

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4045**

BY DELEGATE BOGGS

[Introduced January 12, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §46A-6F-501 of the Code of West Virginia, 1931, as amended,  
2 relating to creating a prohibition circumvent caller identification technology that allows a  
3 consumer to identify from what phone number, location or organization the call has  
4 originated from, or to otherwise misrepresent the origin and nature of the solicitation.

*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.

53 (9) To circumvent caller identification technology that allows the consumer to identify from  
54 what phone number, location or organization the call has originated from, or to otherwise  
55 misrepresent the origin and nature of the solicitation.

NOTE: The purpose of this bill is to prohibit telemarketers and sellers from misrepresenting the location and identification from which a phone call solicitation originates, and the nature of the solicitation.

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