
ENGROSSED SUBSTITUTE HOUSE BILL 1650

State of Washington

67th Legislature

2022 Regular Session

By House Consumer Protection & Business (originally sponsored by Representatives Leavitt, Mosbrucker, Eslick, Pollet, Griffey, and Young)

READ FIRST TIME 01/24/22.

1 AN ACT Relating to commercial solicitation; amending RCW
2 19.190.010, 19.190.020, 19.190.040, 19.190.060, 19.190.070,
3 19.190.080, 19.190.090, and 80.36.400; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that commercial
6 text messaging and robocalling are increasingly common practices
7 employed by some businesses seeking to advertise or facilitate the
8 sale of goods or services, and that such text messaging and
9 robocalling are often an unwanted nuisance and invasion of privacy
10 for many Washington residents. It is the intent of the legislature
11 to: Clarify and strengthen the limitations on commercial text
12 messaging and robocalling; reaffirm the requirement that a commercial
13 text message or robocalling sender must first obtain clear and
14 affirmative consent from recipients before sending such messages or
15 robocalling; and expand the civil remedies available for violations
16 of these provisions.

17 (2) The legislature further finds that some entities use
18 misleading text messaging and robocalling to deceive Washington
19 residents and induce them into providing sensitive personal
20 information, money, goods, or services. It is the intent of the
21 legislature to expand the scope of existing "anti-phishing"

1 provisions to include text messaging and robocalling, and efforts to
2 obtain money, goods, and services, and to expand the civil remedies
3 available for violations of these provisions.

4 (3) It is the intent of the legislature to remove the limitations
5 in RCW 19.190.090 (1) and (2), which currently restrict the private
6 right of action created by the statute, such that a claim for damages
7 can only be brought against a person or entity that violates RCW
8 19.190.080. As amended, the private right of action available under
9 RCW 19.190.090 (1) and (2) will provide an additional remedy for any
10 violation of chapter 19.190 RCW and supplement existing remedies
11 available under the consumer protection act, chapter 19.86 RCW.

12 (4) The legislature further finds that the most effective way to
13 prevent robocalling practices that violate RCW 80.36.400 is to ensure
14 that those calls never originate or enter the telecommunication
15 network. Therefore, it is further the intent of the legislature to
16 extend liability to those persons who provide substantial assistance
17 or support in the origination and transmission of voice
18 communications sent in violation of RCW 80.36.400.

19 **Sec. 2.** RCW 19.190.010 and 2005 c 378 s 1 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Assist in the transmission" means actions taken by a person
24 to provide substantial assistance or support which enables any person
25 to formulate, compose, send, originate, initiate, or transmit a
26 commercial ((~~electronic-mail~~)) email message or a commercial
27 electronic text message when the person providing the assistance
28 knows or consciously avoids knowing that the initiator of the
29 commercial ((~~electronic-mail~~)) email message or the commercial
30 electronic text message is engaged, or intends to engage, in any
31 practice that violates the consumer protection act. "Assist in the
32 transmission" does not include ((~~any of the following~~)): (a)
33 Activities of an ((~~electronic-mail~~)) email service provider or other
34 entity who provides intermediary transmission service in sending or
35 receiving ((~~electronic-mail~~)) email, or provides to users of
36 ((~~electronic-mail~~)) email services the ability to send, receive, or
37 compose ((~~electronic-mail~~)) email; or (b) activities of any entity
38 related to the design, manufacture, or distribution of any

1 technology, product, or component that has a commercially significant
2 use other than to violate or circumvent this section.

3 (2) "~~Commercial ((electronic mail))~~ email message" means an
4 ~~((electronic mail))~~ email message sent for the purpose of promoting
5 the sale or lease of real property, goods, or services ~~((for sale or~~
6 ~~lease))~~ or advertising the commercial availability of real property,
7 goods, or services. It does not mean an ~~((electronic mail))~~ email
8 message to which an interactive computer service provider has
9 attached an advertisement in exchange for free use of an ~~((electronic~~
10 ~~mail))~~ email account, when the sender has agreed to such an
11 arrangement. It also does not mean an email message that constitutes
12 debt collection activity.

13 (3) "Commercial electronic text message" means an electronic text
14 message sent to promote the sale or lease of real property, goods, or
15 services ~~((for sale or lease))~~ or advertise the commercial
16 availability of real property, goods, or services. It does not mean a
17 text message that constitutes debt collection activity.

18 (4) "~~((Electronic mail))~~ Email address" means a destination,
19 commonly expressed as a string of characters, to which ~~((electronic~~
20 ~~mail))~~ email may be sent or delivered.

21 (5) "~~((Electronic mail))~~ Email message" means an electronic
22 message sent to an ~~((electronic mail))~~ email address and a reference
23 to an internet domain, whether or not displayed, to which an
24 ~~((electronic mail))~~ email message can be sent or delivered.

25 (6) "Electronic text message" means a text message sent to a
26 ~~((cellular telephone or pager))~~ mobile device equipped with short
27 message service (SMS), rich communication service (RCS), or any
28 similar capability, whether the message is initiated as a ~~((short~~
29 ~~message service))~~ SMS message, RCS message, any similar service
30 message, or as an ~~((electronic mail))~~ email message. For purposes of
31 this definition, "mobile device" means any cellular phone, mobile
32 phone, smart phone, tablet, pager, or similar device.

33 (7) "Established business relationship" means an existing
34 relationship formed by a voluntary two-way communication between a
35 person or entity and a business, with or without an exchange of
36 consideration, on the basis of an application, purchase, or
37 transaction regarding real property, goods, or services offered by
38 such business or entity, which relationship has not been previously
39 terminated by either party.

1 (8) "Initiate the transmission" refers to the action by the
2 original sender of an (~~electronic-mail~~) email message or an
3 electronic text message, not to the action by any intervening
4 interactive computer service or wireless network that may handle or
5 retransmit the message, unless such intervening interactive computer
6 service assists in the transmission of an (~~electronic-mail~~) email
7 message when it knows, or consciously avoids knowing, that the person
8 initiating the transmission is engaged, or intends to engage, in any
9 act or practice that violates the consumer protection act.

10 (~~(8)~~) (9) "Interactive computer service" means any information
11 service, system, or access software provider that provides or enables
12 computer access by multiple users to a computer server, including
13 specifically a service or system that provides access to the internet
14 and such systems operated or services offered by libraries or
15 educational institutions.

16 (~~(9)~~) (10) "Internet" means collectively the myriad of computer
17 and telecommunications facilities, including equipment and operating
18 software, that comprise the interconnected worldwide network of
19 networks that employ the transmission control protocol/internet
20 protocol, or any predecessor or successor protocols to such protocol,
21 to communicate information of all kinds by wire or radio.

22 (~~(10)~~) (11) "Internet domain name" refers to a globally unique,
23 hierarchical reference to an internet host or service, assigned
24 through centralized internet naming authorities, comprising a series
25 of character strings separated by periods, with the right-most string
26 specifying the top of the hierarchy.

27 (~~(11)~~) (12) "Person" means an individual, corporation, business
28 trust, estate, trust, partnership, limited liability company,
29 association, joint venture, government, governmental subdivision,
30 agency or instrumentality, public corporation, or any other legal or
31 commercial entity.

32 (~~(12)~~) (13) "Personally identifying information" means an
33 individual's: (a) Social security number; (b) driver's license
34 number; (c) bank account number; (d) credit or debit card number; (e)
35 personal identification number; (f) automated or electronic
36 signature; (g) unique biometric data; (h) account passwords; or (i)
37 any other piece of information that can be used to access an
38 individual's financial accounts or to obtain goods or services.

1 (~~(13)~~) (14) "Web page" means a location, with respect to the
2 world wide web, that has a single uniform resource locator or other
3 single location with respect to the internet.

4 **Sec. 3.** RCW 19.190.020 and 1999 c 289 s 2 are each amended to
5 read as follows:

6 (1) No person may initiate the transmission, conspire with
7 another to initiate the transmission, or assist in the transmission,
8 of a commercial (~~(electronic-mail)~~) email message from a computer
9 located in Washington or to an (~~(electronic-mail)~~) email address that
10 the sender knows, or has reason to know, is held by a Washington
11 resident that:

12 (a) Uses a third party's internet domain name without permission
13 of the third party, or otherwise misrepresents or obscures any
14 information in identifying the point of origin or the transmission
15 path of a commercial (~~(electronic-mail)~~) email message; or

16 (b) Contains false or misleading information in the subject line.

17 (2) For purposes of this section, a person knows that the
18 intended recipient of a commercial (~~(electronic-mail)~~) email message
19 is a Washington resident if that information is available, upon
20 request, from the registrant of the internet domain name contained in
21 the recipient's (~~(electronic-mail)~~) email address.

22 **Sec. 4.** RCW 19.190.040 and 2003 c 137 s 5 are each amended to
23 read as follows:

24 (1) Damages to the recipient of a commercial (~~(electronic-mail)~~)
25 email message or a commercial electronic text message sent in
26 violation of this chapter are (~~(five hundred dollars)~~) \$1,000 for
27 each violation, or actual damages, whichever is greater.

28 (2) Damages to an interactive computer service resulting from a
29 violation of this chapter are (~~(one thousand dollars)~~) \$2,000 for
30 each violation, or actual damages, whichever is greater.

31 **Sec. 5.** RCW 19.190.060 and 2003 c 137 s 3 are each amended to
32 read as follows:

33 (1) (~~(No)~~) Except as provided in RCW 19.190.070, no person
34 (~~(conducting business in the state)~~) may initiate or assist in the
35 transmission of (~~(an electronic)~~) a commercial electronic text
36 message to a (~~(telephone number assigned to a Washington resident for~~
37 ~~cellular telephone or pager service that is equipped with short~~

1 ~~message capability or any similar capability allowing the~~
2 ~~transmission of text messages))~~ person within the state of
3 Washington. For purposes of this section, there is a rebuttable
4 presumption that a commercial electronic text message to a telephone
5 number with a Washington state area code is received by a person
6 within the state of Washington.

7 (2) The legislature finds that the practices covered by this
8 section are matters vitally affecting the public interest for the
9 purpose of applying the consumer protection act, chapter 19.86 RCW. A
10 violation of this section is not reasonable in relation to the
11 development and preservation of business and is an unfair or
12 deceptive act in trade or commerce and an unfair method of
13 competition for the purpose of applying the consumer protection act,
14 chapter 19.86 RCW.

15 **Sec. 6.** RCW 19.190.070 and 2003 c 137 s 4 are each amended to
16 read as follows:

17 (1) It is not a violation of RCW 19.190.060 if:

18 (a) The commercial electronic text message is transmitted at the
19 direction of a person offering (~~cellular telephone or pager~~)
20 telecommunications service to the person's existing subscriber at no
21 cost to the subscriber unless the subscriber has indicated that he or
22 she is not willing to receive further commercial text messages from
23 the person; or

24 (b) The commercial electronic text message is transmitted by a
25 person with an established business relationship with the recipient.

26 (c) The (~~unsolicited~~) commercial electronic text message is
27 transmitted by a person to a (~~subscriber~~) recipient and the
28 (~~subscriber~~) recipient has clearly and affirmatively consented in
29 writing in advance to receive these text messages. The recipient may
30 provide written consent electronically, provided that the recipient
31 is given a clear, detailed disclosure as to what text messages he or
32 she is consenting to receiving, and the electronic written consent
33 only applies to text messages from the person seeking the recipient's
34 consent.

35 (2) No person offering (~~cellular or pager~~) telecommunications
36 service may be held liable for serving merely as an intermediary
37 between the sender and the recipient of a commercial electronic text
38 message sent in violation of this chapter unless the person is

1 assisting in the transmission of the commercial electronic text
2 message.

3 **Sec. 7.** RCW 19.190.080 and 2005 c 378 s 2 are each amended to
4 read as follows:

5 It is a violation of this chapter to solicit, request, or take
6 any action to induce a person to provide personally identifying
7 information, money, goods, or services, by means of a web page,
8 ~~((electronic mail))~~ email message, electronic text message, phone
9 call, or otherwise using the internet or any telecommunications
10 service, by representing oneself, either directly or by implication,
11 to be another person, without the authority or approval of such other
12 person.

13 **Sec. 8.** RCW 19.190.090 and 2005 c 378 s 3 are each amended to
14 read as follows:

15 (1) A person who is injured under this chapter may bring a civil
16 action in the superior court to enjoin further violations, and ~~((to~~
17 ~~seek up to five hundred dollars))~~ shall recover actual damages or
18 \$1,000 per violation, ~~((or actual damages,))~~ whichever is greater.
19 ~~((A person who seeks damages under this subsection may only bring an~~
20 ~~action against a person or entity that directly violates RCW~~
21 ~~19.190.080.))~~

22 (2) A person engaged in the business of providing internet access
23 service or text messaging service to the public, an owner of a web
24 page, or trademark owner who is adversely affected by reason of a
25 violation of ~~((RCW 19.190.080))~~ this chapter, may bring an action
26 against a person who violates ~~((RCW 19.190.080))~~ this chapter to:

27 (a) Enjoin further violations of ~~((RCW 19.190.080))~~ this chapter;
28 and

29 (b) Recover the greater of actual damages or ~~((five thousand~~
30 ~~dollars))~~ \$5,000 per violation of ~~((RCW 19.190.080))~~ this chapter.

31 (3) In an action under ~~((subsection (2) of))~~ this section, a
32 court may increase the damages up to three times the damages allowed
33 by ~~((subsection (2) of))~~ this section if the defendant has engaged in
34 a pattern and practice of violating this ~~((section))~~ chapter. ~~((The))~~

35 (4) In an action under this chapter, the court ((may)) shall
36 award costs and reasonable attorneys' fees to a prevailing ~~((party))~~
37 plaintiff.

1 **Sec. 9.** RCW 80.36.400 and 1986 c 281 s 2 are each amended to
2 read as follows:

3 (1) As used in this section:

4 (a) ~~((An automatic dialing and announcing device is a device~~
5 ~~which automatically dials telephone numbers and plays a recorded~~
6 ~~message once a connection is made))~~ "Automatic dialing and announcing
7 device" means any device or system of devices that is used, whether
8 alone or in conjunction with other equipment, for the purpose of
9 automatically selecting or dialing telephone numbers and transmitting
10 a voice communication.

11 (b) "Voice communication" means any communication by means of a
12 live voice or artificial or prerecorded message. "Voice
13 communication" includes, without limitation, any voice message
14 transmitted directly to a recipient's voice mail, regardless of
15 whether the recipient receives a call as part of the transmission.

16 ~~((b))~~ (c) "Commercial solicitation" means the ((unsolicited))
17 initiation of a ((telephone conversation)) voice communication for
18 the purpose of ((encouraging)): Encouraging a person to purchase
19 property, goods, or services; advertising to a person the commercial
20 availability of property, goods, or services; or encouraging a person
21 to provide personally identifying information. "Commercial
22 solicitation" does not include voice communication to any person who
23 has clearly and affirmatively consented in writing in advance to
24 receive the voice communication, or voice communication sent by a
25 person with an established business relationship with the recipient.
26 Written consent may be given electronically, provided that the person
27 giving consent is given a clear, detailed disclosure as to what voice
28 communications he or she is consenting to, and the consent only
29 applies to voice communications from the caller seeking the person's
30 consent.

31 (d) "Established business relationship" means an existing
32 relationship formed by a voluntary two-way communication between a
33 person or entity and a business, with or without an exchange of
34 consideration, on the basis of an application, purchase, or
35 transaction regarding property, goods, or services offered by such
36 business or entity, which relationship has not been previously
37 terminated by either party.

38 (e) "Person" means an individual, corporation, business trust,
39 estate, trust, partnership, limited liability company, association,
40 joint venture, government, governmental subdivision, agency or

1 instrumentality, public corporation, or any other legal or commercial
2 entity.

3 (f) "Personally identifying information" means an individual's:
4 (i) Social security number; (ii) driver's license number; (iii) bank
5 account number; (iv) credit or debit card number; (v) personal
6 identification number; (vi) unique biometric data; (vii) account
7 passwords; or (viii) any other piece of information that can be used
8 to access an individual's financial accounts or to obtain goods or
9 services.

10 (g) "Assist in the transmission" means actions taken by a person
11 to provide substantial assistance or support, which enables any
12 person to originate, initiate, or transmit a commercial solicitation
13 when the person providing the assistance knows or consciously avoids
14 knowing that the initiator of the commercial solicitation is engaged,
15 or intends to engage, in any practice that violates this section.
16 "Assist in the transmission" does not include: (i) Activities of any
17 entity related to the design, manufacture, or distribution of any
18 technology, product, or component that has a commercially significant
19 use other than to violate or circumvent this section; (ii) activities
20 of a telecommunications provider or other entity that are limited to
21 providing access to the internet; or (iii) activities of a
22 terminating provider relating to the completion of a voice
23 communication.

24 (h) "Terminating provider" means a telecommunications provider
25 upon whose network telecommunications traffic terminates.

26 (2) No person may ~~((use))~~ initiate or assist in the transmission
27 of a commercial solicitation to a person within the state of
28 Washington using an automatic dialing and announcing device ~~((for~~
29 purposes of commercial solicitation. This section applies to all
30 commercial solicitation intended to be received by telephone
31 customers within the state.

32 ~~(3) A violation of this section is a violation of chapter 19.86~~
33 ~~RCW. It shall be presumed that damages to the recipient of commercial~~
34 ~~solicitations made using an automatic dialing and announcing device~~
35 ~~are five hundred dollars)). For purposes of this subsection, there is~~
36 ~~a rebuttable presumption that a commercial solicitation sent to a~~
37 ~~telephone number with a Washington state area code is received by a~~
38 ~~person within the state of Washington.~~

39 (3) No person may initiate or assist in the transmission of a
40 commercial solicitation using an automatic dialing and announcing

1 device to any Washington resident whose telephone number is on the do
2 not call registry maintained by the federal government pursuant to
3 the telemarketing sales rule, 16 C.F.R. Part 310, and 47 C.F.R. Sec.
4 64.1200 as currently enacted or subsequently amended. For purposes of
5 this subsection, there is a rebuttable presumption that a telephone
6 number with a Washington state area code belongs to a Washington
7 resident.

8 (4) The legislature finds that the practices covered by this
9 section are matters vitally affecting the public interest for the
10 purpose of applying the consumer protection act, chapter 19.86 RCW. A
11 violation of this section is not reasonable in relation to the
12 development and preservation of business and is an unfair or
13 deceptive act in trade or commerce and an unfair method of
14 competition for the purpose of applying the consumer protection act,
15 chapter 19.86 RCW. In addition to all remedies available in chapter
16 19.86 RCW, a person who is injured under this section may bring a
17 civil action in the superior court to enjoin further violations, and
18 shall recover actual damages or \$1,000 per violation of this section,
19 whichever is greater.

20 ((4)) (5) Nothing in this section shall be construed to prevent
21 the Washington utilities and transportation commission from adopting
22 additional rules regulating automatic dialing and announcing devices.

23 NEW SECTION. Sec. 10. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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