

SHB 1051 - H AMD 29

By Representative Leavitt

ADOPTED 02/27/2023

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

18 (a) Include a provision in RCW 80.36.390 to prohibit the
19 initiation of unwanted telephone calls to Washington telephone
20 numbers on the do not call registry maintained by the federal
21 government pursuant to the telemarketing sales rule, 16 C.F.R. Part
22 310, and related regulations; and

23 (b) Combat fraudulent or misleading caller identification.

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

26 (1) (~~(As used in this section:)~~) The definitions in this
27 subsection apply throughout this section unless the context clearly
28 requires otherwise.

29 (a) (~~(An automatic)~~) "Automatic dialing and announcing device" is
30 a (~~(device)~~) system which automatically dials telephone numbers and
31 (~~(plays)~~) transmits a recorded or artificial voice message once a
32 connection is made. A recorded or artificial message is transmitted

1 even if the recorded or artificial message goes directly to a
2 recipient's voicemail.

3 (b) "Commercial solicitation" means the unsolicited initiation of
4 a telephone ((~~conversation~~)) communication made for the purpose of
5 encouraging a person to purchase property, goods, or services, or
6 wrongfully obtaining anything of value.

7 (c)(i) "Assist in the transmission" means actions taken to
8 provide substantial assistance or support, which enables any person
9 to formulate, originate, initiate, or transmit a commercial
10 solicitation when the person providing the assistance knows or
11 consciously avoids knowing that the initiator of the commercial
12 solicitation is engaged, or intends to engage, in any practice that
13 violates chapter 19.86 RCW, the consumer protection act.

14 (ii) "Assist in the transmission" does not include any of the
15 following:

16 (A) Activities of an entity relating to the design, manufacture,
17 or distribution of any technology, product, or component that has a
18 commercially significant use other than to violate or circumvent this
19 section;

20 (B) Activities of a telecommunications provider or other entity
21 that are limited to providing access to the internet for purposes
22 excluding initiation of a telephone communication; or

23 (C) Activities of a terminating provider relating to the
24 transmission of a telephone communication.

25 (d) "Terminating provider" means a telecommunications provider
26 that provides voice services to an end user customer.

27 (2) No person may use an automatic dialing and announcing device
28 for purposes of commercial solicitation. This section applies to all
29 commercial solicitation intended to be received by telephone
30 customers within the state.

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

35 ~~(4))~~ No person may assist in the transmission of a commercial
36 solicitation described in subsection (2) of this section. In any
37 action arising out of a violation of this subsection, it shall be an
38 affirmative defense that a telecommunications provider both:

39 (a) Acted in compliance with 47 U.S.C. Sec. 227, 16 C.F.R. Part
40 310, and related regulations; and

1 (b) Implemented a reasonably effective plan to mitigate
2 origination, initiation, or transmission of a commercial solicitation
3 described in subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

2 (c) "Telephone call" means any communication made through a
3 telephone that uses a live person, artificial voice, or recorded
4 message.

5 (2)(a) For purposes of this section, each individual real estate
6 agent or insurance agent who maintains a separate list from other
7 individual real estate or insurance agents shall be treated as a
8 company or organization.

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

13 ~~((2))~~ (3) A person making a telephone solicitation must
14 identify him or herself and the company or organization on whose
15 behalf the solicitation is being made and the purpose of the call
16 within the first 30 seconds of the telephone call.

17 ~~((3))~~ (4) As used in this section, "telephone solicitor" means
18 a commercial or nonprofit company or organization engaged in
19 telephone solicitation.

20 ~~((4))~~ (5) If the telephone solicitor is requesting a donation
21 or gift of money, the telephone solicitor must ask the called party
22 whether they want to continue the call, end the call, or be removed
23 from the solicitor's telephone lists.

24 ~~((5))~~ (6) If, at any time during the telephone contact, the
25 called party states or indicates they want to end the call, the
26 telephone solicitor must end the call within 10 seconds.

27 ~~((6))~~ (7) If, at any time during the telephone contact, the
28 called party states or indicates that he or she does not want to be
29 called again by the telephone solicitor or wants to have his or her
30 name, individual telephone number, or other contact information
31 removed from the telephone lists used by the telephone solicitor:

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

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

36 (c) The telephone solicitor shall not make any additional
37 telephone solicitation of the called party at any telephone number
38 ~~((associated with that party within))~~ that the called party has
39 requested be removed from the solicitor's telephone lists for a
40 period of at least one year; and

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

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

10 ~~((8))~~ (9) No person may initiate, or cause to be initiated, a
11 telephone solicitation to a telephone number registered on the do not
12 call registry maintained by the federal government pursuant to
13 telephone consumer protection act, 47 U.S.C. Sec. 227 and related
14 regulations, as currently enacted or subsequently amended. This
15 subsection applies to all telephone solicitation intended to be
16 received by telephone customers within the state.

17 (10) It is unlawful for a person to initiate, or cause to be
18 initiated, a telephone solicitation that violates 47 U.S.C. Sec.
19 227(e)(1), as currently written or as subsequently amended or
20 interpreted by the federal government. This subsection applies to all
21 telephone solicitation intended to be received by telephone customers
22 within the state.

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

26 ~~((9))~~ (12) The attorney general may bring actions to enforce
27 compliance with this section. ~~((For the first violation by any~~
28 ~~telephone solicitor of this section, the attorney general shall~~
29 ~~notify the telephone solicitor with a letter of warning that the~~
30 ~~section has been violated.))~~ The legislature finds that the practices
31 covered by this section are matters vitally affecting the public
32 interest for the purpose of applying the consumer protection act,
33 chapter 19.86 RCW. A violation of this section is not reasonable in
34 relation to the development and preservation of business and is an
35 unfair or deceptive act in trade or commerce and an unfair method of
36 competition for the purpose of applying the consumer protection act,
37 chapter 19.86 RCW.

38 ~~((10))~~ (13) A person aggrieved by repeated violations of this
39 section may bring a civil action in superior court to enjoin future
40 violations, to recover damages, or both. The court shall award

1 damages of at least (~~one hundred dollars~~) \$1,000 for each
2 individual violation of this section. If the aggrieved person
3 prevails in a civil action under this subsection, the court shall
4 award the aggrieved person reasonable attorneys' fees and cost of the
5 suit.

6 (~~(11)~~) (14) The utilities and transportation commission shall
7 by rule ensure that telecommunications companies inform their
8 residential customers of the provisions of this section. The
9 notification may be made by (a) annual (~~inserts~~) notice in the
10 billing statements (~~mailed~~) sent to residential customers, or (b)
11 conspicuous publication of the notice in the consumer information
12 pages of local telephone directories.

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

15 (~~Unless the context requires otherwise, the~~) The definitions in
16 this section apply throughout this chapter unless the context clearly
17 requires otherwise.

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

20 (2) "Commercial telephone solicitation" means:

21 (a) An unsolicited telephone call (~~to a person initiated by a~~
22 ~~salesperson and conversation for the purpose of inducing the person~~
23 ~~to purchase or invest in property, goods, or services~~), initiated by
24 one other than a person described under subsection (3)(a) through (k)
25 of this section, for the purpose of encouraging a person to purchase
26 or invest in property, goods, or services, or wrongfully obtaining
27 anything of value;

28 (b) Other communication with a person where:

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

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

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

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

1 (d) For purposes of this section, "other communication" means a
2 written or oral notification or advertisement transmitted through any
3 means.

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

6 (a) A person engaging in commercial telephone solicitation
7 where(~~(~~

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

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

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

20 (c) A person soliciting business solely from purchasers who have
21 previously purchased from the business enterprise for which the
22 person is calling;

23 (d) A person soliciting:

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

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

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

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

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

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

37 (h) A person licensed under chapter 48.17 RCW (~~(48.17.150)~~) when
38 the solicited transaction is governed by that law;

39 (i) Any person soliciting the sale of a franchise who is
40 registered under RCW 19.100.140;

1 (j) A person primarily soliciting the sale of a newspaper of
2 general circulation, a magazine or periodical, or contractual plans,
3 including book or record clubs: (i) Under which the seller provides
4 the consumer with a form which the consumer may use to instruct the
5 seller not to ship the offered merchandise; and (ii) which is
6 regulated by the federal trade commission trade regulation concerning
7 "use of negative option plans by sellers in commerce";

8 (k) Any supervised financial institution or parent, subsidiary,
9 or affiliate thereof. As used in this section, "supervised financial
10 institution" means any commercial bank, trust company, savings and
11 loan association, mutual savings banks, credit union, industrial loan
12 company, personal property broker, consumer finance lender,
13 commercial finance lender, or insurer, provided that the institution
14 is subject to supervision by an official or agency of this state or
15 the United States;

16 (l) A person soliciting the sale of a prearrangement funeral
17 service contract registered under RCW 18.39.240 and 18.39.260;

18 (m) A person licensed to enter into prearrangement contracts
19 under RCW 68.05.155 when acting subject to that license;

20 (n) A person soliciting the sale of services provided by a cable
21 television system operating under authority of a franchise or permit;

22 (o) A person or affiliate of a person whose business is regulated
23 by the utilities and transportation commission or the federal
24 communications commission;

25 (p) A person soliciting the sale of agricultural products, as
26 defined in RCW 20.01.010 where the purchaser is a business;

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

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

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

35 (i) The purchaser business intends to resell the property or
36 goods purchased, or

37 (ii) The purchaser business intends to use the property or goods
38 purchased in a recycling, reuse, remanufacturing or manufacturing
39 process;

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

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

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

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

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

14 (6) "Service bureau" means a commercial telephone solicitor who
15 contracts with any person to provide commercial telephone
16 solicitation services.

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

19 (8) "Person" includes any individual, firm, association,
20 corporation, partnership, joint venture, sole proprietorship, or any
21 other business entity.

22 (9) "Free gift, award, or prize" means a gratuity which the
23 purchaser believes of a value equal to or greater than the value of
24 the specific product, good, or service sought to be sold to the
25 purchaser by the seller.

26 (10) (~~"Solicit"~~) "Telephone call" includes any communication
27 made through a telephone that uses a live person, artificial voice,
28 or recorded message.

29 (11) "Unsolicited" means to initiate contact ((with a purchaser))
30 for the purpose of attempting to sell a person property, goods, or
31 services, where such ((purchaser has expressed)) person provided
32 previous express interest in purchasing, investing in, or obtaining
33 information regarding the property, goods, or services attempted to
34 be sold.

35 NEW SECTION. Sec. 5. If any provision of this act or its
36 application to any person or circumstance is held invalid, the
37 remainder of the act or the application of the provision to other
38 persons or circumstances is not affected."

1 Correct the title.

EFFECT: Modifies the definition of "automatic dialing and announcing device" to mean a system which automatically dials telephone numbers and transmits a recorded or artificial voice message once a connection is made, and a recorded message is transmitted even if the recorded or artificial message goes directly to a recipient's voicemail.

Strikes the definitions for "voice communication," "established business relationship," "health care entity," "patient," "person," and "personally identifying information."

Modifies the definition of "commercial solicitation" to mean the unsolicited initiation of a telephone communication made for the purpose of encouraging a person to purchase property, goods, or services, or wrongfully obtaining anything of value.

Modifies the definition of "terminating provider" to mean a telecommunications provider that provides voice services to an end user customer.

Reinserts the codified prohibition that no person may use an automatic dialing and announcing device for purposes of commercial solicitation instead of specifically prohibiting commercial solicitation using an automatic dialing and announcing device to a telephone number registered to a Washington resident, a telephone number with a Washington area code, or a telephone number of a Washington resident or telephone number with a Washington area code on the do not call registry.

Modifies the definition of "telephone solicitation" to mean the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a person for the purpose of encouraging the person to purchase property, goods, or services, wrongfully obtaining anything of value, or soliciting donations of money, property, goods, or services.

Adds a definition of "telephone call" to mean any communication made through a telephone that uses a live person, artificial voice, or recorded message.

Requires a called party who does not want to be called again by a telephone solicitor to request that their telephone number be removed from the solicitor's telephone lists.

Removes specific prohibitions regarding telephone solicitation to a Washington resident or a telephone number with a Washington area code on the do not call registry and instead states that no person may initiate, or cause to be initiated, a telephone solicitation to a telephone number registered on the do not call registry.

Applies the prohibition to all telephone solicitation intended to be received by telephone customers within Washington.

Increases the award for damages for repeated violations from \$100 per violation to \$1,000 per violation.

Makes various language changes.

Modifies the intent section.

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