

HOUSE BILL REPORT

ESB 6427

*As Passed House
March 5, 1992*

Title: An act relating to unauthorized mailings.

Brief Description: Declaring when goods mailed without authority become gifts.

Sponsor(s): Senators Murray and Skratek.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 27, 1992, DP;
Passed House, March 5, 1992, 97-0.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass.* Signed by 10 members:
Representatives Heavey, Chair; G. Cole, Vice Chair; Fuhrman,
Ranking Minority Member; Lisk, Assistant Ranking Minority
Member; Franklin; Jones; R. King; O'Brien; Vance; and
Wilson.

Staff: Andrea McNamara (786-5793) or Jim Kelley (786-7166).

Background: State law allows a person who receives unsolicited goods through the mail to keep the goods as a gift without an obligation to return or pay for them. "Unsolicited" is not specifically defined. Services that are rendered without request are not covered by the law.

Unsolicited goods are being marketed to customers by means other than the mails, and both goods and services are being marketed to customers through a practice known as "negative option" selling. Negative option selling refers to the practice of providing and charging a customer for a service or product when that person fails to take action to refuse the delivery, for instance, by failing to return a response card.

This type of unsolicited marketing and negative option marketing can confuse consumers into paying for goods or services they did not order and do not want.

Summary of Bill: Unsolicited goods or services may be accepted, used, or disposed of by the person receiving them without any obligation to pay for or return them. They are gifts only unless the person receiving them specifically requested, in an affirmative manner, the receipt of the goods or services according to the terms under which they are being offered. Failure to respond to an invitation to purchase the goods or services does not make the gifts solicited.

A violation of the act is a violation of the Consumer Protection Act.

Fiscal Note: Not requested.

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

Testimony For: Negative option marketing is not currently illegal and is increasingly being used to market goods and services, forcing people to pay for things they didn't order. This type of marketing is unfair because it puts the burden on the consumer to take affirmative action to avoid being charged. Negative option marketing takes advantage of many classes of citizens, including busy people, sick people, the elderly, the handicapped, and people with trouble reading and understanding the marketing offers. Many citizens are surprised that this practice is not already illegal and are angered by this type of business practice. Some direct marketers favor clear guidelines on acceptable marketing practices and disapprove of the deceptive practices engaged in by unscrupulous businesses. The federal trade commission's long-standing regulation of certain types of negative option marketing contracts takes precedence over state laws, but this law is needed to prevent all the unfair negative option sales practices not in compliance with federal law.

Testimony Against: An amendment specifically allowing negative option marketing that is in compliance with the federal trade commission guidelines is needed to clarify the bill.

Witnesses: Senator Patty Murray (prime sponsor); Paula Selis, Assistant Attorney General, Consumer Protection Division (in favor); Rowan Hinds, Mayor of Issaquah (in favor); Mary Montgomery, citizen/consumer (in favor); Joe Daniels, Direct Marketing Association (in favor, with amendment); Jack Parin, citizen/consumer (in favor); Forrest Butler, citizen/consumer (in favor); and Donn Charnley, former Washington Representative and Senator (in favor).