

Washington Becomes Latest State to Tighten Restrictions on Telemarketing

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While claims under the Telephone Consumer Protection Act have become more difficult for plaintiffs to assert successfully following the U.S. Supreme Court's decision in *Facebook v. Duguid*,¹ several states, such as Florida, have taken the initiative to enhance their own telemarketing restrictions. Washington has become the latest state to join that trend. House Bill (H.B.) 1497,² which goes into effect on 9 June 2022, revises portions of the state's existing telemarketing laws to, among other things, broaden the scope of how the law defines "telephone solicitation" and the reach of a do-not-call request, impose new obligations on callers requesting a donation or gift, and tighten the requirements for callers to identify themselves.

H.B. 1497 revises the definition of "telephone solicitation." Under the existing law, "telephone solicitation" covers unsolicited telephone calls to a "residential telephone customer."³ H.B. 1497 expands the definition, however, to cover unsolicited calls to "a person," not just a residential telephone customer.⁴ This likely would include calls to cell phones, as well as individuals who answer a call but might not otherwise be an account holder for the phone number.

H.B. 1497 also enhances the reach of a do-not-call request. While the existing law prohibits callers, upon receiving a do-not-call request, from calling that number for a period of one year,⁵ the revised law will prohibit any such calls to "any telephone number associated with that party" who made the do-not-call request for a period of one year.⁶ The statute does not define what it means for a telephone number to be "associated with" a person. For example, if someone runs a sole proprietorship business under a fictitious name and has a phone number in the name of the business, it is not clear if that phone number would be "associated with" the individual. In any event, businesses engaged in telephone solicitation in Washington will need to closely monitor their records to identify whether more than one phone number is plausibly "associated with" a single person.

In addition to expanding the scope of the state's telemarketing laws, H.B. 1497 also imposes a new obligation on telephone solicitors requesting a donation or a gift to affirmatively ask the called party if he or she "want[s] to continue the call, end the call, or be removed from the solicitor's telephone lists."⁷ Further, H.B. 1497 amends the state's unfair business practices law to require all telephone solicitors to identify themselves, the companies on whose behalf they are calling, and the purpose of the call within the first 30 seconds of the call,⁸ which cuts the existing law's one-minute timeframe in half.⁹

These revisions to the existing law in Washington may make fertile ground for claims by opening the door to new potential plaintiffs and additional avenues to state claims, such as calls made to phone numbers “associated with” a person who asked not to be called. Failing to comply with any of these new requirements may expose companies engaged in telephone solicitation to civil damages of at least US\$100 per violation, plus attorneys’ fees and costs.¹⁰ As we have seen in Florida, businesses can expect that litigation under the revised Washington statute will increase, and therefore should take necessary steps to ensure that procedures are in place to comply with these new requirements if they are engaged in telemarketing within that state.

FOOTNOTES

[1] Facebook v. Duguid, 141 S.Ct. 1163 (2021).

[2] <https://lawfilesexult.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1497-S.SL.pdf>.

[3] RCW 80.36.390(1).

[4] H.B. 1497, § 1(1).

[5] RCW 80.36.390(3)(a).

[6] H.B. 1497, § 6(c).

[7] H.B. 1497, § 1(4).

[8] H.B. 1497, § 2(4), § 3(1).

[9] RCW 19.158.110(1).

[10] H.B. 1497, § 1(1).

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