

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5251

By Delegates Kelly, Westfall, Phillips, Shamblin,

Garcia, Hillenbrand, Toney, and Lucas

[Introduced January 26, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §46A-6O-1, §46A-6O-2, §46A-6O-3, and §46A-6O-4, relating to the Telephone
3 Consumer Protection Act; defining terms; establishing exclusions; establishing conduct
4 that is prohibited under the article; and setting forth violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6O. TELEPHONE CONSUMER PROTECTION ACT.

§46A-6O-1. Definitions.

1 (a) In this article, the following words have the meanings indicated:

2 (1) "Called Party" means a person who is a regular user of a telephone number that
3 receives a telephone solicitation.

4 (2) "Caller Identification Service" means a service that allows a telephone subscriber to
5 have the telephone number and, where available, the name of the calling party transmitted
6 simultaneously with the telephone call and displayed on a device connected to the subscriber's
7 telephone.

8 (3) "Prior express written consent" means a written agreement that:

9 (A) Bears the signature of the called party;

10 (B) Clearly authorizes the person making or allowing the placement of a telephone
11 solicitation by telephone call, text message, or voicemail to delivery or cause to be delivered to the
12 called party:

13 (i) A telephone solicitation using an automated system for the selection or dialing of
14 telephone numbers;

15 (ii) The playing of a recorded or artificial voice message when a connection is completed to
16 a number called; or

17 (iii) The transmission of a prerecorded voicemail; and

18 (iv) Includes the telephone number to which the signatory authorizes a telephone
19 solicitation to be delivered and a clear and conspicuous disclosure informing the called party that,

20 by executing the agreement, the called party authorizes the person making or allowing the
21 placement of a telephone solicitation to deliver or cause to be delivered a telephone solicitation to
22 the called party using an automated system for the selection or dialing of telephone numbers; or
23 the playing of a recorded or artificial voice message when a connection is completed to a number
24 called. In addition, the called party is not required to directly or indirectly sign the written
25 agreement or agree to enter into the agreement as a condition of purchasing any property, goods,
26 or services.

27 (4) "Signature" includes an electronic or digital signature to the extent that the form of
28 signature is recognized as a valid signature under applicable federal law or state contract law.

29 (5) "Telephone solicitation" means an organized activity, program, or campaign to
30 communicate by telephone with residents of West Virginia in order to sell, lease, or rent goods or
31 services; attempt to sell, lease, or rent goods or services; offer or attempt to offer a gift or prize;
32 conduct or attempt to conduct a poll; or request or attempt to request survey information, if the
33 results of the survey will be used directly to solicit persons to purchase, lease, or rent goods or
34 services.

35 (6) "Telephone solicitation" includes the act of managing, directing, or supervising an
36 individual engaged in telephone solicitation as defined herein.

§46A-60-2.

Exclusions.

1 (a) This article does not apply to:

2 (1) A telephone solicitation that is an isolated transaction and not performed in the course
3 of a pattern of repeated transactions of a similar nature;

4 (2) A charitable telephone solicitation for religious, charitable, political, or educational
5 purposes;

6 (3) A business-to-business sale where the telephone solicitor has been lawfully operating
7 continuously for at least 3 years under the same business name;

8 (4) A person who solicits contracts for the maintenance or repair of goods previously
9 purchased from the person making the solicitation or on whose behalf the solicitation is made;

10 (5) A single telephone solicitation made to a customer or client in response to an inquiry or
11 request from the customer or client; or

12 (6) A communication between a business and a customer that have an existing business
13 contract or relationship with each other if:

14 (A) The communication is initially intended for informational purposes only; and

15 (B) Based on further inquiry from the customer, the communication becomes a telephone
16 solicitation.

17 (b) A person soliciting for charitable purposes under this section is exempt only if:

18 (1) The person is soliciting for a non-profit entity; and

19 (2) The entity is:

20 (A) Exempt from the registration and bonding requirements of §46A6F-201 of this code;
21 and

22 (B) Exempt from taxation under § 501(c),(3), (4), or (6) of the Internal Revenue Code.

§46A-6O-3.

Prohibitions.

1 (a) Without the prior written consent of the called party, a person may not make or cause to
2 be made a telephone solicitation that involves:

3 (1) An automated system for the selection or dialing of telephone numbers; or

4 (2) The playing of a recorded or artificial voice message when a connection is completed to
5 a number called.

6 (b) A person who makes or causes to be made a telephone solicitation may not:

7 (1) Fail to transmit or cause not to be transmitted:

8 (A) The originating telephone number; and

9 (B) When made available by the caller's carrier, the name of the caller to any caller
10 identification service in use by a called party;

11 (2) Intentionally act to prevent the transmission of the telephone solicitor's name or
12 telephone number to the called party when the equipment or service used by the telephone
13 solicitor is capable of creating and transmitting the telephone solicitor's name and the telephone
14 number; or

15 (3) In order to conceal the true identity of the caller, use technology that deliberately
16 displays a different caller identification number than the number the call is originating from.

17 (c) It is not a violation of this section to substitute for the name and telephone number used
18 in or billed for making the call;

19 (1) The name of the seller or other entity for whom the telephone solicitation is placed; and

20 (2) The customer service telephone number of the seller or other entity.

21 (d) A person may not make or cause to be made a telephone solicitation, including a call
22 made through automated dialing or a recorded message:

23 (1) To a called party during the hours 8:00 PM and 8:00 AM in the called party's time zone;

24 (2) More than three times to the same called party during a 24-hour period on the same
25 subject matter or issue, regardless of the telephone numbers used to make the call; or

26 (3) By intentionally altering the voice of the caller in an attempt to disguise or conceal the
27 identity of the caller in order to:

28 (A) Defraud, confuse, or financially or otherwise injure the called party; or

29 (B) Obtain personal information from the called party that may be used in a fraudulent or
30 unlawful manner.

§46A-6O-4.

Violations.

1 (a) A violation of this article is:

2 (1) An unfair, abusive, or deceptive trade practice within the meaning of West Virginia
3 Consumer Credit and Protection Act; and

4 (2) Subject to the enforcement and penalty provisions contained in §46A-5-101 et seq. of
5 this code.

- 6 (b) There is a rebuttal presumption that a telephone solicitation made to any area code in
7 the State is made to a resident or person who is reasonably presumed to reside or have a place of
8 business in the State at the time the call is made.

NOTE: The purpose of this bill is to establish the Telephone Consumer Protection Act; defining terms; establishing exclusions; establishing conduct that is prohibited under the article; and setting forth violations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.