

January 13, 2023

Attorney General Charity Clark
Vermont Office of the Attorney General
109 State St
Montpelier, VT 05609

Re: Report regarding robocalls (9 V.S.A. § 2464e)

Dear Attorney General Clark:

I am reaching out on behalf of the American Financial Services Association (“AFSA”)¹ regarding the Office of the Attorney General’s (“OAG”) report related to robocalls as required by Section 58 of SB 11/Act 183. Under this section, OAG is obligated to review federal law concerning robocalls and compare it to 9 V.S.A. § 2464e to make recommendations to the legislature for necessary legislative action. While our members are committed to complying with all applicable laws and rooting out abusive actors, we are concerned that the criminal penalties in 9 V.S.A. § 2464e are out of step with federal law and could leave individual employees of companies subject to significant penalties for a single inadvertent violation.

Under Section 2464e, robocalls to Vermont consumers are generally prohibited. This prohibition is coextensive with federal restrictions in the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and subsequent regulations. However, unlike the federal restrictions, 9 V.S.A. § 2464e provides for strict, ill-matched criminal penalties for any knowing and willful violation. These criminal penalties are out of step with federal law and the laws in other states with otherwise-similar restrictions on robocalls, despite the legislature’s stated intent regarding the law’s relation to federal protections.

Because OAG is empowered to make recommendations for legislative actions, we respectfully request that OAG consider a recommendation to amend the law’s penalties to bring them in line with federal law and remove the criminal penalties while preserving the civil penalties. This recommendation would fall directly under OAG’s mandate to “review and consider the federal law and judicial construction concerning robocalls and their relationship to 9 V.S.A. § 2464e” while preserving crucial enforcement mechanisms for the state. Alternatively, if the state seeks to preserve these severe criminal penalties, we would recommend that the legislature amend the statute to limit the criminal penalties to repeated and malicious violations rather than merely knowing and willful violations. Since this provision of law takes effect on July 1, 2023, we hope to have your support in moving swiftly to address this issue.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Thank you in advance for your consideration of our request. If you have any questions or would like to discuss ways in which AFSA can help facilitate this process, please do not hesitate to contact me at mkownacki@afsamail.org or at (202) 469-3181.

Sincerely,



Matthew Kownacki
Director, State Research and Policy
American Financial Services Association