
HOUSE BILL 1051

State of Washington

68th Legislature

2023 Regular Session

By Representatives Leavitt and Walen; by request of Attorney General
Prefiled 12/19/22.

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 47 C.F.R. Sec. 64.1200;

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.
25 Automated warnings required by law, without more, do not turn a
26 communication into a "voice communication" under this section.

27 ~~((b))~~ (c) "Commercial solicitation" means the ((unsolicited))
28 initiation of a ((telephone conversation)) voice communication for
29 the purpose of encouraging a person to purchase property, goods, or
30 services, provide personally identifying information, or obtain
31 anything of value.

32 (i) "Commercial solicitation" does not include any person who has
33 provided written consent in advance of receiving the commercial
34 solicitation. Written consent may be given electronically, provided
35 that the consenting person is given a clear, detailed disclosure as
36 to what communications the consenting person is agreeing to receive,
37 and the consent only applies to communications from the person
38 seeking consent.

1 (ii) "Commercial solicitation" also does not include that portion
2 of a voice communication involving live conversation between the
3 recipient and a person with whom that recipient has an established
4 business relationship.

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

12 (e) "Person" has the same meaning as defined in RCW 19.158.020.

13 (f) "Personally identifying information" has the same meaning as
14 defined in RCW 19.190.010.

15 (g)(i) "Assist in the transmission" means actions taken by a
16 person to provide substantial assistance or support, which enables
17 any person to originate, initiate, or transmit a commercial
18 solicitation when the person providing the assistance knows or avoids
19 knowing that the initiator of the commercial solicitation is engaged,
20 or intends to engage, in any practice that violates this section.

21 (ii) "Assist in the transmission" does not include activities of
22 (A) any entity related to the design, manufacture, or distribution of
23 any technology, product, or component that has a commercially
24 significant use other than to violate or circumvent this section; (B)
25 a telecommunications provider or other entity that are limited to
26 providing access to the internet for purposes excluding initiation of
27 a voice communication; or (C) a terminating provider relating to the
28 completion of a voice communication.

29 (h) "Terminating provider" means a telecommunications provider
30 upon whose network a voice communication terminates.

31 ~~(2) No person may ((use an automatic dialing and announcing~~
32 ~~device for purposes of commercial solicitation. This section applies~~
33 ~~to all 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.~~

39 ~~(4))~~ initiate a commercial solicitation using an automatic
40 dialing and announcing device to any telephone number with a

1 Washington area code, or to a telephone registered to any person that
2 is a Washington resident.

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

5 (4) No person may initiate a commercial solicitation using an
6 automatic dialing and announcing device to any telephone number with
7 a Washington area code, or to a telephone registered to any person
8 that is a Washington resident, on the do not call registry maintained
9 by the federal government pursuant to the telemarketing sales rule,
10 16 C.F.R. Part 310, and 47 C.F.R. Sec. 64.1200 as currently enacted
11 or subsequently amended.

12 (5) No person may assist in the transmission of a commercial
13 solicitation described in subsection (4) of this section.

14 (6) The legislature finds that the practices covered by this
15 section are matters vitally affecting the public interest for the
16 purpose of applying the consumer protection act, chapter 19.86 RCW. A
17 violation of this section is not reasonable in relation to the
18 development and preservation of business and is an unfair or
19 deceptive act in trade or commerce and an unfair method of
20 competition for the purpose of applying the consumer protection act,
21 chapter 19.86 RCW. In addition to all remedies available in chapter
22 19.86 RCW, a person who is injured under this section may bring a
23 civil action in the superior court to enjoin further violations, and
24 shall recover actual damages or \$1,000 per violation of this section,
25 whichever is greater.

26 (7) Nothing in this section shall be construed to prevent the
27 Washington utilities and transportation commission from adopting
28 additional rules regulating automatic dialing and announcing devices.

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

31 (1)(a) As used in this section, "telephone solicitation" means
32 the ((unsolicited)) initiation of a telephone call by a commercial or
33 nonprofit company or organization to a person ((and conversation))
34 for the purpose of encouraging the person to purchase property,
35 goods, services, personally identifying information, or anything of
36 value, or services or soliciting donations of money, property, goods,
37 ((or)) services, personally identifying information, or anything of
38 value.

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

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

6 ~~((b))~~ (ii) Calls made by a not-for-profit organization to its
7 own list of bona fide or active members of the organization;

8 ~~((c))~~ (iii) Calls limited to polling or soliciting the
9 expression of ideas, opinions, or votes; or

10 ~~((d))~~ (iv) Business-to-business contacts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (11) A violation of subsection ~~((2),)~~ (3), (4), (5), (6),
32 ~~((6))~~ (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 in the billing
17 statements mailed to residential customers, or (b) conspicuous
18 publication of the notice in the consumer information pages of local
19 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, or obtaining
31 personally identifying information or anything of value;

32 (b) Other communication with a person where:

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

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

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

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

5 (d) For purposes of this section, "other communication" means a
6 written or oral notification or advertisement transmitted through any
7 means.

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

10 (a) A person engaging in commercial telephone solicitation
11 where(~~(÷~~

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

15 ~~(ii) Less than sixty percent of such person's prior year's sales~~
16 ~~were made as a result of a commercial telephone solicitation as~~
17 ~~defined in this chapter. Where more than sixty percent of a seller's~~
18 ~~prior year's sales were made as a result of commercial telephone~~
19 ~~solicitations, the service bureau contracting to provide commercial~~
20 ~~telephone solicitation services to the seller shall be deemed a~~
21 ~~commercial telephone solicitor;))~~

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

24 (c) A person soliciting business solely from purchasers who have
25 previously purchased from the business enterprise for which the
26 person is calling;

27 (d) A person soliciting:

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

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

32 (iii) Who only makes the major sales presentation or arranges for
33 the major sales presentation to be made at a later face-to-face
34 meeting between the salesperson and the purchaser;

35 (e) A person selling a security which is exempt from registration
36 under RCW 21.20.310;

37 (f) A person licensed under RCW (~~(18.85.090)~~) 18.85.101 when the
38 solicited transaction is governed by that law;

39 (g) A person registered under RCW 18.27.060 when the solicited
40 transaction is governed by that law;

- 1 (h) A person licensed under RCW 48.17.150 when the solicited
2 transaction is governed by that law;
- 3 (i) Any person soliciting the sale of a franchise who is
4 registered under RCW 19.100.140;
- 5 (j) A person primarily soliciting the sale of a newspaper of
6 general circulation, a magazine or periodical, or contractual plans,
7 including book or record clubs: (i) Under which the seller provides
8 the consumer with a form which the consumer may use to instruct the
9 seller not to ship the offered merchandise; and (ii) which is
10 regulated by the federal trade commission trade regulation concerning
11 "use of negative option plans by sellers in commerce";
- 12 (k) Any supervised financial institution or parent, subsidiary,
13 or affiliate thereof. As used in this section, "supervised financial
14 institution" means any commercial bank, trust company, savings and
15 loan association, mutual savings banks, credit union, industrial loan
16 company, personal property broker, consumer finance lender,
17 commercial finance lender, or insurer, provided that the institution
18 is subject to supervision by an official or agency of this state or
19 the United States;
- 20 (l) A person soliciting the sale of a prearrangement funeral
21 service contract registered under RCW 18.39.240 and 18.39.260;
- 22 (m) A person licensed to enter into prearrangement contracts
23 under RCW 68.05.155 when acting subject to that license;
- 24 (n) A person soliciting the sale of services provided by a cable
25 television system operating under authority of a franchise or permit;
- 26 (o) A person or affiliate of a person whose business is regulated
27 by the utilities and transportation commission or the federal
28 communications commission;
- 29 (p) A person soliciting the sale of agricultural products, as
30 defined in RCW 20.01.010 where the purchaser is a business;
- 31 (q) An issuer or subsidiary of an issuer that has a class of
32 securities that is subject to section 12 of the securities exchange
33 act of 1934 (15 U.S.C. Sec. (~~781~~) 781) and that is either
34 registered or exempt from registration under paragraph (A), (B), (C),
35 (E), (F), (G), or (H) of subsection (g) of that section;
- 36 (r) A commodity broker-dealer as defined in RCW 21.30.010 and
37 registered with the commodity futures trading commission;
- 38 (s) A business-to-business sale where:
- 39 (i) The purchaser business intends to resell the property or
40 goods purchased, or

1 (ii) The purchaser business intends to use the property or goods
2 purchased in a recycling, reuse, remanufacturing or manufacturing
3 process;

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

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

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

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

12 (5) "Salesperson" means any individual employed, appointed, or
13 authorized by a commercial telephone solicitor, whether referred to
14 by the commercial telephone solicitor as an agent, representative, or
15 independent contractor, who attempts to solicit or solicits a sale on
16 behalf of the commercial telephone solicitor.

17 (6) "Service bureau" means a commercial telephone solicitor who
18 contracts with any person to provide commercial telephone
19 solicitation services.

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

22 (8) "Person" includes any individual, firm, association,
23 corporation, partnership, joint venture, sole proprietorship, or any
24 other business entity.

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

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

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

34 (12) "Unsolicited" means to initiate contact ((with a purchaser))
35 for the purpose of attempting to sell a person property, goods, or
36 services, or obtain personally identifying information or anything of
37 value, where such ((purchaser has expressed)) person provided no
38 previous express interest in purchasing, investing in, or obtaining
39 information regarding the property, goods, or services attempted to
40 be sold.

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

--- **END** ---