

HOUSE BILL REPORT

ESHB 1051

As Passed House:
February 27, 2023

Title: An act relating to robocalling and telephone scams.

Brief Description: Concerning robocalling and telephone scams.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Leavitt, Walen, Simmons, Ryu, Goodman, Fitzgibbon, Pollet, Doglio, Orwall, Macri, Timmons, Wylie, Bronoske, Ramos, Thai and Kloba; by request of Attorney General).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/10/23, 1/27/23 [DPS].

Floor Activity:

Passed House: 2/27/23, 96-0.

Brief Summary of Engrossed Substitute Bill

- Prohibits a person from assisting with a telephone solicitation using an automatic dialing and announcing device to any.
- Prohibits a person from initiating, or causing the initiation of, a telephone solicitation to a telephone number on the federal do not call registry or that violates federal law which prohibits misleading or inaccurate caller identification information.
- Makes a violation of the Telephone Solicitation Act (TSA) and a violation of the prohibition on using an automatic dialing and announcing device to make a commercial solicitation per se violations of the Consumer Protection Act.
- Adds that a person injured by a commercial solicitation by an automatic dialing and announcing device may bring civil action to enjoin further

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violations and recover actual damages or \$1,000 per violation, whichever is greater.

- Modifies and adds definitions to the TSA, the Commercial Telephone Solicitation Regulation Act, and the automatic dialing and commercial solicitation statute.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Walen, Chair; Reeves, Vice Chair; Chapman, Donaghy, Hackney, Ryu and Santos.

Minority Report: Do not pass. Signed by 3 members: Representatives Corry, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Volz.

Minority Report: Without recommendation. Signed by 3 members: Representatives Cheney, Connors and Sandlin.

Staff: Megan Mulvihill (786-7304).

Background:

Telephone solicitation is primarily regulated by two statutes: the Telephone Solicitation Act of 1986 (TSA) and the Commercial Telephone Solicitation Regulation Act of 1989 (CTSRA). These acts contain both similar and distinct provisions. In addition, automatic dialing and commercial solicitation is regulated under telecommunications.

	Telephone Solicitation Act	Commercial Telephone Solicitation Regulation Act	Automatic Dialing and Commercial Solicitation
Scope and Exceptions	The TSA defines "telephone solicitation" as the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a person and conversation for the purpose of encouraging the person to purchase property, goods, or	The CTSRA defines "commercial telephone solicitation" as: <ul style="list-style-type: none"> • an unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest 	An "automatic dialing and announcing device" is a device which automatically dials telephone numbers and plays a recorded message once a connection is made. "Commercial

	<p>services or soliciting donations of money, property, goods, or services.</p> <p>"Telephone solicitation" does not include</p> <ul style="list-style-type: none"> • calls made in response to a request or inquiry by the called party; • calls made by a not-for-profit organization to its own list of bona fide or active members of the organization; • calls limited to polling or soliciting the expression of ideas, opinions, or votes; or • business-to-business contacts. <p>The TSA does not cover calls from political parties.</p>	<p>in property, goods, or services;</p> <ul style="list-style-type: none"> • other communication with a person where: (1) a free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; (2) a telephone call response is invited; and (3) the salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or • other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson. <p>"Commercial telephone solicitor" means any person who engages in commercial telephone solicitation, including service bureaus.</p>	<p>solicitation" is the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.</p>
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		<p>However, many specific industries and activities are exempted by the CTSRA, such as isolated solicitations; calls by charities and collection agencies; and the sale of certain products, like cable television, fish, etc. One specific exemption is for people engaging in commercial telephone solicitation where less than 60 percent of such person's prior year's sales are as a result of the commercial telephone solicitation.</p>	
Prohibition	<p>There are time restrictions and regulations around identification requirements, and when a recipient of the solicitation must be removed from call lists, but there is no prohibition on commercial telephone solicitations.</p>	<p>There are time restrictions and regulations around identification requirements, and when a recipient of the solicitation must be removed from call lists, but there is no prohibition on commercial telephone solicitations.</p>	<p>A person may not use an automatic dialing and announcing device for purposes of commercial solicitation intended to be received by telephone customers within Washington.</p>
Fines and Civil Penalties	<p>Violations of the call time restrictions or identification and opt-out, call termination, or list removal requirements are subject to a \$1,000 fine for each violation under the TSA.</p>	<p>A civil penalty of \$500 to \$2,000 shall be imposed by the court for each violation.</p>	<p>Damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are presumed to be \$500.</p>

Private Civil Actions	Individuals subject to repeated violations may bring a civil action to enjoin violations and recover damages, including at least \$100 per violation. A prevailing plaintiff is entitled to attorney's fees and costs.	A person who is injured by a violation may bring an action for recovery of actual damages, attorney's fees, and costs. A violation is an unfair or deceptive act in trade or commerce for the purposes of the Consumer Protection Act.	A violation is a violation of the Consumer Protection Act.
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Summary of Engrossed Substitute Bill:

Automatic Dialing and Commercial Solicitation.

Definitions.

The definition of "automatic dialing and announcing device" is modified to mean a system which automatically dials telephone numbers and transmits a recorded or artificial voice message once a connection is made. A recorded or artificial message is transmitted even if the recorded or artificial message goes directly to a recipient's voicemail.

The definition of commercial solicitation is also modified to include wrongfully obtaining anything of value.

In addition, the following definitions are added:

- "Assist in the transmission" means actions taken to provide substantial assistance or support, which enables any person to formulate, originate, initiate, or transmit a commercial solicitation when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial solicitation is engaged, or intends to engage, in any practice that violates the Consumer Protection Act. This does not include activities of: (1) any entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent regulations; (2) a telecommunications provider or other entity that is limited to providing access to the internet for purposes excluding initiation of a telephone communication; or (3) a terminating provider relating to the transmission of a telephone communication.
- "Terminating provider" means a telecommunications provider that provides voice services to an end user customer.

Prohibition.

No person may assist in the transmission of a commercial solicitation using an automatic dialing and announcing device. In any action arising from a violation, there is an

affirmative defense that a telecommunications provider both acted in compliance with federal law and implemented a reasonably effective plan to mitigate origination, initiation, or transmission of a commercial solicitation using an automatic dialing and announcing device.

Private Civil Actions and Penalties.

A commercial solicitation violation is considered a *per se* violation of the Consumer Protection Act (CPA), and a person injured by such violations may receive remedies under the CPA. In addition, the person may bring civil action to enjoin further violations and recover actual damages or \$1,000 per violation, whichever is greater.

Telephone Solicitation Act.

Definitions.

"Telephone solicitation" is modified to include wrongfully obtaining anything of value.

A definition of "telephone call" is added.

Prohibition.

No person may initiate, or cause to be initiated, a telephone solicitation to any telephone number on the federal do not call registry. It is also unlawful for a person to initiate, or cause to be initiated, a telephone solicitation that violates federal law prohibiting misleading or inaccurate caller identification information. The prohibitions apply to all telephone solicitation intended to be received by telephone customers within Washington.

Exemptions.

Calls made by a membership or labor organization to its own list of bona fide or active members of the organization are also exempted from telephone solicitation regulations.

Private Civil Actions.

A violation of the TSA is made a *per se* violation of the CPA. The court must award damages of at least \$1,000 per violation for persons aggrieved by repeated violations.

Commercial Telephone Solicitation Regulation Act.

Definitions.

"Commercial telephone solicitation" is modified to include wrongfully obtaining anything of value and references to salesperson are removed. In addition, the exemption that a person who had less than 60 percent of their prior year's sales made as a result of commercial telephone solicitation is removed, and such person is now considered a commercial telephone solicitor.

The following definitions are added:

- "Telephone call" includes any communication made through a telephone that uses a live person, artificial voice, or recorded message.
- "Unsolicited" means to initiate contact for the purpose of attempting to sell a person

property, goods, or services where such person provided no previous express interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Everyone receives calls and messages on their phones that are annoying and deceptive. Robocalls are a hazard of the digital age, and hundreds of millions of these calls flood Washington. These are predatory and dangerous calls and scams that affect seniors, youth, and those who are financially fragile. These callers scare older adults, trick consumers, and threaten others with arrest if they do not comply. It is the single highest number of complaints that the Office of the Attorney General receives. Two states, Nebraska and Utah, have passed similar legislation. This proposal strengthens current robocalling laws, recognizing that, due to technological advancements, the statute and definitions need to keep up. Robocalling and solicitation are no longer just about procuring goods and services, but many are after personally identifying information. These callers use fraudulent or misleading caller identification and do not allow a person to call them back. A key enforcement tool is to hold domestic companies accountable for transmitting robocalls.

(Opposed) None.

(Other) There are concerns with the definitions, as more clarity is needed to know what is allowed in terms of offering products over the phone. Fraud should be combated. The telecommunications industry has made efforts across networks to identify bad actors. The federal law requires caller identification authentication with the new Stir Shaken law. The state should avoid an increase in litigation around determining where a phone call resides. The requirement that the established business relationship exists with a live person impacts the healthcare industry, which needs to be able to leave appointment and prescription pick up reminders. In addition, healthcare entities need the ability to communicate with all persons who are authorized to receive healthcare information about a person, not just the patient who has the established business relationship. Higher education institutions are not nefarious actors and want to ensure that the institutions can still reach out to students who need information about attending college, such as reminders about filling out the Free Application for Federal Student Aid.

Persons Testifying: (In support) Representative Mari Leavitt, prime sponsor; Mina

Shahin, Office of the Attorney General; David Thompson; and Shaun Scott.

(Other) Jeff Gombosky, CTIA; Joe Adamack, GoWest Credit Union Association; Bob Battles, Association of Washington Business; Katie Kolan, Washington State Hospital Association; Terri Standish-Kuon, Independent Colleges of Washington; and Kelsi Hamilton, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: None.