

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 500**

By Senators Weld, Caputo, Deeds, Hamilton, Rucker,  
Stover, Takubo, Taylor, Woodrum, Woelfel, and  
Plymale

[Introduced January 22, 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 section,  
 2 designated §46A-6O-1, §46A-6O-2, §46A-6O-3, and §46A-6O-4, all relating to creating  
 3 the Telephone Consumer Protection Act; providing definitions, exclusions, and  
 4 prohibitions; and listing violations of this act.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 60. TELEPHONE CONSUMER PROTECTION ACT.**

**§46A-6O-1. Definitions.**

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

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

4 (b) "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 (c) "Prior express written consent" means a written agreement that bears the signature of  
 9 the called party and clearly authorizes the person making or allowing the placement of a telephone  
 10 solicitation by telephone call, text message, or voicemail to delivery or cause to be delivered to the  
 11 called party;

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

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

16 (3) The transmission of a prerecorded voicemail that includes the telephone number to  
 17 which the signatory authorizes a telephone solicitation to be delivered and a clear and  
 18 conspicuous disclosure informing the called party that:

19 (A) By executing the agreement, the called party authorizes the person making or allowing

20 the placement of a telephone solicitation to deliver or cause to be delivered a telephone solicitation  
21 to the called party using:

22 (i) An automated system for the selection or dialing of telephone numbers; or

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

25 (B) The called party is not required to directly or indirectly:

26 (i) Sign the written agreement; or

27 (ii) Agree to enter into the agreement as a condition of purchasing any property, goods, or  
28 services.

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

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

37 (f) "Telephone solicitation" includes the act of managing, directing, or supervising an  
38 individual engaged in telephone solicitation as defined herein.

**§46A-6O-2.**

**Exclusions.**

1 This subsection does not apply to:

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

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

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

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

17 (g) 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 (i) Registered with the Secretary of State in accordance with §31D-1-101, et seq. of this  
21 code; and

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

**§46A-60-3.**

**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 an automated system for the selection or dialing of  
3 telephone numbers or the playing of a recorded or artificial voice message when a connection is  
4 completed to a number called.

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

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

7 (A) The originating telephone number; and

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

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

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

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

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

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

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

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

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

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

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

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

**§46A-6O-4.**

**Violations.**

1 (a) A violation of this subtitle is an unfair or deceptive act or practice within the meaning of  
2 §46A-1-101, et seq. of this code; and

3 (b) Subject to the enforcement and penalty provisions contained in §46A-1-101, et seq. of  
4 this code, there is a rebuttable presumption that a telephone solicitation made to any area code in  
5 the State is made to a resident or person who is reasonably presumed to reside or have a place of

6 business in the State at the time the call is made.

NOTE: The purpose of this bill is to enact the Telephone Consumer Protection Act, providing definitions, exclusions, prohibitions, and listing violations of this act.

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