

# HOUSE BILL REPORT

## SHB 1185

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### As Amended by the Senate

**Title:** An act relating to use and disclosure of personal wireless numbers.

**Brief Description:** Prohibiting disclosure of personal wireless numbers.

**Sponsors:** By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morrell, Haler, Morris, Tom, Green, Jarrett, Clibborn, Moeller, Upthegrove, Pettigrew, Chase, Flannigan, Cody, Newhouse, Wallace, Hasegawa, Quall, Linville, Simpson, B. Sullivan, Sells, Lantz, Schual-Berke, Appleton, Campbell, Darneille, Dickerson, Armstrong, Kenney, Condotta, Kagi, Ormsby, Hunt, McIntire, Haigh and Kilmer).

### Brief History:

#### Committee Activity:

Technology, Energy & Communications: 2/3/05, 2/17/05 [DPS].

#### Floor Activity:

Passed House: 3/9/05, 96-0.

Senate Amended.

Passed Senate: 4/13/05, 45-0.

### Brief Summary of Substitute Bill

- Requires a wireless telephone company to obtain a subscriber's express, opt-in consent, either in writing or electronically, before publishing their wireless phone number in a directory.

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## HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; Kilmer, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Ericks, Hudgins, Nixon, P. Sullivan, Sump, Takko and Wallace.

**Staff:** Kara Durbin (786-7133).

### Background:

In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA), which specifically prohibits the use of automatic dialers or pre-recorded messages to make telemarketing calls to telephones.

In 2003, the Federal Communications Commission (FCC) revised its rules implementing the TCPA and established a national Do-Not-Call Registry, which allows individuals to place their home and wireless phone numbers in the registry. Under the Do-Not-Call Registry, telemarketers are required to search the registry every three months and to avoid calling individuals who have included their number in the registry. Washington does not maintain its own do not call list, but Washington residents may register for the Do-Not-Call registry.

Washington law prohibits the sending of unsolicited commercial electronic text messages to wireless phones or pagers. It does not, however, prohibit telemarketers from making unsolicited calls to wireless phones.

Currently, 4-1-1 directory service is not available for wireless service. Existing law does not restrict wireless telephone companies from including a subscriber's wireless phone number in a public directory.

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### **Summary of Substitute Bill:**

Wireless telephone companies must obtain express opt-in consent from a subscriber before publishing their wireless phone number in a directory. Consent may be obtained in writing or electronically, and a receipt must be provided to the subscriber. In obtaining consent, the provider must disclose to the subscriber that he or she bears the responsibility for paying for any additional cost incurred as the result of receiving unsolicited calls.

A subscriber may revoke his or her consent at any time. If the subscriber revokes his or her consent, the telephone company must comply with the subscriber's request within a reasonable period of time, not to exceed 60 days. In addition, the subscriber may not be charged for choosing not to be listed in the directory.

Non-consensual disclosure of a subscriber's wireless phone number is permissible under certain, limited circumstances:

- to law enforcement, fire protection, public health, or city or county emergency service planning agencies for purposes of responding to a 911 call or communicating imminent threat to life or property;
- to a sales agent for the limited purpose of billing and customer service;
- through a lawful process under state or federal law;
- to a telephone company to facilitate service between service areas;
- to a telephone company for billing purposes;
- to a telephone company to transfer a telephone number from one provider to a new provider; and
- to the Washington Utilities and Transportation Commission (WUTC) pursuant to its jurisdiction and control over telephone companies.

An aggrieved person may bring a civil action against a telephone company who violates the laws relating to disclosure of wireless phone numbers. The court shall award damages of at

least \$500 for each individual violation. If the aggrieved person prevails in a civil action, the court shall also award reasonable attorneys' fees and cost of the suit. The Attorney General may also bring an enforcement action under this act.

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**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment removes the private right of action, which allowed an aggrieved person to bring a civil action against a radio communications service company who improperly publishes an individual's cell phone number without his or her consent. The amendment also increases the civil penalty from \$500 to \$50,000 per violation. In addition, the bill as amended by the Senate requires that consent be obtained through either a separate screen or web page that has the sole purpose of authorizing a radio communications service company to include the subscriber's phone number in a publicly available directory assistance data base.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (In support) Most wireless phone customers do not want a wireless directory. This prohibition on disclosure of phone numbers is necessary because wireless companies can change their policies at any time. Many service contracts contain a provision that allows wireless companies to use its customer's name, address, and phone number for listing. The wireless industry has a history of poor customer service. We should not rely on their promise not to share this information. Some wireless companies have chosen not to provide a wireless directory because of privacy concerns.

(With concerns) We are concerned that this bill might prohibit sharing of wireless phone numbers between the sales agent and the service provider. This might take away options for individuals to list their wireless numbers in other directories. We are concerned about public disclosure provisions because the Public Disclosure Act only applies to public entities.

**Testimony Against:** The WUTC should not be given oversight or the power to promulgate rules. Prefer that any restrictions placed upon a wireless directory be more similar to California's law. This law isn't necessary because wireless companies won't give out a person's number without their permission. It would be bad business to do otherwise. None of the information will be published. A person's phone number would only be included if they consented to it at the time of sale. There will be no charge to be in the directory, nor will there be a charge not to be in the directory. A patchwork of regulations will only drive up the cost of wireless service.

**Persons Testifying:** (In support) Representative Morrell, prime sponsor; Lauren Moughon, American Association of Retired People of Washington; Robert Pregulman, Washington Public Interest Research Group; and Cliff Webster, Verizon Wireless.

(With concerns) Mark Johnson, Washington Retail Association; and Rowland Thompson, Allied Daily Newspapers.

(Opposed) Steve Gano, Cingular Wireless; and Russell Sarazen, T-Mobile USA.

**Persons Signed In To Testify But Not Testifying:** None.