

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1051

68th Legislature
2023 Regular Session

Passed by the House February 27, 2023
Yeas 96 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate April 5, 2023
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1051** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1051

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By House Consumer Protection & Business (originally sponsored by Representatives Leavitt, Walen, Simmons, Ryu, Goodman, Fitzgibbon, Pollet, Doglio, Orwall, Macri, Timmons, Wylie, Bronoske, Ramos, Thai, and Kloba; by request of Attorney General)

READ FIRST TIME 01/31/23.

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 personal information to
8 wrongfully obtain something of value. It is the intent of the
9 legislature to expand the scope of existing provisions in RCW
10 80.36.390, 80.36.400, and 19.158.020 regulating robocalls and
11 telephone solicitations to prohibit abusive telephone communications
12 that mislead or harm Washington 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 80.36.390 to prohibit the
21 initiation of unwanted telephone calls to Washington telephone

1 numbers on the do not call registry maintained by the federal
2 government pursuant to the telemarketing sales rule, 16 C.F.R. Part
3 310, and related regulations; and

4 (b) Combat fraudulent or misleading caller identification.

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

7 (1) (~~(As used in this section:)~~) The definitions in this
8 subsection apply throughout this section unless the context clearly
9 requires otherwise.

10 (a) (~~(An automatic)~~) "Automatic dialing and announcing device" is
11 a (~~(device)~~) system which automatically dials telephone numbers and
12 (~~(plays)~~) transmits a recorded or artificial voice message once a
13 connection is made. A recorded or artificial message is transmitted
14 even if the recorded or artificial message goes directly to a
15 recipient's voicemail.

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

20 (c)(i) "Assist in the transmission" means actions taken to
21 provide substantial assistance or support, which enables any person
22 to formulate, originate, initiate, or transmit a commercial
23 solicitation when the person providing the assistance knows or
24 consciously avoids knowing that the initiator of the commercial
25 solicitation is engaged, or intends to engage, in any practice that
26 violates chapter 19.86 RCW, the consumer protection act.

27 (ii) "Assist in the transmission" does not include any of the
28 following:

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

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

36 (C) Activities of a terminating provider relating to the
37 transmission of a telephone communication.

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

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

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

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

13 (a) Acted in compliance with 47 U.S.C. Sec. 227, 16 C.F.R. Part
14 310, and related regulations; and

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

18 (4) The legislature finds that the practices covered by this
19 section are matters vitally affecting the public interest for the
20 purpose of applying the consumer protection act, chapter 19.86 RCW. A
21 violation of this section is not reasonable in relation to the
22 development and preservation of business and is an unfair or
23 deceptive act in trade or commerce and an unfair method of
24 competition for the purpose of applying the consumer protection act,
25 chapter 19.86 RCW. In addition to all remedies available in chapter
26 19.86 RCW, a person who is injured under this section may bring a
27 civil action in the superior court to enjoin further violations and
28 shall recover actual damages or \$1,000 per violation of this section,
29 whichever is greater.

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

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

35 (1) (a) As used in this section, "telephone solicitation" means
36 the unsolicited initiation of a telephone call by a commercial or
37 nonprofit company or organization to a person ~~((and conversation))~~
38 for the purpose of encouraging the person to purchase property,

1 goods, or services, wrongfully obtaining anything of value, or
2 soliciting donations of money, property, goods, or services.

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

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

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

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

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

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

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

20 (2) (a) For purposes of this section, each individual real estate
21 agent or insurance agent who maintains a separate list from other
22 individual real estate or insurance agents shall be treated as a
23 company or organization.

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

28 ~~((2))~~ (3) A person making a telephone solicitation must
29 identify him or herself and the company or organization on whose
30 behalf the solicitation is being made and the purpose of the call
31 within the first 30 seconds of the telephone call.

32 ~~((3))~~ (4) As used in this section, "telephone solicitor" means
33 a commercial or nonprofit company or organization engaged in
34 telephone solicitation.

35 ~~((4))~~ (5) If the telephone solicitor is requesting a donation
36 or gift of money, the telephone solicitor must ask the called party
37 whether they want to continue the call, end the call, or be removed
38 from the solicitor's telephone lists.

1 ~~((+5))~~ (6) If, at any time during the telephone contact, the
2 called party states or indicates they want to end the call, the
3 telephone solicitor must end the call within 10 seconds.

4 ~~((+6))~~ (7) If, at any time during the telephone contact, the
5 called party states or indicates that he or she does not want to be
6 called again by the telephone solicitor or wants to have his or her
7 name, individual telephone number, or other contact information
8 removed from the telephone lists used by the telephone solicitor:

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

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

13 (c) The telephone solicitor shall not make any additional
14 telephone solicitation of the called party at any telephone number
15 ~~((associated with that party within))~~ that the called party has
16 requested be removed from the solicitor's telephone lists for a
17 period of at least one year; and

18 (d) The telephone solicitor shall not sell or give the called
19 party's name, telephone number, and other contact information to
20 another company or organization: PROVIDED, That the telephone
21 solicitor may return the list, including the called party's name,
22 telephone number, and other contact information to the company or
23 organization from which it received the list.

24 ~~((+7))~~ (8) A telephone solicitor shall not place calls to any
25 person which will be received before 8:00 a.m. or after 8:00 p.m. at
26 the call recipient's local time.

27 ~~((+8))~~ (9) No person may initiate, or cause to be initiated, a
28 telephone solicitation to a telephone number registered on the do not
29 call registry maintained by the federal government pursuant to
30 telephone consumer protection act, 47 U.S.C. Sec. 227 and related
31 regulations, as currently enacted or subsequently amended. This
32 subsection applies to all telephone solicitation intended to be
33 received by telephone customers within the state.

34 (10) It is unlawful for a person to initiate, or cause to be
35 initiated, a telephone solicitation that violates 47 U.S.C. Sec.
36 227(e)(1), as currently written or as subsequently amended or
37 interpreted by the federal government. This subsection applies to all
38 telephone solicitation intended to be received by telephone customers
39 within the state.

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

4 ~~((9))~~ (12) The attorney general may bring actions to enforce
5 compliance with this section. ~~((For the first violation by any~~
6 ~~telephone solicitor of this section, the attorney general shall~~
7 ~~notify the telephone solicitor with a letter of warning that the~~
8 ~~section has been violated.))~~ The legislature finds that the practices
9 covered by this section are matters vitally affecting the public
10 interest for the purpose of applying the consumer protection act,
11 chapter 19.86 RCW. A violation of this section is not reasonable in
12 relation to the development and preservation of business and is an
13 unfair or deceptive act in trade or commerce and an unfair method of
14 competition for the purpose of applying the consumer protection act,
15 chapter 19.86 RCW.

16 ~~((10))~~ (13) A person aggrieved by repeated violations of this
17 section may bring a civil action in superior court to enjoin future
18 violations, to recover damages, or both. The court shall award
19 damages of at least ~~((one hundred dollars))~~ \$1,000 for each
20 individual violation of this section. If the aggrieved person
21 prevails in a civil action under this subsection, the court shall
22 award the aggrieved person reasonable attorneys' fees and cost of the
23 suit.

24 ~~((11))~~ (14) The utilities and transportation commission shall
25 by rule ensure that telecommunications companies inform their
26 residential customers of the provisions of this section. The
27 notification may be made by (a) annual ~~((inserts))~~ notice in the
28 billing statements ~~((mailed))~~ sent to residential customers, or (b)
29 conspicuous publication of the notice in the consumer information
30 pages of local telephone directories.

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

33 ~~((Unless the context requires otherwise, the))~~ The definitions in
34 this section apply throughout this chapter unless the context clearly
35 requires otherwise.

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

38 (2) "Commercial telephone solicitation" means:

1 (a) An unsolicited telephone call (~~(to a person initiated by a~~
2 ~~salesperson and conversation for the purpose of inducing the person~~
3 ~~to purchase or invest in property, goods, or services)), initiated by
4 one other than a person described under subsection (3)(a) through (k)
5 of this section, for the purpose of encouraging a person to purchase
6 or invest in property, goods, or services, or wrongfully obtaining
7 anything of value;~~

8 (b) Other communication with a person where:

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

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

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

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

20 (d) For purposes of this section, "other communication" means a
21 written or oral notification or advertisement transmitted through any
22 means.

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

25 (a) A person engaging in commercial telephone solicitation
26 where(~~+~~

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

30 ~~(ii) Less than sixty percent of such person's prior year's sales~~
31 ~~were made as a result of a commercial telephone solicitation as~~
32 ~~defined in this chapter. Where more than sixty percent of a seller's~~
33 ~~prior year's sales were made as a result of commercial telephone~~
34 ~~solicitations, the service bureau contracting to provide commercial~~
35 ~~telephone solicitation services to the seller shall be deemed a~~
36 ~~commercial telephone solicitor;))~~

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

1 (c) A person soliciting business solely from purchasers who have
2 previously purchased from the business enterprise for which the
3 person is calling;

4 (d) A person soliciting:

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

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

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

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

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

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

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

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

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

29 (k) Any supervised financial institution or parent, subsidiary,
30 or affiliate thereof. As used in this section, "supervised financial
31 institution" means any commercial bank, trust company, savings and
32 loan association, mutual savings banks, credit union, industrial loan
33 company, personal property broker, consumer finance lender,
34 commercial finance lender, or insurer, provided that the institution
35 is subject to supervision by an official or agency of this state or
36 the United States;

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

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

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

3 (o) A person or affiliate of a person whose business is regulated
4 by the utilities and transportation commission or the federal
5 communications commission;

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

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

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

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

16 (i) The purchaser business intends to resell the property or
17 goods purchased, or

18 (ii) The purchaser business intends to use the property or goods
19 purchased in a recycling, reuse, remanufacturing or manufacturing
20 process;

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

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

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

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

29 (5) "Salesperson" means any individual employed, appointed, or
30 authorized by a commercial telephone solicitor, whether referred to
31 by the commercial telephone solicitor as an agent, representative, or
32 independent contractor, who attempts to solicit or solicits a sale on
33 behalf of the commercial telephone solicitor.

34 (6) "Service bureau" means a commercial telephone solicitor who
35 contracts with any person to provide commercial telephone
36 solicitation services.

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

1 (8) "Person" includes any individual, firm, association,
2 corporation, partnership, joint venture, sole proprietorship, or any
3 other business entity.

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

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

11 (11) "Unsolicited" means to initiate contact (~~(with a purchaser)~~)
12 for the purpose of attempting to sell a person property, goods, or
13 services, where such (~~(purchaser has expressed)~~) person provided no
14 previous express interest in purchasing, investing in, or obtaining
15 information regarding the property, goods, or services attempted to
16 be sold.

17 NEW SECTION. **Sec. 5.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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