
HOUSE BILL 1650

State of Washington

67th Legislature

2022 Regular Session

By Representatives Leavitt, Mosbrucker, Eslick, Pollet, Griffey, and Young

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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.

11 (3) "Commercial electronic text message" means an electronic text
12 message sent to promote or facilitate the sale or lease of real
13 property, goods, or services ~~((for sale or lease))~~.

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

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

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

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

38 (8) "Interactive computer service" means any information service,
39 system, or access software provider that provides or enables computer
40 access by multiple users to a computer server, including specifically

1 a service or system that provides access to the internet and such
2 systems operated or services offered by libraries or educational
3 institutions.

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

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

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

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

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

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

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

38 (a) Uses a third party's internet domain name without permission
39 of the third party, or otherwise misrepresents or obscures any

1 information in identifying the point of origin or the transmission
2 path of a commercial (~~(electronic-mail)~~) email message; or

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

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

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

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

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

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

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

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

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

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

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

10 (b) The (~~unsolicited~~) commercial electronic text message is
11 transmitted by a person to a (~~subscriber~~) recipient and the
12 (~~subscriber~~) recipient has clearly and affirmatively consented in
13 writing in advance to receive these text messages.

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

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

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

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

32 (1) A person who is injured under this chapter may bring a civil
33 action in the superior court to enjoin further violations, and (~~to~~
34 ~~seek up to five hundred dollars~~) shall recover actual damages or
35 \$1,000 per violation, (~~or actual damages,~~) whichever is greater.
36 (~~A person who seeks damages under this subsection may only bring an~~
37 ~~action against a person or entity that directly violates RCW~~
38 ~~19.190.080.~~)

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

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

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

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

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

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

19 (1) As used in this section:

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

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

32 (~~(b)~~) (c) "Commercial solicitation" means the (unsolicited)
33 initiation of a (telephone conversation) voice communication for
34 the purpose of encouraging or facilitating a person to purchase
35 property, goods, or services or to provide personally identifying
36 information. "Commercial solicitation" does not include voice
37 communication to any person who has clearly and affirmatively
38 consented in writing in advance to receive the voice communication.

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

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

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

27 (g) "Terminating provider" means a telecommunications provider
28 upon whose network telecommunications traffic terminates.

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

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

1 (3) No person may initiate or assist in the transmission of a
2 commercial solicitation using an automatic dialing and announcing
3 device to any Washington resident whose telephone number is on the do
4 not call registry maintained by the federal government pursuant to
5 the telemarketing sales rule, 16 C.F.R. Part 310, and 47 C.F.R. Sec.
6 64.1200 as currently enacted or subsequently amended. For purposes of
7 this subsection, a telephone number with a Washington state area code
8 shall be presumed to belong to a Washington resident.

9 (4) The legislature finds that the practices covered by this
10 section are matters vitally affecting the public interest for the
11 purpose of applying the consumer protection act, chapter 19.86 RCW. A
12 violation of this section is not reasonable in relation to the
13 development and preservation of business and is an unfair or
14 deceptive act in trade or commerce and an unfair method of
15 competition for the purpose of applying the consumer protection act,
16 chapter 19.86 RCW. In addition to all remedies available in chapter
17 19.86 RCW, a person who is injured under this section may bring a
18 civil action in the superior court to enjoin further violations, and
19 shall recover actual damages or \$1,000 per violation of this section,
20 whichever is greater.

21 ~~((4))~~ (5) Nothing in this section shall be construed to prevent
22 the Washington utilities and transportation commission from adopting
23 additional rules regulating automatic dialing and announcing devices.

24 NEW SECTION. Sec. 10. If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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