

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5518

Chapter 191, Laws of 1991

52nd Legislature
1991 Regular Session

DECEPTIVE PAY-PER-CALL INFORMATION DELIVERY SERVICES--
VIOLATION OF CONSUMER PROTECTION ACT

EFFECTIVE DATE: 7/28/91

Passed by the Senate April 22, 1991
Yeas 46 Nays 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 10, 1991
Yeas 94 Nays 3

JOE KING
**Speaker of the
House of Representatives**

Approved May 15, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5518** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

FILED

May 15, 1991 - 11:45 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5518

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Thorsness, Sutherland, Patterson, Jesernig, Stratton and Roach; by request of Attorney General).

Read first time March 5, 1991.

1 AN ACT Relating to telephone information delivery services;
2 amending RCW 80.36.500; and adding a new chapter to Title 19 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
5 deceptive use of pay-per-call information delivery services is a matter
6 vitally affecting the public interest for the purpose of applying the
7 Consumer Protection Act, chapter 19.86 RCW.

8 (2) The deceptive use of pay-per-call information delivery services
9 is not reasonable in relation to the development and preservation of
10 business. A violation of this chapter is an unfair or deceptive act in
11 trade or commerce for the purpose of applying the Consumer Protection
12 Act, chapter 19.86 RCW, and constitutes an act of deceptive pay-per-
13 call information delivery service.

14 (3) This chapter applies to a communication made by a person in
15 Washington or to a person in Washington.

1 NEW SECTION. **Sec. 2.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Person" means an individual, corporation, the state or its
5 subdivisions or agencies, business trust, estate, trust, partnership,
6 association, cooperative, or any other legal entity.

7 (2) "Information delivery services" means telephone-recorded
8 messages, interactive programs, or other information services that are
9 provided for a charge to a caller through an exclusive telephone number
10 prefix or service access code.

11 (3) "Information provider" means the person who provides the
12 information, prerecorded message, or interactive program for the
13 information delivery service. The information provider generally
14 receives a portion of the revenue from the calls. "Information
15 provider" does not include the medium for advertising information
16 delivery services.

17 (4) "Interactive program" means a program that allows an
18 information delivery service caller, once connected to the information
19 provider's delivery service, to use the caller's telephone device to
20 access more specific information or further information or to talk to
21 other callers during the call.

22 (5) "Telecommunications company" includes every corporation,
23 company, association, joint stock association, partnership, and person,
24 their lessees, trustees, or receivers appointed by any court
25 whatsoever, and every city or town owning, operating, or managing any
26 facilities used to provide telecommunications for hire, sale, or resale
27 to the general public within the state of Washington.

28 (6) "Interexchange carrier" means a carrier providing transmissions
29 between local access and transport areas interstate or intrastate.

1 (7) "Billing services" means billing and collection services
2 provided to information providers whether by the local exchange company
3 or the interexchange carrier.

4 (8) "Program message" means the information that a caller hears or
5 receives upon placing a call to an information provider.

6 (9) "Advertisement" includes all radio, television, or other
7 broadcast, video, newspaper, magazine, or publication, billboard,
8 direct mail, print media, telemarketing, or any promotion of an
9 information delivery service, program, or number, and includes
10 brochures, pamphlets, fliers, coupons, promotions, or the labeling of
11 products or in-store communications circulated or distributed in any
12 manner whatsoever. "Advertisement" does not include any listing in a
13 white page telephone directory. In a yellow page telephone directory,
14 "advertisement" includes only yellow page display advertising.

15 (10) "Subscriber" means the person in whose name an account is
16 billed.

17 (11) "Does business in Washington" includes providing information
18 delivery services to Washington citizens, advertising information
19 delivery services in Washington, entering into a contract for billing
20 services in Washington, entering into a contract in Washington with a
21 telecommunications company or interexchange carrier for transmission
22 services, or having a principal place of business in Washington.

23 NEW SECTION. **Sec. 3.** (1) An information provider that does
24 business in Washington must include a preamble in all program messages
25 for:

26 (a) Programs costing more than five dollars per minute; or

27 (b) Programs having a total potential cost of greater than ten
28 dollars.

29 (2) The preamble must:

1 (a) Accurately describe the service that will be provided by the
2 program;

3 (b) Advise the caller of the price of the call, including:

4 (i) Any per minute charge;

5 (ii) Any flat rate charge; and

6 (iii) Any minimum charge;

7 (c) State that billing will begin shortly after the end of the
8 introductory message; and

9 (d) Be clearly articulated, at a volume equal to that of the
10 program message, in plain English or the language used to promote the
11 information delivery service, and spoken in a normal cadence.

12 (3) Mechanisms that provide for the option of bypassing the
13 preamble are only permitted when:

14 (a) The caller has made use of the information provider's service
15 in the past, at which time the preamble required by this section was
16 part of the program message; and

17 (b) The cost of the call has not changed during the thirty-day
18 period before the call.

19 (4) When an information provider's program message consists of a
20 polling application that permits the caller to register an opinion or
21 vote on a matter by completing a call, this section does not apply.

22 NEW SECTION. **Sec. 4.** An information provider that does
23 business in Washington shall comply with the following provisions in
24 its advertisement of information delivery services:

25 (1) Advertisements for information delivery services that are
26 broadcast by radio or television, contained in home videos, or that
27 appear on movie screens must include a voice-over announcement that is
28 clearly audible and articulates the price of the service provided. The
29 announcement must be made at a volume equal to that used to announce

1 the telephone number, spoken in a normal cadence, and in plain English
2 or the language used in the advertisement.

3 (2) Advertisements for information delivery services that are
4 broadcast by television, contained in home videos, or that appear on
5 movie screens must include, in clearly visible letters and numbers, the
6 cost of calling the advertised number. This visual disclosure of the
7 cost of the call must be displayed adjacent to the number to be called
8 whenever the number is shown in the advertisement, and the lettering of
9 the visual disclosure of the cost must be in the same size and typeface
10 as that of the number to be called.

11 (3) (a) Except as otherwise provided in (b) of this subsection,
12 advertisements for information delivery services that appear in print
13 must include, in clearly visible letters and numbers, the cost of
14 calling the advertised number. The printed disclosure of the cost of
15 the call must be displayed adjacent to the number to be called wherever
16 the number is shown in the advertisement.

17 (b) In telephone directory yellow page display advertising and in
18 printed materials published not more than three times a year, instead
19 of disclosing the cost of the service, advertisements for information
20 delivery services, shall include the conspicuous disclosure that the
21 call is a pay-per-call service.

22 (4) The advertised price or cost of the information delivery
23 service must include:

- 24 (a) Any per minute charge;
- 25 (b) Any flat rate charge; and
- 26 (c) Any minimum charge.

27 NEW SECTION. **Sec. 5.** An information provider that does
28 business in the state of Washington shall not direct information

1 delivery services to children under the age of twelve years unless the
2 information provider complies with the following provisions:

3 (1) Interactive calls where children under the age of twelve years
4 can speak to other children under the age of twelve years are
5 prohibited.

6 (2) Programs directed to children under the age of twelve where the
7 children are asked to provide their names, addresses, telephone
8 numbers, or other identifying information are prohibited.

9 (3) Advertisements for information delivery services that are
10 directed to children under the age of twelve years must contain a
11 visual disclosure that clearly and conspicuously in the case of print
12 and broadcast advertising, and audibly in the case of broadcast
13 advertising, states that children under the age of twelve years must
14 obtain parental consent before placing a call to the advertised number.

15 (4) Program messages that encourage children under the age of
16 twelve years to make increased numbers of calls in order to obtain
17 progressively more valuable prizes, awards, or similarly denominated
18 items are prohibited.

19 (5) Advertisements for information delivery services that are
20 directed to children under the age of twelve years must contain, in
21 age-appropriate language, an accurate description of the services being
22 provided. In the case of print advertising, the information must be
23 clear and conspicuous and in the case of broadcast advertising, it must
24 be visually displayed clearly and conspicuously and verbally disclosed
25 in an audible, clearly articulated manner.

26 (6) Program messages that are directed to children under the age of
27 twelve years that employ broadcast advertising where an electronic tone
28 signal is emitted during the broadcast of the advertisement that
29 automatically dials the program message are prohibited.

1 NEW SECTION. **Sec. 6.** An information provider's failure to
2 substantially comply with any of the provisions of sections 3 through
3 5 of this act is a defense to the nonpayment of charges accrued as a
4 result of using the information provider's services, billed by any
5 entity, including but not limited to telecommunications companies and
6 interexchange carriers.

7 NEW SECTION. **Sec. 7.** A person who suffers damage from a
8 violation of this chapter may bring an action against an information
9 provider. In an action alleging a violation of this chapter, the court
10 may award the greater of three times the actual damages sustained by
11 the person or five hundred dollars; equitable relief, including but not
12 limited to an injunction and restitution of money and property;
13 attorneys' fees and costs; and any other relief that the court deems
14 proper. For purposes of this section, a telecommunications company or
15 interexchange carrier is a person.

16 **Sec. 8.** RCW 80.36.500 and 1988 c 123 s 2 are each amended to read
17 as follows:

18 (1) As used in this section:

19 (a) "Information delivery services" means telephone recorded
20 messages, interactive programs, or other information services that are
21 provided for a charge to a caller through an exclusive telephone number
22 prefix or service access code.

23 (b) "Information providers" means the persons or corporations that
24 provide the information, prerecorded message, or interactive program
25 for the information delivery service. The information provider
26 generally receives a portion of the revenue from the calls.

27 (c) "Interactive program" means a program that allows an
28 information delivery service caller, once connected to the information

1 provider's announcement machine, to use the caller's telephone device
2 to access more specific information.

3 (2) The utilities and transportation commission shall by rule
4 require any local exchange company that offers information delivery
5 services to a local telephone exchange to provide each residential
6 telephone subscriber the opportunity to block access to all information
7 delivery services offered through the local exchange company. The rule
8 shall take effect by October 1, 1988.

9 (3) All costs of complying with this section shall be borne by the
10 information providers.

11 (4) The local exchange company shall inform subscribers of the
12 availability of the blocking service through a bill insert and by
13 publication in a local telephone directory.

14 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act
15 constitute a new chapter in Title 19 RCW.

Passed the Senate April 22, 1991.

Passed the House April 10, 1991.

Approved by the Governor May 15, 1991.

Filed in Office of Secretary of State May 15, 1991.