

SENATE BILL REPORT

ESHB 1497

As Reported by Senate Committee On:
Business, Financial Services & Trade, February 24, 2022

Title: An act relating to commercial telephone solicitation.

Brief Description: Concerning commercial telephone solicitation.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Mosbrucker, Chandler, Peterson, Dent, Schmick, Steele, Pollet, Eslick and Young).

Brief History: Passed House: 2/10/22, 90-5.

Committee Activity: Business, Financial Services & Trade: 2/22/22, 2/24/22 [DP].

Brief Summary of Bill

- Restricts telephone solicitation to the hours of 8:00 a.m. to 8:00 p.m.
- Requires telephone solicitors to provide identifying information within the first 30 seconds of a call, and to end the call within 10 seconds of the called party indicating they want to end the call.
- Requires telephone solicitors requesting a donation or gift of money to provide a specific list of options to the called party.
- Expands the definition of telephone solicitation to include calls to non-residential telephone customers.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: Do pass.

Signed by Senators Mullet, Chair; Hasegawa, Vice Chair; Dozier, Ranking Member; Brown, Frockt, Lovick and Wilson, L.

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.

Staff: Clinton McCarthy (786-7319)

Background: Telephone solicitation in Washington is primarily regulated by two overlapping statutes: the Telephone Solicitation Act of 1986 (TSA) and the Commercial Telephone Solicitation Regulation Act of 1989 (CTSRA). These acts contain both similar and distinct provisions.

Scope and Exceptions. *Telephone Solicitation Act.* The TSA defines "telephone solicitation" as the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services.

Telephone solicitation does not include:

- calls made in response to a request or inquiry by the called party;
- calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;
- calls limited to polling or soliciting the expression of ideas, opinions, or votes; or
- business-to-business contacts.

The TSA does not cover calls from political parties.

Commercial Telephone Solicitation Regulation Act. The CTSRA defines commercial telephone solicitation as:

- an unsolicited telephone call to a person initiated by a salesperson, and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;
- other communication with a person where a free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; a telephone call response is invited; and the salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or
- other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

Commercial telephone solicitor means any person who engages in commercial telephone solicitation, including service bureaus.

The CTSRA exempts a number of specific industries and activities, for example, isolated solicitations; calls by charities and collection agencies; the sale of certain securities, cable television, fish, and so on.

Identification Requirements. *Telephone Solicitation Act.* Within the first 30 seconds of the

call, a person making a telephone solicitation must identify themselves; the company or organization on whose behalf the solicitation is being made; and the purpose of the call.

Commercial Telephone Solicitation Regulation Act. Within the first minute of the call, a commercial telephone solicitor or salesperson must identify themselves; the company on whose behalf the solicitation is being made; and the property, goods, or services being sold.

Call Termination. *Telephone Solicitation Act.* There is no provision for call termination.

Commercial Telephone Solicitation Regulation Act. Within the first minute of the call, a commercial telephone solicitor or salesperson must terminate the call within 10 seconds if the purchaser indicates they do not wish to continue the conversation.

List Removal. *Telephone Solicitation Act.* At any point during the call, if the called party states or indicates they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor must not:

- make any additional telephone solicitation of the called party at that telephone number for at least one year; and
- sell or give the called party's name and telephone number to another company or organization.

Commercial Telephone Solicitation Regulation Act. At any point during the call, if the purchaser states or indicates they do not want to be called again or want to have their contact information removed from the solicitor's telephone lists, the solicitor must not:

- make any additional commercial telephone solicitation of the called party at that telephone number for at least one year; and
- sell or give the called party's name and telephone number to another commercial telephone solicitor.

Registration. *Telephone Solicitation Act.* There is no provision for registration.

Commercial Telephone Solicitation Regulation Act. Commercial telephone solicitors must register with the Department of Licensing to do business in Washington. Doing business includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.

Disciplinary Action. *Telephone Solicitation Act.* There is no provision for disciplinary action.

Commercial Telephone Solicitation Regulation Act. The Department of Licensing may take disciplinary action when a commercial telephone solicitor engages in unprofessional conduct under the Uniform Regulation of Business and Professions Act, or engages in any unfair or deceptive commercial telephone solicitation; places calls to a residence that will be received before 8:00 a.m. or after 9:00 p.m.; or engages in conduct to harass, intimidate, or

torment any person.

Enforcement by the Attorney General. The Attorney General may bring an action to enforce compliance in both the Telephone Solicitation Act and the Commercial Telephone Solicitation Regulation Act.

Fines and Civil Penalties. *Telephone Solicitation Act.* Violation of the identification and list removal requirements is punishable by a fine up to \$1,000 per violation.

Commercial Telephone Solicitation Regulation Act. A civil penalty of \$500 to \$2,000 must be imposed by the court for each violation.

Private Civil Actions. *Telephone Solicitation Act.* Individuals subject to repeated violations may bring a civil action to enjoin violations and recover damages, including at least \$100 per violation. A prevailing plaintiff is entitled to attorneys' fees and costs.

Commercial Telephone Solicitation Regulation Act. A person who is injured by a violation may bring an action for recovery of actual damages, attorneys' fees, and costs.

A violation is an unfair or deceptive act in trade or commerce for the purposes of the Consumer Protection Act.

Criminal Prosecution. *Telephone Solicitation Act.* There is no provision for criminal prosecution.

Commercial Telephone Solicitation Regulation Act. A knowing violation or the knowing employment of any device, scheme, or artifice to deceive in connection with an offer or sale by a commercial telephone solicitor is punishable as a misdemeanor, gross misdemeanor, or class C felony depending on the value of the transaction.

Solicitation without registration is a misdemeanor.

Summary of Bill: A telephone solicitor is defined as an entity that can be a for profit or a non-profit company or organization engaged in telephone solicitation.

Definition of a Telephone Solicitor Under the Telephone Solicitation Act. A telephone solicitor is defined as an entity that can be a for profit or a non-profit company or organization engaged in telephone solicitation.

Expanding the Definition of a Target for a Telephone Solicitation Under the Telephone Solicitation Act. The target of a telephone solicitation is expanded from a residential telephone customer to a person more generally.

Normalizing Statutes between the Commercial Telephone Solicitation Regulation Act and

the Telephone Solicitation Act. CTSRA and the TSA are amended to have the same following characteristics:

- a telephone solicitor is obligated to identify themselves and the organizations they represent within the first 30 seconds;
- a telephone solicitor must end a phone call within 10 seconds if the called party states or indicates they want to end the call;
- a telephone solicitor must promptly implement the recipient's statement or indication that they do not want to be called again or be removed from a solicitation list;
- if a recipient requests removal from a solicitor's list, they must be removed for one year; and
- a solicitor must not place a solicitation call between 8 p.m. and 8 a.m.

Violations Under the Telephone Solicitation Act. Violations of the call time restrictions or identification and opt-out, call termination, or list removal requirements are subject to a \$1,000 fine for each violation under the TSA.

Outreach. The Washington State Attorney General is directed to provide and maintain a web page informing the public of the laws and regulations that pertain to telephone solicitation.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill started in 2021. Spam calls are being made more and more. Seniors and businesses are being targeted. This bill gets closer and closer to separating the good and the bad. A concern is that it is ambiguous that text messages and calls are covered in the bill. A lot of spammers will attack and be shielded because the statute would apply to only the calls themselves. More scammers are going more and more to text messages. This statutory change is critical to protect the people of Washington. The broader and more protection you can give to the people of Washington, the better. Calls are being designed to be warnings and urgent which target our senior citizen population.

OTHER: This bill has a fatal flaw. It will legalize thousands of calls. On page one in the definition of "telephone solicitation", the word "conversations" needs to be eliminated.

Persons Testifying: PRO: Representative Gina Mosbrucker, Prime Sponsor; Peter Leon; Jim Wertheim, LawHQ PC; Adrian Bradford; Thomas Alvord, LawHQ.

OTHER: Mark Hoffman.

Persons Signed In To Testify But Not Testifying: No one.