

# HOUSE BILL ANALYSIS

## HB 2752

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**Title:** An act relating to electronic mail.

**Brief Description:** Prohibiting unsolicited electronic mail.

**Sponsors:** Representatives Bush, Crouse, Gardner, Cairnes, Dyer, Mulliken, Morris, Linville, Reams, Romero, Smith, McDonald, Ogden, Dickerson, Butler, O'Brien, Ballasiotes, Talcott and Appelwick; by request of Attorney General.

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### HOUSE COMMITTEE ON

*Meeting Date:* January 28, 1998

*Bill Analysis Prepared by:* Linda Brooks (786-7153)

**Background:** The Internet is an international network of computer networks, interconnecting computers ranging from simple personal computers to sophisticated mainframes. It is a dynamic, open-ended aggregation of computer networks, rather than a physical entity. Internet users can access or provide a wide variety of information, purchase goods and services, and communicate with other users electronically.

As a network of interconnected computers, the Internet also provides a new forum for advertising. Electronic mail messages sent over a computer network may advertise real property, goods, or services for sale or lease. In some cases a computer user may request information about the property, goods, or services. In other cases the computer user may receive the advertisements as unsolicited electronic mail messages.

The Attorney General's office reports that it received 322 complaints over a five-month period in 1997 about unsolicited electronic messages. Although some of the unsolicited messages were non-commercial in nature, many of the messages were commercial advertisements.

The sending of electronic messages uses resources. Messages must be stored, utilizing memory space on each recipient's computer. An unsolicited message may also delay the receipt of an expected message. Also, just as traffic slows on a freeway as it becomes more congested with cars without any corresponding increase in traffic lanes or alternate routes, there are concerns that traffic over a computer

network may slow as the network becomes more congested with electronic messages without any corresponding increase in capacity.

Many consumers connect to the Internet through interactive computer services that charge fees for time spent utilizing a dial-up connection to their computer server. Via the interactive computer service's server, individual consumers are able to reach the Internet. As traffic over an interactive computer service's server increases, the service provider must add capacity; otherwise, electronic traffic over the server slows.

In 1990 the Legislature prohibited the sending of unsolicited facsimile messages unless the sender has the recipient's prior consent. Also, unsolicited facsimile messages may be sent to persons with whom the sender has had a prior business relationship. If the recipient has notified the sender not to send any further messages, however, then the sender must desist. Failure to comply with this law is a violation of the Consumer Protection Act. A recipient of an unsolicited facsimile message is entitled to bring a civil action against the sender for the greater of \$500 or actual damages.

**Summary:** The Legislature finds that the volume of unsolicited electronic mail has grown exponentially. Unsolicited commercial electronic mail messages often impose costs on recipients, interactive computer services, other businesses and nonprofit organizations. The Legislature further finds that advertisers may reach electronic mail users by less intrusive means.

The sending of an unsolicited electronic mail message from a computer located in Washington or to a Washington resident is generally prohibited. Unsolicited messages may still be sent, however, under the following allowable conditions:

- 1) All recipients have given their consent;
- 2) Purpose of the message is to collect on an existing obligation; or
- 3) Recipients are existing customers who have previously purchased or leased goods or services from the sender.

Nonetheless, in the event that an existing customer provides written or electronic notice that the customer does not wish to receive further unsolicited messages, then the sender must desist. Also, senders may not initiate an unsolicited electronic mail message, if the sender knows or reasonably should know that any of the recipients is a governmental entity, unless that entity has consented to the receipt of the electronic mail message.

When a sender mails an electronic message advertising real property, goods, or services under the allowable conditions, the first word in the subject line of the message must be the term, "advertisement." In the body of the message, the sender must also prominently identify his or her legal name, mailing address, true electronic mail address, physical address, area code and telephone number, and the date and time that the message was sent.

A person who does not comply with the allowable conditions for sending unsolicited electronic mail messages advertising real property, goods, or services from a computer located in Washington or to a Washington resident violates the Consumer Protection Act. When a violation has occurred, any recipient of an unsolicited message may bring a civil action against the sender for the greater of \$500 or actual damages. An interactive computer service provider may bring an action against the sender for the greater of \$1,000 or actual damages. A plaintiff bringing a civil suit against the sender of an unsolicited message may recover the costs of bringing the action, including attorney's fees. The court may also treble a plaintiff's damage award up to a maximum of \$10,000.

In addition to seeking civil remedies, an interactive computer service provider may also block the receipt or transmission through its service of any electronic mail which it reasonably believes is, or will be sent, in violation of the prohibition against unsolicited messages advertising real property, goods, or services. An interactive computer service provider cannot be held liable for any action voluntarily taken in good faith to block the receipt of unsolicited messages.

***Appropriation:*** None.

***Fiscal Note:*** Not requested.

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