiting telemarketing companies from transmitting misleading or
3 inaccurate caller identification information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. TELEMARKETING.

PART V. UNFAIR OR DECEPTIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-501. Unfair or deceptive acts or practices.

1 It is an unfair or deceptive act or practice and a violation of this article for any seller or
2 telemarketer to engage in the following conduct:

3 (1) To advertise or represent that registration as a telemarketer equals an endorsement
4 or approval by the state or any governmental agency of the state;

5 (2) To request or receive payment of any fee or consideration for goods or services
6 represented to remove derogatory information from, or improve, a person's credit history, credit
7 record, or credit rating until:

8 (A) The time frame in which the telemarketer has represented all of the goods or services
9 will be provided to that person has expired; and

10 (B) The telemarketer has provided the person with documentation in the form of a
11 consumer report from a consumer reporting agency demonstrating that the promised results have
12 been achieved, such report having been issued more than six months after the results were
13 achieved;

14 (3) To obtain or submit for payment a check, draft, or other form of negotiable paper drawn
15 on a person's checking, savings, share, or similar account, without that person's express verifiable
16 authorization. Such authorization shall be deemed verifiable if any of the following means are
17 employed:

18 (A) Express written authorization by the customer, which may include the customer's
19 signature on the negotiable instrument; or

20 (B) Express oral authorization which is tape recorded and made available upon request to
21 the customer's bank and which evidences clearly both the customer's authorization of payment
22 for the goods and services that are the subject of the sales offer and the customer's receipt of all
23 of the following information:

24 (i) The date of the draft(s);

25 (ii) The amount of the draft(s);

26 (iii) The payor's name;

27 (iv) The number of draft payments (if more than one);

28 (v) A telephone number for customer inquiry that is answered during normal business
29 hours; and

30 (vi) The date of the customer's oral authorization.

31 (C) Written confirmation of the transaction, sent to the customer prior to submission for
32 payment of the customer's check, draft, or other form of negotiable paper, that includes:

33 (i) All of the information contained in subparagraphs (i) through (vi), paragraph (B),
34 subdivision (3) of this section; and

35 (ii) The procedures by which the customer can obtain a refund from the telemarketer in
36 the event the confirmation is inaccurate;

37 (4) To procure the services of any professional delivery, courier or other pick-up service
38 to obtain immediate receipt and possession of a consumer's payment unless:

39 (A) Such service is requested by the consumer;

40 (B) The consumer is informed that he or she can inspect the goods or services prior to
41 payment and may refuse to accept the goods or services; and

42 (C) The consumer is actually afforded an opportunity to inspect the goods or services prior
43 to payment;

44 (5) To engage in any other unfair or deceptive conduct which will create a likelihood of
45 confusion or misunderstanding to any reasonable consumer;

46 (6) To misrepresent the requirements of this section;

47 (7) To provide substantial assistance or support to any telemarketer when that person
48 knows or consciously avoids knowing that the telemarketer is engaged in any act or practice that
49 violates this section;

50 (8) To engage in any “unfair methods of competition and unfair or deceptive acts or
51 practices” as specified in §46A-6-102(f) of this code and made unlawful by the provisions of §46A-
52 6-102 of this code; or

53 (9) To engage in transmission of misleading or inaccurate caller identification information,
54 including, but not limited to, circumventing caller identification technology that allows the
55 consumer to identify from what phone number, location or organization the call has originated
56 from, or to otherwise misrepresent the origin and nature of the solicitation: *Provided*, That the
57 provisions of this subsection do not apply to a communications service provider that delivers a
58 communication originated by another person or entity.

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NOTE: The purpose of this bill is to prohibit spoofing caller ID information that is fraudulent or misleading.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.