SENATE BILL REPORT
ESHB 1051

As of March 15, 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: Passed House: 2/27/23, 96-0.
Committee Activity: Law & Justice: 3/09/23 [w/oRec-BFGT].
Business, Financial Services, Gaming & Trade: 3/16/23.

Brief Summary of Bill

- Expands existing provisions regulating robocalls and solicitations targeting Washington residents.
- Makes certain persons that assist in the transmission of unwanted commercial solicitation subject to the Consumer Protection Act.
- 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 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 violations and recover actual damages or $1,000 per violation, whichever

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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.

is greater.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Clinton McCarthy (786-7319)

Background: Scope and Exceptions. *Telephone Solicitation Act.* The Telephone Solicitation Act (TSA) defines "telephone solicitation" as the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services.

Telephone solicitation does not include:

- 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.

The TSA does not cover calls from political parties.

Commercial Telephone Solicitation Regulation Act. The Commercial Telephone Solicitation Regulation Act (CTSRA) defines commercial telephone solicitation as:

- 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 where a free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication;
- a telephone call response is invited; and 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.

Commercial telephone solicitor means any person who engages in commercial telephone solicitation, including service bureaus.

The CTSRA exempts a number of specific industries and activities, for example, isolated solicitations; calls by charities and collection agencies; the sale of certain securities, cable television, fish, and so on.

List Removal. *Telephone Solicitation Act.* At any point during the call, if the called party states or indicates they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor must not:

- make any additional telephone solicitation of the called party at that telephone number for at least one year; and
- sell or give the called party's name and telephone number to another company or organization.

Commercial Telephone Solicitation Regulation Act. At any point during the call, if the purchaser states or indicates they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor must not:

- make any additional commercial telephone solicitation of the called party at that telephone number for at least one year; and
- sell or give the called party's name and telephone number to another commercial telephone solicitor.

Enforcement by the Attorney General. The attorney general may bring an action to enforce compliance in both the TSA and the CTSRA.

Fines and Civil Penalties. *Telephone Solicitation Act.* Violation of the identification and list removal requirements is punishable by a fine up to $1,000 per violation.

Commercial Telephone Solicitation Regulation Act. A civil penalty of $500 to $2,000 must be imposed by the court for each violation.

Changes to the Commercial Telephone Solicitation Regulation Act in 2022. The definition of "telephone solicitation" was expanded from having to be a call to a residential telephone customer to a person. The term "telephone solicitor" was defined to mean a commercial or non-profit company or organization engaged in telephone solicitation. Telephone solicitors must hang up within ten seconds if the called party states or indicates that they don't want the call.

Summary of Bill: Definitions. The definition of "automatic dialing and announcing device" is expanded 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 (CPA). 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 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; and
- "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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.