
**Consumer Protection & Business
Committee**

HB 1497

Brief Description: Concerning commercial telephone solicitation.

Sponsors: Representatives Mosbrucker, Chandler, Peterson, Dent, Schmick, Steele, Pollet, Eslick and Young.

Brief Summary of Bill

- Restricts telephone solicitation to the hours of 8:00 a.m. to 5:00 p.m.
- Requires telephone solicitors to provide identifying information and an opt-out within the first 30 seconds of a call and end a call within 10 seconds of the called party indicating they want to end the call.
- Expands the definition of telephone solicitation to include calls to non-residential telephone customers.

Hearing Date: 2/15/21

Staff: John Burzynski (786-7133).

Background:

Telephone solicitation in Washington is primarily regulated by two overlapping statutes: The Telephone Solicitation Act of 1986 (codified at RCW 80.36.390), and the Commercial Telephone Solicitation Regulation Act of 1989 (codified at RCW 19.158.010, et seq.). These acts contain both similar and distinct provisions.

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.

	Telephone Solicitation Act of 1986 (TSA)	Commercial Telephone Solicitation Regulation Act of 1989 (CTSRA)
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> <ul style="list-style-type: none"> (a) calls made in response to a request or inquiry by the called party; (b) calls made by a not-for-profit organization to its own list of bona fide or active members of the organization; (c) calls limited to polling or soliciting the expression of ideas, opinions, or votes; or (d) business-to-business contacts. <p>The TSA does not cover calls from political parties.</p>	<p>The CTSRA defines "commercial telephone solicitation" as:</p> <ul style="list-style-type: none"> (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; (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 (c) 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. <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</p>	<p>Within the first minute of the call, a commercial telephone solicitor or</p>

	solicitation must identify him or herself; the company or organization on whose behalf the solicitation is being made; and the purpose of the call.	salesperson must identify him or herself; the company on whose behalf the solicitation is being made; and the property, goods, or services being sold.
Call Termination	N/A	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.
List Removal	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: (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.	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: (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.
Registration	N/A	Commercial telephone solicitors must register with the Department of 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	N/A	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	N/A	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 of the transaction. Solicitation without registration is a misdemeanor.

Summary of Bill:

House Bill 1497 expands the scope and requirements of the the Telephone Solicitation Act of 1986 (TSA) and the Commercial Telephone Solicitation Regulation Act of 1989 (CTSRA).

Telephone Solicitation Defined.

For purposes of the TSA, "telephone solicitation" is defined as the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a person and conversation for the purpose of encouraging the person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. This modified definition of telephone solicitation extends the TSA to cover qualifying calls to any person, regardless of whether they are residential telephone customers (e.g., cell phone users).

Call Time Restrictions.

Solicitors must not call individuals before 8:00 a.m. or after 5:00 p.m. at the call recipient's local time. This modified time restriction is made consistent under the TSA and the CTSRA and moves the evening call cut off from 9:00 p.m. to 5:00 p.m.

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; state the purpose of the call; and 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. Additionally, solicitors would be required to ask an opt-out question under both statutes.

Call Termination.

At any point during the call, if the called party states or indicates they want to end the call, the solicitor must end the call within 10 seconds. This requirement is made consistent under the TSA and the CTSRA. Additionally, the requirement would apply throughout the call under both statutes.

List Removal.

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: (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 under the TSA and the CTSRA. This provision includes new requirements to inform the called party their contact information will be removed for at least one year and end the call within 10 seconds. Additionally, the requirement to not contact the called party for at least one year would be extended to cover any number associated with the called party.

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. This modified requirement extends fines to cover violations of the call time restriction and the opt-out and call termination requirements.

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 5:00 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 they want to end the call; or (6) fails to promptly implement a called party's statement or indication they do not want to receive further calls.

The modified time restriction moves the evening call cut off from 9:00 p.m. to 5:00 p.m. The grounds for disciplinary action are extended to cover failure to comply with the identification and opt-out, call termination, and list removal requirements.

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 of the same.

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.