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**ENGROSSED SUBSTITUTE HOUSE BILL 1650**

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**State of Washington 67th Legislature 2022 Regular Session**

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

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

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

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

(2) The legislature further finds that some entities use misleading text messaging and robocalling to deceive Washington residents and induce them into providing sensitive personal information, money, goods, or services. It is the intent of the legislature to expand the scope of existing "anti-phishing" provisions to include text messaging and robocalling, and efforts to obtain money, goods, and services, and to expand the civil remedies available for violations of these provisions.

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

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

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

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

(1) "Assist in the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial ((~~electronic mail~~)) email message or a commercial electronic text message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial ((~~electronic mail~~)) email message or the commercial electronic text message is engaged, or intends to engage, in any practice that violates the consumer protection act. "Assist in the transmission" does not include ((~~any of the following~~)): (a) Activities of an ((~~electronic mail~~)) email service provider or other entity who provides intermediary transmission service in sending or receiving ((~~electronic mail~~)) email, or provides to users of ((~~electronic mail~~)) email services the ability to send, receive, or compose ((~~electronic mail~~)) email; or (b) activities of any entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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