

**INITIATIVE 961**

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 961 to the People is a true and correct copy as it was received by this office.

AN ACT Relating to telephone disclosure and privacy; adding a new chapter to Title 19 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This chapter may be known and cited as the Washington telecommunication disclosure and privacy act and establishes that any contact or call made through a residential, mobile, or personal access line is at the will and exclusive use of the person that maintains the right to that access line by prepayment, subscription, or any other method where the service, device, or use of the device is not free of charge.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Access line" means service access to a two-way communication system by a provider to a device that is routed by a telephone number, internet address, or other unique identification number or code. The service is provided on a subscription or prepayment basis.

(2) "Affirmative authorization" means an express authorization by a consumer that further contact by the solicitor is acceptable.

(3) "Call" means a contact by any electric, electronic, radio, or other electronic means through an access line or in a method that represents it is made through an access line and may include voice, text message, electronic mail, transmission of a file, facsimile, display of a picture or graphic style image, or any other means not contemplated on the adoption of this chapter where communication occurs between a sender and receiver. This includes any means that is stored for retrieval at a later date.

(4) "Caller identification service" means a service or device designed to provide the user of the service or device with the telephone number and true identification of the source of an incoming call. This includes the true origination address and routing of internet information.

(5) "Commission" means the Washington utilities and transportation commission.

(6) "Consumer" means the person, customer, or consumer receiving a call. This term is interchangeable with receiver.

(7) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes.

(8) "Database" means the information from which the provider and commission compiles as the no call list and recording of complaints for violations of this chapter.

(9) "Device" means a telephone, computer, cell phone, pager, facsimile device, or any other electronic device intended to be used for two-way communication and includes software that may enable other types of hardware to function as a two-way communication device.

(10) "Established business relationship" means a prior or existing relationship of a person formed by a voluntary two-way communication between a person and a consumer, regardless of whether consideration is exchanged, regarding consumer goods or services offered by the person, that has not been terminated by either party.

(11) "Exclusive use" means the point at which a provider directs a call to an access line that activates a device and causes the consumer to physically respond in order to answer, listen to, view, erase, delete, or terminate a contact.

(12) "Person" means any person or automated system including any business entity whether for profit or nonprofit, such as, but not limited to a partnership, corporation, limited liability corporation, charity, politician, or religious organization.

(13) "Provider" means a person that provides telephone or other electronic service or system to a means of communication on a prepaid or subscription basis to a receiver when that service is not free of charge.

(14) "Receiver" means the person, customer, or consumer receiving a call. This term is interchangeable with consumer.

(15) "Service" means the same as access line or access to a provider's service.

(16) "Solicitor" means a person who makes or causes to be made a solicitation call.

(17) "Solicitation" means an offer or information provided to a person or requested from a person, such as but not limited to products, election votes, surveys, information, research, donations, including political, religious, or charitable purposes, whether the solicitor's or receiver's gain is real or imagined. A solicitation also includes an offer for payment or any consideration to a receiver for those same items.

(18) "Telephone call" means a telephone call or other transmission which is made to a person including:

- (a) A call made by an automated telephone dialing system;
- (b) A transmission to a facsimile recording device; and
- (c) A call to any mobile device or telephone number.

(19) "Telephone number" means an identifying number or other code that identifies an access line.

(20) "Upsell" means the utilization of an established business relationship for a call for other solicitation purposes.

NEW SECTION. **Sec. 3.** (1) For the purposes of this chapter, a solicitation call is an unsolicited call made to any personal, mobile, or residential access line.

(2) This chapter does not apply to a call made:

(a) For solicitation purposes when an affirmative authorization has been signed or initialed allowing further contact. The affirmative authorization statement shall be a separate declaration signed or initialed by the consumer that is in easily read type size and understandable at a sixth grade level that the solicitor has permission for further contact. The statement must also include an expiration date. The authorization is not transferable to a 3rd party;

(b) That is conducted in the normal course of business by any federal, state, county, or local government;

(c) By a consumer that is the result of a solicitation by a seller or solicitor or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;

(d) In connection with an established business relationship regarding the completion of a specific order or purchase that has not expired and does not include an upsell. However, an upsell may be accomplished if:

(i) The receiver is asked if he or she desires to hear an offer; and

(ii) The receiver does not decline; and

(iii) The business complies with the caller identification requirements set forth in section 6 of this chapter.

(e) A business relationship that has been terminated, if the call is made before the earlier of the date the first Washington no call list in which the consumer's telephone number appears is published or one year after the date of termination;

(f) Between a solicitor and a business, unless the business informed the solicitor that the business does not wish to receive solicitation calls from the solicitor;

(g) To collect a debt or in connection with an existing debt or contract for which the payment or performance has not been completed at the time of the contact if the caller complies with the caller identification requirements set forth in section 6 of this chapter; or

(h) Between friends and family for nonsolicitation purposes.

NEW SECTION.     **Sec. 4.**     In this chapter, a person makes a solicitation call if the person effects a call on the person's own behalf or on behalf of another person and the caller:

(1) Becomes entitled to receive money or other property or any other consideration real or imagined from a sale or transfer of a consumer good; or

(2) Uses any information solicited during a call for any purpose where the solicitor will gain money, property, or any other consideration real or imagined from a third party; or

(3) Is any other person making a call for any solicitation purpose.

NEW SECTION.     **Sec. 5.**     A caller must immediately cease a solicitation and any future solicitations upon the receiver's verbal, written, or electronic request.

NEW SECTION.     **Sec. 6.**     (1) A business making any call or any person making a solicitation call shall not block the true identity of the person or the telephone number from which the call is made to evade devices designed to identify callers.

(2) A business or solicitor shall not:

(a) Provide false or misleading caller identification information;

(b) Interfere with or circumvent the capability of a caller identification service to access or provide to the recipient of the solicitation or business call any information regarding the call that the service is capable of providing;

(c) Fail to provide caller identification information in a manner that is accessible by a caller identification service, if the person has capability to provide the information in that manner; or

(d) Provide false or misleading internet routing information in the case of internet solicitations.

(3) For purposes of this section, the use of telecommunications service or equipment that is incapable of transmitting caller identification information does not of itself constitute interference with or circumvention of the capability of a caller identification service to access or provide the information.

NEW SECTION.     **Sec. 7.**     (1) Except as provided by subsection (3) of this section, the commission shall receive and investigate complaints concerning violations of section 6 of this act and may assess an administrative penalty not to exceed two thousand dollars for each violation. If the complaint alleges that the person violating section 6 of this act is a provider or is wholly or partially owned by a provider, the commission has exclusive jurisdiction over the violation alleged in the complaint, notwithstanding subsection (2) of this section.

(2) Except as provided by subsection (3) of this section, the attorney general may investigate violations of section 6 of this act and file civil enforcement actions seeking injunctive relief, attorneys' fees, and civil penalties in an amount not to exceed two thousand dollars for each violation. If the court finds the defendant

willfully or knowingly violated section 6 of this act, the court may increase the amount of the civil penalties to an amount not to exceed six thousand dollars for each violation. A violation of section 6 of this act is subject to enforcement action by the attorney general's consumer protection division.

(3) The venue for an action under section 6 of this act is in Thurston county.

NEW SECTION. **Sec. 8.** (1) The commission shall establish and provide for the operation of a database to be known as the Washington No Call List to compile a list of names, zip codes, and telephone numbers of consumers in this state who object to receiving calls under the provisions of this chapter within one hundred eighty days of the adoption of this chapter.

(2) The commission may contract with another Washington state agency or a private vendor to maintain the Washington no call list if:

(a) The private vendor has maintained a no call list database containing the names and telephone numbers of consumers who have previously requested to be added to a no call list; and

(b) The contract requires the vendor to publish the Washington No Call List in an electronic format to any solicitor who agrees to use the Washington no call list only for the purposes of updating the no call list of that solicitor by including in its list persons with whom the solicitor does not have an established business relationship.

(3) The Washington no call list is a combined list consisting of the name and telephone numbers of each consumer in this state who has requested to be on that list and of each person in the portion of the national do not call registry maintained by the United States government that relates to this state. The Washington no call list shall be updated and published on January 1st, April 1st, July 1st, and October 1st of each year. An entry on the Washington no call list expires on the fifth anniversary of the date the entry is first published on the list. An entry may be renewed for successive five-year periods. The telephone number of the consumer on the Washington no call list may be deleted from the list on the consumer's written request or if the telephone number of the consumer is changed. The commission may charge a person a reasonable amount not to exceed five dollars for a request to place a telephone number on the Washington no call list or to renew an entry on the list, except that the commission

shall provide for a method of placement or renewal of an entry by use of the internet at no charge. The commission shall develop and make available an internet web site at which a person may request that a telephone number be placed on the Washington no call list and shall provide a toll-free telephone number and a mailing address that persons may call or write to obtain a copy of a form to request placement of a telephone number on the Washington no call list. A private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost shall include in the directory a prominently displayed internet web site address, toll-free number, and mailing address established by the commission through which a person may request placement of a telephone number on the Washington no call list or order a copy of the form to make this request.

(4) The commission or its designee may provide information on the Washington no call list to the administrator of the national do not call registry and may allow placement of the names and telephone numbers contained on the Washington no call list in the national do not call registry.

(5) A vendor must provide the information in the no call list to the commission or attorney general upon request.

(6) Any person on the no call list must be provided the expiration date of their listing upon request and be allowed to renew the listing at any time through internet or phone access.

NEW SECTION. **Sec. 9.** The commission shall establish a standard dial code within ninety days of the adoption of this chapter that will automatically report a call received by any residential, mobile, or personal access line that is in violation of this chapter. The dial code shall:

(1) Consist of a character \* or # followed by three digits.

(2) Be adopted by each provider of any access line utilized by a person in the state of Washington within one hundred eighty days of the adoption of this chapter.

(3) Enable the receiver to enter the code within three minutes of a call and the provider shall capture the call origination information, including caller identification information, the receiver's phone number, time of day, and length of call.

(a) A business with a published access line number shall not be entitled to use this reporting system.

(b) A provider shall establish an operational reporting system as described in this section within one hundred eighty days of the adoption of this chapter.

(c) The commission is authorized to assess an administrative fine of one thousand dollars per day for the failure of a provider to adopt the requirements of this section.

NEW SECTION.     **Sec. 10.**     (1) The commission shall maintain an unsolicited calls database for the purposes of enforcement of this chapter. Each provider for an access line in the state of Washington shall receive information reported by a person utilizing the dial code to report an unsolicited call.

(2) The provider shall immediately or for each twenty-four hour period beginning at midnight report the information to the database established by the commission, and be made available to the attorney general upon request.

(3) The database information shall be maintained by the commission for a period of two years from the date the call was originated and shall be maintained in a manner that is sortable by automated means as to the source, receiving number, and date of call.

(4) The commission may contract with another state agency or private vendor to maintain this database.

NEW SECTION.     **Sec. 11.**     No person may knowingly cause a false unsolicited call report to be filed. A person knowingly filing a false report is subject to a twenty-five dollar fine for each occurrence.

NEW SECTION.     **Sec. 12.**     A provider may charge a consumer a fee of one dollar and fifty cents each time a call is reported by the automated reporting dial code up to a maximum of fifteen dollars per month per access line. To charge a fee, the provider must furnish an immediate confirmation by voice or other message that the report has been filed and the information reported to the commission must be provided on the statement of charges to the consumer.

NEW SECTION.     **Sec. 13.**     (1) A solicitor shall not make a solicitation call to a telephone number that has been published on the Washington no call list more than sixty days after the telephone number appears on the then current list.



(2) Except as provided by subsection (4) of this section, the commission shall receive and investigate complaints concerning violations of sections 8 through 15 of this act and may assess an administrative penalty not to exceed two thousand dollars for each violation. If the complaint alleges that the person violating sections 8 through 15 of this act is a provider or is wholly or partially owned by a provider, the commission has exclusive jurisdiction, notwithstanding subsection (3) of this section, over the violation alleged in the complaint, except that this does not affect the right of a consumer to bring an action under subsection (5) of this section.

(3) As provided in subsection (4) of this section, the attorney general shall receive complaints from the public at any time and shall establish a schedule to perform a review of complaints submitted and listed in the automated violation reporting database that is required under this chapter for violations on a monthly, quarterly, or annual basis. The attorney general may investigate violations of sections 8 through 15 of this act and file civil enforcement actions seeking injunctive relief, attorneys' fees, and civil penalties in an amount not to exceed two thousand dollars for each violation. If the court finds the defendant willfully or knowingly violated sections 8 through 15 of this act, the court may increase the amount of the civil penalties to an amount not to exceed six thousand dollars for each violation. A violation of sections 8 through 15 of this act is subject to enforcement action by the attorney general's consumer protection division.

(4) The venue for an action based on a violation of sections 8 through 15 of this act is in the county where the solicitation call was made or received, or may be brought by any person or the attorney general or commission in Thurston county.

(5) For purposes of sections 8 through 15 of this act, a consumer on the Washington no call list is presumed to be adversely affected by a solicitor who calls the consumer more than once, and may bring a civil action based on the second or a subsequent violation of sections 8 through 15 of this act if:

(a) The consumer utilizes the reporting dial code system listed in section 9 of this act and has notified the solicitor of the alleged violation and not later than the thirtieth day after the date of the call files a verified complaint setting forth the relevant facts surrounding the violation with the commission or attorney general.

(b) The commission or attorney general receiving the complaint fails to initiate an administrative action or a civil enforcement action, as appropriate, against the solicitor named in the complaint before the one hundred twenty-first day after the date the complaint is filed.

(6) For purposes of sections 8 through 15 of this act, the attorney general may also presume that a consumer on the Washington no call list is adversely affected by a solicitor who demonstrates a habit of making one-time calls to consumers that are listed on the no call list.

(7) If the consumer brings an action based on violation of this section and the court finds that the defendant willfully or knowingly violated this section, the court may award damages in an amount not to exceed five hundred dollars for each violation in addition to a real damage award of any attorneys' fees, court costs, and three times the current rate of minimum wage in the state of Washington for a reasonable number of hours of time spent in filing the complaint and time spent attending court proceedings as part of that complaint.

NEW SECTION. **Sec. 14.** (1) The commission may adopt rules to administer sections 8 through 15 of this act. The commission shall adopt rules:

(a) Requiring each local provider in this state to inform its customers of the requirements of sections 8 through 15 of this act on an annual basis through inserts in billing statements mailed to customers, notification in a customer's electronic bill, notification printed on a customer's paper bill, notification sent free of charge by messaging service to a customer's mobile telephone number, and conspicuous publication of the notice in the consumer information pages of local telephone directories or other appropriate notice to consumers;

(b) Providing that a solicitation call made to a number on the Washington no call list is not a violation of section 9 of this act if the solicitation call is an isolated occurrence made by a person who has in place adequate procedures to comply with sections 8 through 15 of this act; and

(c) Providing for:

(i) The dissemination of the Washington no call lists in formats, including electronic formats, commonly used by persons making solicitation calls; and

(ii) A fee for each such distribution not to exceed seventy-five dollars.

(2) In addition to requiring the notice under subsection (1)(a) of this section, the commission may conduct educational programs designed to inform the public of their rights and solicitors of their obligations under sections 8 through 15 of this act.

NEW SECTION. **Sec. 15.** On request of the commission, the department of information services shall assist the commission in administering this chapter.

NEW SECTION. **Sec. 16.** Before December 31st of each year, the commission shall submit a report to the governor and the report shall be posted on the Washington state internet access site. The report must contain for the one-year period ending August 31st of the year of the report:

(1) A statement of the number of telephone numbers included on the Washington no call list, the number of no call lists distributed, and the amount collected for those requests and for distribution;

(2) A list of complaints received by the commission concerning activities regulated by this chapter, itemized by type and number; and

(3) A summary of any enforcement efforts made by the commission.

NEW SECTION. **Sec. 17.** Before December 31st of each year, the attorney general shall submit a report to the governor and the report shall be posted on the Washington state internet access site. The report must contain for the one-year period ending August 31st of the year of the report:

(1) A list of complaints received by the attorney general concerning activities regulated by this chapter, itemized by type and number; and

(2) A summary of any enforcement efforts made by the attorney general.

NEW SECTION. **Sec. 18.** The amount of an administrative penalty imposed under this chapter shall be based on:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) The history of previous violations;

- (3) The amount necessary to deter a future violation;
- (4) Efforts to correct the violation; and
- (5) Any other matter that justice may require.

NEW SECTION.   **Sec. 19.**   The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Washington rules of civil procedure for a party who cannot afford to file security for costs, subject to the right to contest the affidavit as provided by those rules.

NEW SECTION.   **Sec. 20.**   A proceeding to impose the penalty is considered to be a contested case under the Washington administrative procedure act, chapter 34.05 RCW.

NEW SECTION.   **Sec. 21.**   This chapter shall be liberally construed and applied to promote its underlying purpose to protect the public against unwanted solicitation and false, misleading, abusive, or deceptive practices from any solicitor.

NEW SECTION.   **Sec. 22.**   An attempted waiver of a provision of this chapter is void and any word, part, or section of this chapter found to be unconstitutional shall not void any other part or section of this chapter.

NEW SECTION.   **Sec. 23.**   Sections 1 through 22 of this act constitute a new chapter in Title 19 RCW.

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