

HOUSE BILL REPORT

HB 1051

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to robocalling and telephone scams.

Brief Description: Concerning robocalling and telephone scams.

Sponsors: 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].

Brief Summary of Substitute Bill

- Prohibits a person from initiating or assisting with a telephone solicitation or a commercial solicitation using an automatic dialing and announcing device to any: (1) telephone number with a Washington area code; (2) telephone number registered to a Washington resident; or (3) telephone number with a Washington area code or registered to a Washington resident on the do not call list.
- 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 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 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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 services or soliciting donations of money, property, goods, or services.	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 in property, goods, or services;• other communication with a person	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 solicitation" is the unsolicited initiation of a telephone conversation for the purpose of

	<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>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</p> <ul style="list-style-type: none"> • 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>However, many specific industries and activities are exempted by the CTSRA, such as isolated</p>	<p>encouraging a person to purchase property, goods, or services.</p>
--	---	--	---

		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.	
Prohibition	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.	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.	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.
Fines and Civil Penalties	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.	A civil penalty of \$500 to \$2,000 shall be imposed by the court for each violation.	Damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are presumed to be \$500.
Private Civil Actions	Individuals subject to repeated violations may bring a civil action to enjoin violations and	A person who is injured by a violation may bring an action for recovery of actual damages, attorney's	A violation is a violation of the Consumer Protection Act.

	recover damages, including at least \$100 per violation. A prevailing plaintiff is entitled to attorney's fees and costs.	fees, and costs. A violation is an unfair or deceptive act in trade or commerce for the purposes of the Consumer Protection Act.	
--	---	---	--

Summary of Substitute Bill:

Automatic Dialing and Commercial Solicitation.

Definitions.

The definition of "automatic dialing and announcing device" is modified to mean an automated system for the dialing of a telephone number and the transmission of a voice communication.

The definition of commercial solicitation is also modified. "Commercial solicitation" means the initiation of a voice communication for the purpose of: (1) encouraging a person to purchase property, goods, or services; (2) inducing a person to provide personally identifying information; or (3) wrongfully obtaining anything of value. Commercial solicitation does not include a voice communication with any person who has provided written consent in advance of receiving the commercial solicitation. Written consent may be given electronically, providing that the consenting person is given a clear, detailed disclosure as to what communications the consenting person is agreeing to receive, and the consent only applies to communications from the person seeking consent. Commercial solicitation also does not include a voice communication between a person and a business with whom that person has an established business relationship, so long as the voice communication complies with federal law.

In addition, the following definitions are added:

- "Voice communication" means any communication, in whole or in part, by means of an artificial or prerecorded message, and includes, without limitation, any voice message transmitted directly to a recipient's voicemail, regardless of whether the recipient's phone rings as part of the transmission. Automated warnings, the substance of which is required by law, without more, do not turn a communication into a voice communication.
- "Established business relationship" means an existing relationship formed by a voluntary two-way communication between a person and a business, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction regarding property, goods, or services offered by the business or entity, in which the relationship has not been previously terminated by either party. An

established business relationship includes any person authorized by a patient or a patient's personal representative, as permitted under federal or state law, to receive protected healthcare information from healthcare entities about the patient. An established business relationship does not include: (1) a relationship where a person states or indicates they do not want to be called again by the calling business for commercial solicitation purposes; or (2) affiliated entities unless the person would reasonably expect them to be included given the nature and type of goods and services offered by the affiliate and the affiliate's identity.

- "Healthcare entity" means: (1) covered entities or business associates under the federal Health Insurance Portability and Accountability Act of 1996; (2) healthcare providers or healthcare facilities pursuant to the state medical records law; or (3) programs or qualified service organizations covered under the federal law regarding treatment of substance use disorders.
- "Patient" means an individual who receives or has received health care, including a deceased individual.
- "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.
- "Personally identifying information" means an individual's: (1) social security number; (2) driver's license number; (3) bank account number; (4) credit or debit card number; (5) personal identification number; (6) automated or electronic signature; (7) unique biometric data; (8) account passwords; or (9) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.
- "Assist in the transmission" means actions taken by a person to provide substantial assistance or support, which enables any person to originate, initiate, or transmit a commercial solicitation when the person providing the assistance knows or avoids knowing that the initiator of the commercial solicitation is engaged, or intends to engage, in any practice is a violation. 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 voice communication; or (3) a terminating provider relating to the completion of a voice communication.
- "Terminating provider" means a telecommunications provider upon whose network a voice communication terminates.

Prohibition.

No person may initiate, or assist in the transmission of, a commercial solicitation using an automatic dialing and announcing device to any telephone number:

- with a Washington area code;
- registered to a Washington resident; or
- with a Washington area code or registered to a Washington resident on the do not call registry.

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" means the initiation of a telephone call by a commercial or nonprofit company or organization to a person for the purpose of encouraging the person to purchase property, goods, or services; soliciting donations of money, property, goods, or services; inducing a person to provide personally identifying information; or wrongfully obtaining anything of value.

Prohibition.

No person may initiate, or cause to be initiated, a telephone solicitation to any telephone number with a Washington area code or to a telephone registered to a Washington resident on the do not call registry. There is a rebuttable presumption that a telephone solicitation to a telephone number with a Washington area code is presumed to be received by a Washington resident.

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.

Commercial Telephone Solicitation Regulation Act.

Definitions.

"Commercial telephone solicitation" means an unsolicited telephone call to a person for the purpose of encouraging the person to purchase or invest in property, goods, or services; inducing a person to provide personally identifying information; or wrongfully obtaining anything of value. 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:

- "Personally identifying information" means an individual's: (1) social security number; (2) driver's license number; (3) bank account number; (4) credit or debit card number; (5) personal identification number; (6) automated or electronic signature; (7) unique biometric data; (8) account passwords; or (9) any other piece of information

that can be used to access an individual's financial accounts or to obtain goods or services.

- "Telephone call" includes any communication made through a telephone that uses a live person, artificial voice, or prerecorded message.
- "Unsolicited" means to initiate contact for the purpose of attempting to sell a person property, goods, or services, or obtaining personally identifying information or anything of value, 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.

Substitute Bill Compared to Original Bill:

The substitute bill made various changes, including modifying the definition of "commercial solicitation" under the automatic dialing and commercial solicitation statute. The definition of "established business relationship" was modified to:

- include patients receiving protected healthcare information from healthcare entities;
- provide that an established business relationship is terminated if a person states or indicates they do not want to be called again by the business for commercial solicitation purposes; and
- clarify that an established business relationship does not include affiliated entities unless the person would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and their identity.

Definitions for "healthcare entity" and "patient" were added. The substitute bill clarified that not-for-profit entities are those defined under the Internal Revenue Code, and added an exemption to the CTSRA that calls made by a membership or labor organization to its own list of bona fide or active members are not considered commercial solicitation.

The substitute bill made other various technical corrections, language changes, and restructuring of subsections.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: 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.