

HOUSE BILL REPORT

ESHB 1497

As Passed Legislature

Title: An act relating to commercial telephone solicitation.

Brief Description: Concerning commercial telephone solicitation.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Mosbrucker, Chandler, Peterson, Dent, Schmick, Steele, Pollet, Eslick and Young).

Brief History:

Committee Activity:

Consumer Protection & Business: 2/15/21, 1/12/22, 1/20/22 [DPS].

Floor Activity:

Passed House: 2/10/22, 90-5.

Passed Senate: 3/3/22, 47-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Restricts telephone solicitation to the hours of 8:00 a.m. to 8:00 p.m.
- Requires telephone solicitors to provide identifying information within the first 30 seconds of a call, and to end the call within 10 seconds of the called party indicating they want to end the call.
- Requires telephone solicitors requesting a donation or gift of money to provide a specific list of options to the called party.
- Expands the definition of telephone solicitation to include calls to non-residential telephone customers.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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.

Signed by 5 members: Representatives Kirby, Chair; Walen, Vice Chair; Corry, Ryu and Santos.

Minority Report: Do not pass. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Vick, Ranking Minority Member.

Staff: Corey Patton (786-7388).

Background:

Telephone solicitation in Washington is primarily regulated by two overlapping statutes: the Telephone Solicitation Act of 1986 (TSA) and the Commercial Telephone Solicitation Regulation Act of 1989 (CTSRA). These acts contain both similar and distinct provisions.

	Telephone Solicitation Act	Commercial Telephone Solicitation Regulation Act
Scope and Exceptions	<p>The 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.</p> <p>"Telephone solicitation" does not include:</p> <p>(a) calls made in response to a request or inquiry by the called party;</p> <p>(b) calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;</p> <p>(c) calls limited to polling or soliciting the expression of ideas,</p>	<p>The CTSRA defines "commercial telephone solicitation" as:</p> <p>(a) 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;</p> <p>(b) other communication with a person where: (i) a free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and (ii) a telephone call response is invited; and (iii) the salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or</p> <p>(c) other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response</p>

	<p>opinions, or votes; or</p> <p>(d) business-to-business contacts.</p> <p>The TSA does not cover calls from political parties.</p>	<p>by telephone or which is followed by a call to the person by a salesperson.</p> <p>"Commercial telephone solicitor" means any person who engages in commercial telephone solicitation, including service bureaus.</p> <p>However, the CTSRA exempts a number of specific industries and activities (e.g., isolated solicitations; calls by charities and collection agencies; the sale of certain securities, cable television, fish, etc.)</p>
Identification Requirements	<p>Within the first 30 seconds of the call, a person making a telephone solicitation must identify himself or herself; the company or organization on whose behalf the solicitation is being made; and the purpose of the call.</p>	<p>Within the first minute of the call, a commercial telephone solicitor or salesperson must identify himself or herself; the company on whose behalf the solicitation is being made; and the property, goods, or services being sold.</p>
Call Termination	<p>Not applicable.</p>	<p>Within the first minute of the call, a commercial telephone solicitor or salesperson must terminate the call within 10 seconds if the purchaser indicates they do not wish to continue the conversation.</p>
List Removal	<p>At any point during the call, if the called party states or indicates that they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor: (1) must not make any additional telephone solicitation of the called party at that telephone number for at least one year; and (2) must not sell or give the called party's name and telephone number to another company or organization.</p>	<p>At any point during the call, if the purchaser states or indicates that they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor: (1) must not make any additional commercial telephone solicitation of the called party at that telephone number for at least one year; and (2) must not sell or give the called party's name and telephone number to another commercial telephone solicitor.</p>
Registration	<p>Not applicable.</p>	<p>Commercial telephone solicitors must register with the Department of</p>

		Licensing to do business in Washington. Doing business includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.
Disciplinary Action	Not applicable.	The Department of Licensing may take disciplinary action when a commercial telephone solicitor engages in unprofessional conduct under the Uniform Regulation of Business and Professions Act, or: (1) engages in any unfair or deceptive commercial telephone solicitation; (2) places calls to a residence that will be received before 8:00 a.m. or after 9:00 p.m.; or (3) engages in conduct to harass, intimidate, or torment any person.
Enforcement by the Attorney General	The Attorney General may bring an action to enforce compliance.	The Attorney General may bring an action to enforce compliance.
Fines and Civil Penalties	Violation of the identification and list removal requirements is punishable by a fine of up to \$1,000 per violation.	A civil penalty of \$500 to \$2,000 shall be imposed by the court for each violation.
Private Civil Actions	Individuals subject to repeated violations may bring a civil action to enjoin violations and recover damages, including at least \$100 per violation. A prevailing plaintiff is entitled to attorney's fees and costs.	A person who is injured by a violation may bring an action for recovery of actual damages, attorney's fees, and costs. A violation is an unfair or deceptive act in trade or commerce for the purposes of the Consumer Protection Act.
Criminal Prosecution	Not applicable.	A knowing violation or the knowing employment of any device, scheme, or artifice to deceive in connection with an offer or sale by a commercial telephone solicitor is punishable as a misdemeanor, gross misdemeanor, or class C felony depending on the value

		<p>of the transaction.</p> <p>Solicitation without registration is a misdemeanor.</p>
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Summary of Engrossed Substitute Bill:

Telephone Solicitation Defined.

The definition of "telephone solicitation" for purposes of the Telephone Solicitation Act (TSA) is expanded to include qualifying calls to any person, regardless of whether they are residential telephone customers (e.g., cell phone users).

Call Time Restrictions.

Solicitors may not call individuals before 8:00 a.m. or after 8:00 p.m. at the call recipient's local time. This modified time restriction is made consistent between the TSA and the Commercial Telephone Solicitation Regulation Act (CTSRA).

Identification and Opt-Out.

Within the first 30 seconds of each call, solicitors must identify the caller; identify the company or organization on whose behalf the solicitation is being made; and state the purpose of the call. If the solicitor is requesting a donation or gift of money, the solicitor must ask the called party whether they want to continue the call, end the call, or be removed from the solicitor's telephone lists. The identification requirement and 30 seconds in which it must be completed are made consistent under the TSA and the CTSRA.

Call Termination.

At any point during the call, if the called party states or indicates that they want to end the call, the solicitor must end the call within 10 seconds. This requirement is made consistent between the TSA and the CTSRA.

List Removal.

At any point during the call, if the called party states or indicates that they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor: (1) must inform the called party their contact information will be removed for at least one year; (2) must end the call within 10 seconds; (3) must not contact the called party again at any number associated with that party for at least one year; and (4) must not sell or give away the called party's contact information. The list removal provision is made consistent between the TSA and the CTSRA.

Fines.

Violations of the call time restrictions or identification and opt-out, call termination, or list removal requirements are subject to a \$1,000 fine for each violation under the TSA.

Disciplinary Actions.

Under the CTSRA, the Department of Licensing may take disciplinary action when a commercial telephone solicitor engages in unprofessional conduct under the Uniform Regulation of Business and Professions Act, or: (1) engages in any unfair or deceptive commercial telephone solicitation; (2) places calls to a person that will be received before 8:00 a.m. or after 8:00 p.m.; (3) engages in conduct to harass, intimidate, or torment any person in connection with the call; (4) fails to provide the required identification and opt-out at the beginning of each answered call; (5) fails to end a call within 10 seconds of the called party stating or indicating that they want to end the call; or (6) fails to promptly implement a called party's statement or indication that they do not want to receive further calls.

Public Awareness.

The Office of the Attorney General is required to develop and maintain a web page informing the public of the laws and regulations governing telephone solicitation and provide information on how to file a complaint for violations.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Fraudulent callers are getting better at targeting and taking advantage of people who are more susceptible to illegitimate calls, such as seniors and people with disabilities. Unwanted calls can be incredibly alarming and disruptive to people's lives, especially when calls are made during hours where people are normally busy or asleep. It is important to expand regulations to apply to calls made to cell phones because most people utilize cell phones as their primary or only form of telephonic communication. The tools provided by this bill will allow for more effective enforcement of regulations and empower recipients of unwanted calls to terminate communications and seek relief.

(Opposed) None.

Persons Testifying: Representative Gina Mosbrucker, prime sponsor; Peter Leon; Adrian Bradford, COR Cellars and Vineyards; and Jim Wertheim, LawHQ.

Persons Signed In To Testify But Not Testifying:

Steve Baus; and Scott Hazlegrove, Washington State Auto Dealers Association.