
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 or facilitating the sale or lease of real property, goods, or
6 services ~~((for sale or lease))~~. It does not mean an ~~((electronic~~
7 ~~mail))~~ email message to which an interactive computer service
8 provider has attached an advertisement in exchange for free use of an
9 ~~((electronic mail))~~ email account, when the sender has agreed to such
10 an arrangement. It also does not mean an email message that
11 constitutes collection activity pursuant to chapter 19.16 RCW or
12 federal law.

13 (3) "Commercial electronic text message" means an electronic text
14 message sent to promote or facilitate the sale or lease of real
15 property, goods, or services ~~((for sale or lease))~~. It does not mean
16 a text message that constitutes collection activity pursuant to
17 chapter 19.16 RCW or federal law.

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) "Initiate the transmission" refers to the action by the
34 original sender of an ~~((electronic mail))~~ email message or an
35 electronic text message, not to the action by any intervening
36 interactive computer service or wireless network that may handle or
37 retransmit the message, unless such intervening interactive computer
38 service assists in the transmission of an ~~((electronic mail))~~ email
39 message when it knows, or consciously avoids knowing, that the person

1 initiating the transmission is engaged, or intends to engage, in any
2 act or practice that violates the consumer protection act.

3 (8) "Interactive computer service" means any information service,
4 system, or access software provider that provides or enables computer
5 access by multiple users to a computer server, including specifically
6 a service or system that provides access to the internet and such
7 systems operated or services offered by libraries or educational
8 institutions.

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

15 (10) "Internet domain name" refers to a globally unique,
16 hierarchical reference to an internet host or service, assigned
17 through centralized internet naming authorities, comprising a series
18 of character strings separated by periods, with the right-most string
19 specifying the top of the hierarchy.

20 (11) "Person" means an individual, corporation, business trust,
21 estate, trust, partnership, limited liability company, association,
22 joint venture, government, governmental subdivision, agency or
23 instrumentality, public corporation, or any other legal or commercial
24 entity.

25 (12) "Personally identifying information" means an individual's:
26 (a) Social security number; (b) driver's license number; (c) bank
27 account number; (d) credit or debit card number; (e) personal
28 identification number; (f) automated or electronic signature; (g)
29 unique biometric data; (h) account passwords; or (i) any other piece
30 of information that can be used to access an individual's financial
31 accounts or to obtain goods or services.

32 (13) "Web page" means a location, with respect to the world wide
33 web, that has a single uniform resource locator or other single
34 location with respect to the internet.

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

37 (1) No person may initiate the transmission, conspire with
38 another to initiate the transmission, or assist in the transmission,
39 of a commercial (~~(electronic mail)~~) email message from a computer

1 located in Washington or to an (~~electronic mail~~) email address that
2 the sender knows, or has reason to know, is held by a Washington
3 resident that:

4 (a) Uses a third party's internet domain name without permission
5 of the third party, or otherwise misrepresents or obscures any
6 information in identifying the point of origin or the transmission
7 path of a commercial (~~electronic mail~~) email message; or

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

9 (2) For purposes of this section, a person knows that the
10 intended recipient of a commercial (~~electronic mail~~) email message
11 is a Washington resident if that information is available, upon
12 request, from the registrant of the internet domain name contained in
13 the recipient's (~~electronic mail~~) email address.

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

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

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

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

25 (1) (~~No~~) Except as provided in RCW 19.190.070, no person
26 (~~conducting business in the state~~) may initiate or assist in the
27 transmission of (~~an electronic~~) a commercial electronic text
28 message to a (~~telephone number assigned to a Washington resident for~~
29 cellular telephone or pager service that is equipped with short
30 message capability or any similar capability allowing the
31 transmission of text messages)) person within the state of
32 Washington. For purposes of this section, there is a rebuttable
33 presumption that a commercial electronic text message to a telephone
34 number with a Washington state area code is received by a person
35 within the state of Washington.

36 (2) The legislature finds that the practices covered by this
37 section are matters vitally affecting the public interest for the
38 purpose of applying the consumer protection act, chapter 19.86 RCW. A

1 violation of this section is not reasonable in relation to the
2 development and preservation of business and is an unfair or
3 deceptive act in trade or commerce and an unfair method of
4 competition for the purpose of applying the consumer protection act,
5 chapter 19.86 RCW.

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

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

9 (a) The commercial electronic text message is transmitted at the
10 direction of a person offering (~~cellular telephone or pager~~)
11 telecommunications service to the person's existing subscriber at no
12 cost to the subscriber unless the subscriber has indicated that he or
13 she is not willing to receive further commercial text messages from
14 the person; or

15 (b) The (~~unsolicited~~) commercial electronic text message is
16 transmitted by a person to a (~~subscriber~~) recipient and the
17 (~~subscriber~~) recipient has clearly and affirmatively consented in
18 writing in advance to receive these text messages. The recipient may
19 provide written consent electronically, provided that the recipient
20 is given a clear, detailed disclosure as to what text messages he or
21 she is consenting to receiving, and the electronic written consent
22 only applies to text messages from the person seeking the recipient's
23 consent.

24 (2) No person offering (~~cellular or pager~~) telecommunications
25 service may be held liable for serving merely as an intermediary
26 between the sender and the recipient of a commercial electronic text
27 message sent in violation of this chapter unless the person is
28 assisting in the transmission of the commercial electronic text
29 message.

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

32 It is a violation of this chapter to solicit, request, or take
33 any action to induce a person to provide personally identifying
34 information, money, goods, or services, by means of a web page,
35 (~~electronic mail~~) email message, electronic text message, phone
36 call, or otherwise using the internet or any telecommunications
37 service, by representing oneself, either directly or by implication,

1 to be another person, without the authority or approval of such other
2 person.

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

5 (1) A person who is injured under this chapter may bring a civil
6 action in the superior court to enjoin further violations, and ~~((to~~
7 ~~seek up to five hundred dollars))~~ shall recover actual damages or
8 \$1,000 per violation, ((or actual damages,)) whichever is greater.
9 ~~((A person who seeks damages under this subsection may only bring an~~
10 ~~action against a person or entity that directly violates RCW~~
11 ~~19.190.080.))~~

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

17 (a) Enjoin further violations of ~~((RCW 19.190.080))~~ this chapter;
18 and

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

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

25 (4) In an action under this chapter, the court ((may)) shall
26 award costs and reasonable attorneys' fees to a prevailing ((party))
27 plaintiff.

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

30 (1) As used in this section:

31 (a) ~~((An automatic dialing and announcing device is a device~~
32 ~~which automatically dials telephone numbers and plays a recorded~~
33 ~~message once a connection is made))~~ "Automatic dialing and announcing
34 device" means any device or system of devices that is used, whether
35 alone or in conjunction with other equipment, for the purpose of
36 automatically selecting or dialing telephone numbers and transmitting
37 a voice communication.

1 (b) "Voice communication" means any communication by means of a
2 live voice or artificial or prerecorded message. "Voice
3 communication" includes, without limitation, any voice message
4 transmitted directly to a recipient's voice mail, regardless of
5 whether the recipient receives a call as part of the transmission.

6 ~~((b))~~ (c) "Commercial solicitation" means the ((unsolicited))
7 initiation of a ((telephone conversation)) voice communication for
8 the purpose of encouraging or facilitating a person to purchase
9 property, goods, or services or to provide personally identifying
10 information. "Commercial solicitation" does not include voice
11 communication to any person who has clearly and affirmatively
12 consented in writing in advance to receive the voice communication.
13 Written consent may be given electronically, provided that the person
14 giving consent is given a clear, detailed disclosure as to what voice
15 communications he or she is consenting to, and the consent only
16 applies to voice communications from the caller seeking the person's
17 consent.

18 (d) "Person" means an individual, corporation, business trust,
19 estate, trust, partnership, limited liability company, association,
20 joint venture, government, governmental subdivision, agency or
21 instrumentality, public corporation, or any other legal or commercial
22 entity.

23 (e) "Personally identifying information" means an individual's:
24 (i) Social security number; (ii) driver's license number; (iii) bank
25 account number; (iv) credit or debit card number; (v) personal
26 identification number; (vi) unique biometric data; (vii) account
27 passwords; or (viii) any other piece of information that can be used
28 to access an individual's financial accounts or to obtain goods or
29 services.

30 (f) "Assist in the transmission" means actions taken by a person
31 to provide substantial assistance or support, which enables any
32 person to originate, initiate, or transmit a commercial solicitation
33 when the person providing the assistance knows or consciously avoids
34 knowing that the initiator of the commercial solicitation is engaged,
35 or intends to engage, in any practice that violates this section.
36 "Assist in the transmission" does not include: (i) Activities of any
37 entity related to the design, manufacture, or distribution of any
38 technology, product, or component that has a commercially significant
39 use other than to violate or circumvent this section; (ii) activities
40 of a telecommunications provider or other entity that are limited to

1 providing access to the internet; or (iii) activities of a
2 terminating provider relating to the completion of a voice
3 communication.

4 (g) "Terminating provider" means a telecommunications provider
5 upon whose network telecommunications traffic terminates.

6 (2) No person may ((use)) initiate or assist in the transmission
7 of a commercial solicitation to a person within the state of
8 Washington using an automatic dialing and announcing device ((for
9 purposes of commercial solicitation. This section applies to all
10 commercial solicitation intended to be received by telephone
11 customers within the state.

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

19 (3) No person may initiate or assist in the transmission of a
20 commercial solicitation using an automatic dialing and announcing
21 device to any Washington resident whose telephone number is on the do
22 not call registry maintained by the federal government pursuant to
23 the telemarketing sales rule, 16 C.F.R. Part 310, and 47 C.F.R. Sec.
24 64.1200 as currently enacted or subsequently amended. For purposes of
25 this subsection, there is a rebuttable presumption that a telephone
26 number with a Washington state area code belongs to a Washington
27 resident.

28 (4) The legislature finds that the practices covered by this
29 section are matters vitally affecting the public interest for the
30 purpose of applying the consumer protection act, chapter 19.86 RCW. A
31 violation of this section is not reasonable in relation to the
32 development and preservation of business and is an unfair or
33 deceptive act in trade or commerce and an unfair method of
34 competition for the purpose of applying the consumer protection act,
35 chapter 19.86 RCW. In addition to all remedies available in chapter
36 19.86 RCW, a person who is injured under this section may bring a
37 civil action in the superior court to enjoin further violations, and
38 shall recover actual damages or \$1,000 per violation of this section,
39 whichever is greater.

1 (~~(4)~~) (5) Nothing in this section shall be construed to prevent
2 the Washington utilities and transportation commission from adopting
3 additional rules regulating automatic dialing and announcing devices.

4 NEW SECTION. **Sec. 10.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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