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**SUBSTITUTE SENATE BILL 5518**

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**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.

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

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

26       (6) "Interexchange carrier" means a carrier registered with the  
27 federal communications commission that is authorized to carry customer  
28 transmissions between local access and transport areas interstate or  
29 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 white and yellow  
13 page telephone directories.

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

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

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

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

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

28 (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) Advertisements for information delivery services that appear in  
12 print must include, in clearly visible letters and numbers, the cost of  
13 calling the advertised number. The printed disclosure of the cost of  
14 the call must be displayed adjacent to the number to be called wherever  
15 the number is shown in the advertisement.

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

- 18 (a) Any per minute charge;
- 19 (b) Any flat rate charge; and
- 20 (c) Any minimum charge.

21 NEW SECTION. **Sec. 5.** An information provider that does  
22 business in the state of Washington shall not direct information  
23 delivery services to children under the age of twelve years unless the  
24 information provider complies with the following provisions:

25 (1) Interactive calls where children under the age of twelve years  
26 can speak to other children under the age of twelve years are  
27 prohibited.

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

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

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

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

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

25 NEW SECTION. **Sec. 6.** An information provider's failure to  
26 substantially comply with any of the provisions of sections 3 through  
27 5 of this act is a defense to the nonpayment of charges accrued as a  
28 result of using the information provider's services, billed by any

1 entity, including but not limited to telecommunications companies and  
2 interexchange carriers.

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

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

14 (1) As used in this section:

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

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

23 (c) "Interactive program" means a program that allows an  
24 information delivery service caller, once connected to the information  
25 provider's announcement machine, to use the caller's telephone device  
26 to access more specific information.

27 (2) The utilities and transportation commission shall by rule  
28 require any local exchange company that offers information delivery

1 services to a local telephone exchange to provide each residential  
2 telephone subscriber the opportunity to block access to all information  
3 delivery services offered through the local exchange company. The rule  
4 shall take effect by October 1, 1988.

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

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

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