

HOUSE BILL REPORT

ESHB 1650

As Passed House:
February 10, 2022

Title: An act relating to commercial solicitation.

Brief Description: Concerning commercial solicitation.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Leavitt, Mosbrucker, Eslick, Pollet, Griffey and Young).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 2/10/22, 54-41.

Brief Summary of Engrossed Substitute Bill

- Modifies the civil remedies available for certain violations of state laws related to commercial electronic mail (e-mail) messages, commercial electronic text messages, and commercial solicitation via automatic dialing and announcing devices.
- Expands the definitions of commercial e-mail message, commercial electronic text message, and commercial solicitation to include communications that advertise the commercial availability of property, goods, or services.
- Clarifies that a text message or voice communication sent to a telephone number with a Washington area code is presumed to be received by a resident within Washington.
- Expands the definition of automatic dialing and announcing device to include additional telemarketing technologies and methods.
- Requires consent to receive certain commercial electronic text messages

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.

and commercial solicitation via automatic dialing and announcing devices to be made in writing.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Kirby, Chair; Walen, Vice Chair; Ryu and Santos.

Minority Report: Do not pass. Signed by 3 members: Representatives Vick, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Corry.

Staff: Corey Patton (786-7388).

Background:

Commercial Electronic Mail Messages and Text Messages.

"Commercial electronic mail (e-mail) messages" and "commercial electronic text messages" are e-mail and text messages sent for the purpose of promoting real property, goods, or services for sale or lease, subject to certain statutory exceptions. State law regulates: (1) commercial e-mail messages that originate from a computer located in Washington or are sent to an e-mail address that the sender knows, or has reason to know, is held by a Washington resident; and (2) commercial electronic text messages that are sent to a telephone number assigned to a Washington resident for cellular telephone or pager service that is equipped for the transmission of text messages.

A person may not transmit, conspire with another to transmit, or assist in the transmission of a commercial e-mail that: (1) uses a third party's Internet domain name without permission, or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of the commercial e-mail; or (2) contains false or misleading information in the subject line. A person may not solicit, request, or take any action to induce another to provide personally identifying information by means of a web page or e-mail, or use of the Internet to represent oneself, either directly or by implication, to be another person, without permission.

A person conducting business in Washington may not transmit or assist in the transmission of a commercial electronic text message to a telephone number assigned to a Washington resident unless: (a) the sender is offering cellular telephone or pager service to an existing subscriber, and the text message is sent at no cost to the subscriber; or (b) the recipient of the text message is a subscriber who has clearly and affirmatively consented in advance to receive the text message.

Damages to the recipient of a commercial e-mail or text message sent in violation of these

provisions are \$500 for each violation, or actual damages, whichever is greater. Damages to an interactive computer service provider resulting from a violation of these provisions are \$1,000 for each violation, or actual damages, whichever is greater.

A private right of action is provided for specific violations of the provision prohibiting soliciting, requesting, or inducing another to provide personally identifying information. Damages to an injured plaintiff are \$500 per violation, or actual damages, whichever is greater. However, if the plaintiff is engaged in the business of providing Internet access service to the public, an owner of a web page, or trademark owner, damages are \$5,000 per violation, or actual damages, whichever is greater. The court may also award costs and reasonable attorneys' fees to a prevailing party.

Automatic Dialing and Commercial Solicitation.

An "automatic dialing and announcing device" is a device which automatically dials telephone numbers and plays a recorded message once a connection is made. "Commercial solicitation" is the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

A person may not use an automatic dialing and announcing device for purposes of commercial solicitation intended to be received by telephone customers within Washington. Damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are presumed to be \$500.

Summary of Engrossed Substitute Bill:

Commercial E-mails and Text Messages.

The definitions of "commercial e-mail messages" and "commercial electronic text messages" are modified to include e-mail and text messages sent for the purpose of advertising the commercial availability of real property, goods, or services for sale or lease, except e-mail and text messages that constitute collection activity. Electronic text messages include text messages sent to any cellular phone, mobile phone, smart phone, tablet, pager, or similar device equipped with short message service, rich communication service, or any similar capability.

A person may not solicit, request, or take any action to induce another to provide personally identifying information, money, goods, or services, by means of a web page, e-mail, electronic text message, phone call, or use of the Internet or any telecommunication service to represent oneself, either directly or by implication, to be another person, without the authority or approval of such other person.

A person may not transmit or assist in the transmission of a commercial electronic text message to a person within Washington unless: (1) the sender is offering telecommunications service to the recipient who is the sender's existing subscriber, and the text message is sent at no cost to the subscriber; (2) the text message is transmitted by a

person with an established business relationship with the recipient; or (3) the recipient of the text message has clearly and affirmatively consented in writing in advance to receive the text message from the sender. 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. A text message sent to a telephone number with a Washington area code is presumed to be received by a person within Washington.

Damages to the recipient of a commercial e-mail or text message sent in violation of these provisions are increased to \$1,000 dollars for each violation, or actual damages, whichever is greater. Damages to an interactive computer service provider resulting from a violation of these provisions are increased to \$2,000 for each violation, or actual damages, whichever is greater.

The private right of action provided for specific violations of the prohibition against soliciting, requesting, or inducing another to provide personally identifying information is expanded to apply to violations of the provisions regulating commercial e-mail and text messages. Damages to an injured plaintiff are increased to \$1,000 per violation, or actual damages, whichever is greater. The court must also award costs and reasonable attorneys' fees to a prevailing plaintiff.

Automatic Dialing and Commercial Solicitation.

The definition of "automatic dialing and announcing device" is modified to include any device or system of devices that is used for the purpose of automatically selecting or dialing telephone numbers and transmitting a voice communication, whether a live voice, artificial voice, or prerecorded message. The definition of "commercial solicitation" is modified to include voice communication for the purpose of advertising the commercial availability of property, goods, or services, or to provide personally identifying information, and does not include: (1) a voice communication to a person who has clearly and affirmatively consented in writing in advance to receive the voice communication; or (2) a voice communication transmitted by a person with an established business relationship with the recipient. The recipient may provide written consent electronically, provided that the recipient is given a clear, detailed disclosure as to what communications he or she is consenting to receiving, and the electronic written consent only applies to communications from the person seeking the recipient's consent.

A person may not transmit or assist in the transmission of a commercial solicitation to a person within Washington, or any Washington resident whose telephone number is on the National Do Not Call Registry maintained by the federal government, using an automatic dialing and announcing device. A transmission made to a telephone number with a Washington area code is presumed to be received by a resident within Washington. A private right of action is created for violations of this provision. Damages to an injured plaintiff are increased to \$1,000 per violation, or actual damages, whichever is greater.

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) Unwanted communications are one of the highest sources of consumer complaints. The primary concern is that bad actors are sending communications to trick people, especially vulnerable groups like the young or elderly, into revealing personal information or transferring funds. This scheme is otherwise known as phishing. One of the most difficult factors in enforcing regulations on unwanted communications is accurately identifying callers. Many bad actors are foreign callers working in tandem with local facilitators to send communications while obscuring their identities. This bill is crafted to target those bad actors without impacting telecommunications providers or other legitimate businesses. This bill encompasses present and emergent forms of electronic communications and provides the Office of the Attorney General with expanded powers to identify and hold bad actors accountable through a number of enforcement tools.

(Opposed) None.

Persons Testifying: Representative Mari Leavitt, prime sponsor; Mina Shahin, Office of the Attorney General; and Jim Wertheim, LawHQ.

Persons Signed In To Testify But Not Testifying: None.