

HOUSE BILL REPORT

HB 2007

As Reported by House Committee On:
Technology, Telecommunications & Energy

Title: An act relating to commercial text messages.

Brief Description: Prohibiting unsolicited commercial text messages.

Sponsors: Representatives Nixon, Ruderman, Bush, Dickerson and Hudgins.

Brief History:

Committee Activity:

Technology, Telecommunications & Energy: 2/28/03, 3/3/03 [DPS].

Brief Summary of Substitute Bill

- Prohibits businesses in the state of Washington from sending commercial electronic text messages to a telephone number assigned to a Washington resident for cellular or page service equipped with short message capability.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Anderson, Blake, Bush, DeBolt, Delvin, Hudgins, Kirby, McMahan, Romero, Tom, Wallace and Wood.

Staff: Pam Madson (786-7166).

Background:

Commercial messages that are sent by telephone or by the Internet are subject to state and federal regulations. Text messages sent by a fax machine are also regulated. However, text messages sent to cellular phones or pagers do not fall within current regulations and restrictions.

State telemarketing laws prohibit unfair or deceptive commercial telephone solicitations. Commercial telephone solicitors must not make any calls before 8 a.m. or after 9 p.m.,

and a commercial solicitor may not engage in any conduct that intimidates or harasses a person in connection with the telephone call. Commercial solicitors must also be registered with the Department of Licensing prior to doing business in the state. Federal rules restrict the use of the telephone network for unsolicited commercial messages including faxed messages.

Commercial electronic mail (e-mail) messages that contain deceptive or false information may not be sent from a computer located in Washington or to an e-mail address held by a Washington resident. A violation occurs when the message: (1) Uses a third party's Internet domain name without permission of the third party, (2) misrepresents any information in identifying the point of origin or transmission path of the message, or (3) puts false or misleading information in the subject line of the message. A commercial electronic mail message is an e-mail message sent for the purpose of promoting real property, goods, or services for sale or lease.

A recipient of a commercial electronic mail message or the Internet service provider may bring a civil action against a sender who violates the laws relating to commercial electronic mail messages. In the case of a suit brought by a recipient, the penalty is the greater of \$500 or actual damages incurred. In the case of a lawsuit brought by an Internet service provider, the penalty is the greater of \$1,000 or actual damages. A violation of laws relating to commercial electronic mail messages is also a violation of the Consumer Protection Act and may be enforced by the Attorney General. A violation of the Consumer Protection Act may result in a civil fine, treble damages, court costs, and attorneys' fees.

Summary of Substitute Bill:

Commercial electronic text messages may not be sent by businesses in the state of Washington to a telephone number assigned to a Washington resident for cellular or page service equipped with short message capability. A commercial electronic text message is a message sent to promote real property, goods, or services for sale or lease. An electronic text message is a message sent to a cell phone or a pager equipped with short message service. The message can be initiated as a short message or as an e-mail message.

Certain messages are exempt from this prohibition. A cellular or pager service provider may send commercial text messages to existing subscribers at no cost to the subscriber unless the subscriber has indicated they are unwilling to receive these text messages. A sender of an unsolicited commercial text message may send messages to a subscriber only if the subscriber has consented in advance to receive these messages.

A cellular phone or pager service provider may not be held liable for acting merely as an intermediary between the sender and the recipient of a commercial electronic text

message sent in violation of the law, but may be liable if they knowingly assist in transmitting messages sent in violation of the law.

A violation of the commercial electronic text messaging law provides penalties similar to those for commercial e-mail messages. A recipient of a commercial electronic text message or the cellular or pager service provider may bring a civil action against a sender who violates the laws relating to commercial electronic text messages. In the case of a suit brought by a recipient, the penalty is the greater of \$500 or actual damages incurred. In the case of a lawsuit brought by a cellular or pager service provider, the penalty is the greater of \$1,000 or actual damages. A violation of laws relating to commercial electronic text messages is also a violation of the Consumer Protection Act and may be enforced by the Attorney General. A violation of the Consumer Protection Act may result in a civil fine, treble damages, court costs, and attorneys' fees.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the cellular or pager service provider is not liable for merely acting as an intermediary but may be liable if they provide assistance knowing that messages are being sent in violation of the law. It allows a cellular or pager service provider to send commercial text messages to existing subscribers at no cost to the subscriber unless the subscriber has indicated they are unwilling to receive these text messages. A sender of an unsolicited commercial text message is required to obtain a subscriber's consent in advance of sending a commercial text message.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: When a person receives unwanted e-mail messages on their computer, they can press delete. It's different on wireless devices. You pay to receive the messages. Fax messages have been banned because of the cost to the recipient. Unsolicited commercial text messages also cost in terms of missed messages because the memory in these devices is not large enough to handle a flood of unwanted text messages. Some exceptions for carriers offering cellular service should include allowing subscribers to opt out as long as the message being sent is free. Otherwise, the recipient should be able to opt in and not receive commercial messages unless they agree to receive them. It makes sense to set limits before this practice gets out of hand. It is important to retain the liability for carriers that know people are using the service to violate the law and who provide substantial assistance to them.

Testimony Against: None.

Testified: Representative Nixon, prime sponsor; Kathleen Swan; Dave Horn, Office of the Attorney General; Laura Altschul, T-Mobile; Mike Woodin, AT&T Wireless; and Steve Gano, Cingular Wireless.