
SUBSTITUTE HOUSE BILL 1051

State of Washington

68th Legislature

2023 Regular Session

By House Consumer Protection & Business (originally sponsored by Representatives Leavitt, Walen, Simmons, Ryu, Goodman, Fitzgibbon, Pollet, Doglio, Orwall, Macri, Timmons, Wylie, Bronoske, Ramos, Thai, and Kloba; by request of Attorney General)

READ FIRST TIME 01/31/23.

1 AN ACT Relating to robocalling and telephone scams; amending RCW
2 80.36.400, 80.36.390, and 19.158.020; creating a new section; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that robocalls
6 are increasingly used by entities to mislead and deceive Washington
7 residents and induce them into providing money or personally
8 identifying information. It is the intent of the legislature to
9 expand the scope of existing provisions in RCW 80.36.390, 80.36.400,
10 and 19.158.020 regulating robocalls and telephone solicitations to
11 prohibit telephone communications that mislead or harm Washington
12 residents.

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

19 (3) It is also the intent of the legislature to:

20 (a) Include a provision in RCW 80.36.400 and 80.36.390 to
21 prohibit the initiation of an unsolicited robocall sent using an

1 automatic dialing and announcing device to a Washington telephone
2 number on the do not call registry maintained by the federal
3 government pursuant to the telemarketing sales rule, 16 C.F.R. Part
4 310, and related regulations;

5 (b) Clearly define exceptions for businesses to be allowed to
6 initiate calls using an automatic dialing and announcing device to
7 communicate with ongoing customers or any potential customer who
8 provides prior consent; and

9 (c) Combat fraudulent or misleading caller identification.

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

12 (1) ~~((As used in this section:))~~ The definitions in this
13 subsection apply throughout this section unless the context clearly
14 requires otherwise.

15 (a) ~~((An automatic))~~ "Automatic dialing and announcing device
16 ((is a device which automatically dials telephone numbers and plays a
17 recorded message once a connection is made))" means an automated
18 system for the dialing of a telephone number and the transmission of
19 a voice communication.

20 (b) "Voice communication" means any communication, in whole or in
21 part, by means of an artificial or prerecorded message. "Voice
22 communication" includes, without limitation, any voice message
23 transmitted directly to a recipient's voicemail, regardless of
24 whether the recipient's phone rings as part of the transmission. An
25 automated warning, the substance of which is required by law, without
26 more, does not turn a communication into a "voice communication"
27 under this section.

28 ~~((b))~~ (c) (i) "Commercial solicitation" means the
29 ((unsolicited)) initiation of a ((telephone conversation)) voice
30 communication for the purpose of ((encouraging)):

31 (A) Encouraging a person to purchase property, goods, or
32 services;

33 (B) Inducing a person to provide personally identifying
34 information; or

35 (C) Wrongfully obtaining anything of value.

36 (ii) "Commercial solicitation" does not include a voice
37 communication with any person who has provided written consent in
38 advance of receiving the commercial solicitation. Written consent may
39 be given electronically, provided that the consenting person is given

1 a clear, detailed disclosure as to what communications the consenting
2 person is agreeing to receive, and the consent only applies to
3 communications from the person seeking consent.

4 (iii) "Commercial solicitation" also does not include a voice
5 communication between a person and a business with whom that person
6 has an established business relationship, as long as such a voice
7 communication complies with 47 U.S.C. Sec. 227, and related
8 regulations, as currently written or subsequently amended or
9 interpreted by the federal government.

10 (d) (i) "Established business relationship" means an existing
11 relationship formed by a voluntary two-way communication between a
12 person and a business, with or without an exchange of consideration,
13 on the basis of an inquiry, application, purchase, or transaction
14 regarding property, goods, or services offered by the business, which
15 relationship has not been previously terminated by either party.

16 (ii) "Established business relationship" includes any persons who
17 are authorized by a patient or a patient's personal representative,
18 as permitted under federal or state law, to receive protected health
19 care information from health care entities about the patient.

20 (iii) "Established business relationship" does not include a
21 relationship where a person states or indicates, including as
22 provided in RCW 19.158.110(3) and 16 C.F.R. Part
23 310.4(b)(1)(v)(B)(ii), they do not want to be called again by the
24 calling business for commercial solicitation purposes.

25 (iv) An established business relationship with a particular
26 business does not include affiliated entities unless the person would
27 reasonably expect them to be included given the nature and type of
28 goods or services offered by the affiliate and the identity of the
29 affiliate.

30 (e) "Health care entity" means:

31 (i) Covered entities or business associates under the federal
32 health insurance portability and accountability act of 1996 and
33 related regulations;

34 (ii) Health care providers or health care facilities pursuant to
35 chapter 70.02 RCW; or

36 (iii) Programs or qualified service organizations covered under
37 42 C.F.R. Part 2.

38 (f) "Patient" has the same meaning as defined in RCW 70.02.010.

39 (g) "Person" has the same meaning as defined in RCW 19.158.020.

1 (h) "Personally identifying information" has the same meaning as
2 defined in RCW 19.190.010.

3 (i)(i) "Assist in the transmission" means actions taken by a
4 person to provide substantial assistance or support, which enables
5 any person to originate, initiate, or transmit a commercial
6 solicitation when the person providing the assistance knows or avoids
7 knowing that the initiator of the commercial solicitation is engaged,
8 or intends to engage, in any practice that violates this section.

9 (ii) "Assist in the transmission" does not include activities of
10 (A) any entity related to the design, manufacture, or distribution of
11 any technology, product, or component that has a commercially
12 significant use other than to violate or circumvent this section; (B)
13 a telecommunications provider or other entity that are limited to
14 providing access to the internet for purposes excluding initiation of
15 a voice communication; or (C) a terminating provider relating to the
16 completion of a voice communication.

17 (j) "Terminating provider" means a telecommunications provider
18 upon whose network a voice communication terminates.

19 ~~(2)(a) No person may ((use an automatic dialing and announcing~~
20 ~~device for purposes of commercial solicitation. This section applies~~
21 ~~to all commercial solicitation intended to be received by telephone~~
22 ~~customers within the state.~~

23 ~~(3) A violation of this section is a violation of chapter 19.86~~
24 ~~RCW. It shall be presumed that damages to the recipient of commercial~~
25 ~~solicitations made using an automatic dialing and announcing device~~
26 ~~are five hundred dollars.~~

27 ~~(4))~~ initiate a commercial solicitation using an automatic
28 dialing and announcing device to:

- 29 (i) A telephone number registered to a Washington resident;
- 30 (ii) A telephone number with a Washington area code; or
- 31 (iii) A telephone number of a Washington resident or a telephone
32 number with a Washington area code that is registered on the do not
33 call registry maintained by the federal government pursuant to the
34 telemarketing sales rule, 16 C.F.R. Part 310, and 47 C.F.R. Sec.
35 64.1200 as currently enacted or subsequently amended.

36 (b) For purposes of this subsection, there is a rebuttable
37 presumption that a commercial solicitation to a telephone number with
38 a Washington area code is a commercial solicitation of a Washington
39 resident.

1 (3) No person may assist in the transmission of a commercial
2 solicitation described in subsection (2) of this section.

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

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

18 **Sec. 3.** RCW 80.36.390 and 2022 c 195 s 1 are each amended to
19 read as follows:

20 (1)(a) As used in this section, "telephone solicitation" means
21 the ~~((unsolicited))~~ initiation of a telephone call by a commercial or
22 nonprofit company or organization to a person ~~((and conversation))~~
23 for the purpose of ~~((encouraging the person to purchase property,~~
24 ~~goods, or services or soliciting donations of money, property, goods,~~
25 ~~or services))~~;

26 (i) Encouraging a person to purchase property, goods, or
27 services;

28 (ii) Soliciting donations of money, property, goods, or services;

29 (iii) Inducing a person to provide personally identifying
30 information; or

31 (iv) Wrongfully obtaining anything of value.

32 (b) "Telephone solicitation" does not include:

33 ~~((a))~~ (i) Calls made in response to a request or inquiry by the
34 called party. This includes calls regarding an item that has been
35 purchased by the called party from the company or organization during
36 a period not longer than ~~((twelve))~~ 12 months prior to the telephone
37 contact;

1 ~~((b))~~ (ii) Calls made by a not-for-profit organization, as
2 defined by 26 U.S.C. Sec. 501 of the federal internal revenue code,
3 to its own list of bona fide or active members of the organization;

4 ~~((c))~~ (iii) Calls made by a membership or labor organization to
5 its own list of bona fide or active members of the organization;

6 (iv) Calls limited to polling or soliciting the expression of
7 ideas, opinions, or votes; or

8 ~~((d))~~ (v) Business-to-business contacts.

9 (2)(a) For purposes of this section, each individual real estate
10 agent or insurance agent who maintains a separate list from other
11 individual real estate or insurance agents shall be treated as a
12 company or organization.

13 (b) For purposes of this section, an organization as defined in
14 RCW 29A.04.086 or 29A.04.097 and organized pursuant to chapter 29A.80
15 RCW shall not be considered a commercial or nonprofit company or
16 organization.

17 ~~((2))~~ (3) A person making a telephone solicitation must
18 identify him or herself and the company or organization on whose
19 behalf the solicitation is being made and the purpose of the call
20 within the first 30 seconds of the telephone call.

21 ~~((3))~~ (4) As used in this section, "telephone solicitor" means
22 a commercial or nonprofit company or organization engaged in
23 telephone solicitation.

24 ~~((4))~~ (5) If the telephone solicitor is requesting a donation
25 or gift of money, the telephone solicitor must ask the called party
26 whether they want to continue the call, end the call, or be removed
27 from the solicitor's telephone lists.

28 ~~((5))~~ (6) If, at any time during the telephone contact, the
29 called party states or indicates they want to end the call, the
30 telephone solicitor must end the call within 10 seconds.

31 ~~((6))~~ (7) If, at any time during the telephone contact, the
32 called party states or indicates that he or she does not want to be
33 called again by the telephone solicitor or wants to have his or her
34 name, individual telephone number, or other contact information
35 removed from the telephone lists used by the telephone solicitor:

36 (a) The telephone solicitor shall inform the called party that
37 his or her contact information will be removed from the telephone
38 solicitor's telephone lists for at least one year;

39 (b) The telephone solicitor shall end the call within 10 seconds;

1 (c) The telephone solicitor shall not make any additional
2 telephone solicitation of the called party at any telephone number
3 associated with that party within a period of at least one year; and

4 (d) The telephone solicitor shall not sell or give the called
5 party's name, telephone number, and other contact information to
6 another company or organization: PROVIDED, That the telephone
7 solicitor may return the list, including the called party's name,
8 telephone number, and other contact information to the company or
9 organization from which it received the list.

10 ~~((7))~~ (8) A telephone solicitor shall not place calls to any
11 person which will be received before 8:00 a.m. or after 8:00 p.m. at
12 the call recipient's local time.

13 ~~((8))~~ (9) No person may initiate, or cause to be initiated, a
14 telephone solicitation to a telephone number of a Washington
15 resident, or a telephone number with a Washington area code, that is
16 registered on the do not call registry maintained by the federal
17 government pursuant to the telemarketing sales rule, 16 C.F.R. Part
18 310, and 47 C.F.R. Sec. 64.1200 as currently enacted or subsequently
19 amended. For purposes of this subsection, there is a rebuttable
20 presumption that a telephone solicitation to a telephone number with
21 a Washington area code is a telephone solicitation of a Washington
22 resident.

23 (10) It is unlawful for a person to violate 47 U.S.C. Sec.
24 227(e)(1), as currently written or as subsequently amended or
25 interpreted by the federal government, if the called party is a
26 Washington resident or the call was to a telephone number with a
27 Washington area code. For purposes of this subsection, there is a
28 rebuttable presumption that a telephone call to a telephone number
29 with a Washington area code is a telephone call to a Washington
30 resident.

31 (11) A violation of subsection ~~((2),)~~ (3), (4), (5), (6),
32 ~~((7),)~~ (7), (8), (9), or (10) of this section is punishable by a fine
33 of up to ~~((one thousand dollars))~~ \$1,000 for each violation.

34 ~~((9))~~ (12) The attorney general may bring actions to enforce
35 compliance with this section. ~~((For the first violation by any~~
36 ~~telephone solicitor of this section, the attorney general shall~~
37 ~~notify the telephone solicitor with a letter of warning that the~~
38 ~~section has been violated.)) The legislature finds that the practices
39 covered by this section are matters vitally affecting the public
40 interest for the purpose of applying the consumer protection act,~~

1 chapter 19.86 RCW. A violation of this section is not reasonable in
2 relation to the development and preservation of business and is an
3 unfair or 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 ((~~(10)~~)) (13) A person aggrieved by repeated violations of this
7 section may bring a civil action in superior court to enjoin future
8 violations, to recover damages, or both. The court shall award
9 damages of at least one hundred dollars for each individual violation
10 of this section. If the aggrieved person prevails in a civil action
11 under this subsection, the court shall award the aggrieved person
12 reasonable attorneys' fees and cost of the suit.

13 ((~~(11)~~)) (14) The utilities and transportation commission shall
14 by rule ensure that telecommunications companies inform their
15 residential customers of the provisions of this section. The
16 notification may be made by (a) annual ((~~inserts~~)) notice in the
17 billing statements ((~~mailed~~)) sent to residential customers, or (b)
18 conspicuous publication of the notice in the consumer information
19 pages of local telephone directories.

20 **Sec. 4.** RCW 19.158.020 and 2003 c 39 s 12 are each amended to
21 read as follows:

22 ((~~Unless the context requires otherwise, the~~)) The definitions in
23 this section apply throughout this chapter unless the context clearly
24 requires otherwise.

25 (1) A "commercial telephone solicitor" is any person who engages
26 in commercial telephone solicitation, including service bureaus.

27 (2) "Commercial telephone solicitation" means:

28 (a) An unsolicited telephone call to a person ((~~initiated by a~~
29 ~~salesperson and conversation for the purpose of inducing the person~~
30 ~~to purchase or invest in property, goods, or services~~)) initiated by
31 one other than a person described under subsection (3)(a) through (k)
32 of this section for the purpose of:

33 (i) Encouraging a person to purchase or invest in property,
34 goods, or services;

35 (ii) Inducing a person to provide personally identifying
36 information; or

37 (iii) Wrongfully obtaining anything of value;

38 (b) Other communication with a person where:

1 (i) A free gift, award, or prize is offered to a purchaser who
2 has not previously purchased from the person initiating the
3 communication; and

4 (ii) A telephone call response is invited; and

5 (iii) The ~~((salesperson))~~ caller intends to complete a sale or
6 enter into an agreement to purchase during the course of the
7 telephone call;

8 (c) Other communication with a person which misrepresents the
9 price, quality, or availability of property, goods, or services and
10 which invites a response by telephone or which is followed by a call
11 to the person ~~((by a salesperson))~~;

12 (d) For purposes of this section, "other communication" means a
13 written ~~((or oral))~~ notification or advertisement transmitted through
14 any ~~((means))~~ advertising media.

15 (3) A "commercial telephone solicitor" does not include any of
16 the following:

17 (a) A person engaging in commercial telephone solicitation
18 where ~~((÷~~

19 ~~((i) The))~~ the solicitation is an isolated transaction and not
20 done in the course of a pattern of repeated transactions of like
21 nature; ~~((or~~

22 ~~((ii) Less than sixty percent of such person's prior year's sales
23 were made as a result of a commercial telephone solicitation as
24 defined in this chapter. Where more than sixty percent of a seller's
25 prior year's sales were made as a result of commercial telephone
26 solicitations, the service bureau contracting to provide commercial
27 telephone solicitation services to the seller shall be deemed a
28 commercial telephone solicitor;))~~

29 (b) A person making calls for religious, charitable, political,
30 or other noncommercial purposes;

31 (c) A person soliciting business solely from purchasers who have
32 previously purchased from the business enterprise for which the
33 person is calling;

34 (d) A person soliciting:

35 (i) Without the intent to complete or obtain provisional
36 acceptance of a sale during the telephone solicitation; and

37 (ii) Who does not make the major sales presentation during the
38 telephone solicitation; and

- 1 (iii) Who only makes the major sales presentation or arranges for
2 the major sales presentation to be made at a later face-to-face
3 meeting between the salesperson and the purchaser;
- 4 (e) A person selling a security which is exempt from registration
5 under RCW 21.20.310;
- 6 (f) A person licensed under RCW (~~(18.85.090)~~) 18.85.101 when the
7 solicited transaction is governed by that law;
- 8 (g) A person registered under RCW 18.27.060 when the solicited
9 transaction is governed by that law;
- 10 (h) A person licensed under chapter 48.17 RCW (~~(48.17.150)~~) when
11 the solicited transaction is governed by that law;
- 12 (i) Any person soliciting the sale of a franchise who is
13 registered under RCW 19.100.140;
- 14 (j) A person primarily soliciting the sale of a newspaper of
15 general circulation, a magazine or periodical, or contractual plans,
16 including book or record clubs: (i) Under which the seller provides
17 the consumer with a form which the consumer may use to instruct the
18 seller not to ship the offered merchandise; and (ii) which is
19 regulated by the federal trade commission trade regulation concerning
20 "use of negative option plans by sellers in commerce";
- 21 (k) Any supervised financial institution or parent, subsidiary,
22 or affiliate thereof. As used in this section, "supervised financial
23 institution" means any commercial bank, trust company, savings and
24 loan association, mutual savings banks, credit union, industrial loan
25 company, personal property broker, consumer finance lender,
26 commercial finance lender, or insurer, provided that the institution
27 is subject to supervision by an official or agency of this state or
28 the United States;
- 29 (l) A person soliciting the sale of a prearrangement funeral
30 service contract registered under RCW 18.39.240 and 18.39.260;
- 31 (m) A person licensed to enter into prearrangement contracts
32 under RCW 68.05.155 when acting subject to that license;
- 33 (n) A person soliciting the sale of services provided by a cable
34 television system operating under authority of a franchise or permit;
- 35 (o) A person or affiliate of a person whose business is regulated
36 by the utilities and transportation commission or the federal
37 communications commission;
- 38 (p) A person soliciting the sale of agricultural products, as
39 defined in RCW 20.01.010 where the purchaser is a business;

1 (q) An issuer or subsidiary of an issuer that has a class of
2 securities that is subject to section 12 of the securities exchange
3 act of 1934 (15 U.S.C. Sec. (~~781~~) 781) and that is either
4 registered or exempt from registration under paragraph (A), (B), (C),
5 (E), (F), (G), or (H) of subsection (g) of that section;

6 (r) A commodity broker-dealer as defined in RCW 21.30.010 and
7 registered with the commodity futures trading commission;

8 (s) A business-to-business sale where:

9 (i) The purchaser business intends to resell the property or
10 goods purchased, or

11 (ii) The purchaser business intends to use the property or goods
12 purchased in a recycling, reuse, remanufacturing or manufacturing
13 process;

14 (t) A person licensed under RCW 19.16.110 when the solicited
15 transaction is governed by that law;

16 (u) A person soliciting the sale of food intended for immediate
17 delivery to and immediate consumption by the purchaser;

18 (v) A person soliciting the sale of food fish or shellfish when
19 that person is licensed pursuant to the provisions of Title 77 RCW.

20 (4) "Purchaser" means a person who is solicited to become or does
21 become obligated to a commercial telephone solicitor.

22 (5) "Salesperson" means any individual employed, appointed, or
23 authorized by a commercial telephone solicitor, whether referred to
24 by the commercial telephone solicitor as an agent, representative, or
25 independent contractor, who attempts to solicit or solicits a sale on
26 behalf of the commercial telephone solicitor.

27 (6) "Service bureau" means a commercial telephone solicitor who
28 contracts with any person to provide commercial telephone
29 solicitation services.

30 (7) "Seller" means any person who contracts with any service
31 bureau to purchase commercial telephone solicitation services.

32 (8) "Person" includes any individual, firm, association,
33 corporation, partnership, joint venture, sole proprietorship, or any
34 other business entity.

35 (9) "Personally identifying information" has the same meaning as
36 defined in RCW 19.190.010.

37 (10) "Free gift, award, or prize" means a gratuity which the
38 purchaser believes of a value equal to or greater than the value of
39 the specific product, good, or service sought to be sold to the
40 purchaser by the seller.

1 (~~(10)~~ "Solicit") (11) "Telephone call" includes any
2 communication made through a telephone that uses a live person,
3 artificial voice, or prerecorded message.

4 (12) "Unsolicited" means to initiate contact (~~(with a purchaser)~~)
5 for the purpose of attempting to sell a person property, goods, or
6 services, or obtaining personally identifying information or anything
7 of value, where such (~~(purchaser has expressed)~~) person provided no
8 previous express interest in purchasing, investing in, or obtaining
9 information regarding the property, goods, or services attempted to
10 be sold.

11 NEW SECTION. **Sec. 5.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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