

2SHB 2479 - S COMM AMD

By Committee on Consumer Protection & Housing

ADOPTED 03/07/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the right to
4 privacy is a personal and fundamental right protected by Article I,
5 section 7 of the state Constitution. The legislature also finds that,
6 in the vast majority of cases, subscribers pay for both incoming and
7 outgoing calls, and that subscribers purchase cell phone service with
8 an expectation that their numbers will not be made public. Therefore,
9 the legislature recognizes that a subscriber's cell phone number should
10 be kept private, unless that subscriber knowingly provides their
11 express, opt-in consent to have that number made available in a public
12 directory.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.250 RCW
14 to read as follows:

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1) "Directory provider" means any person in the business of
18 marketing, selling, or sharing the phone number of any subscriber for
19 commercial purposes.

20 (2) "Radio communications service company" has the same meaning as
21 in RCW 80.04.010.

22 (3) "Reverse phone number search services" means a service that
23 provides the name of a subscriber associated with a phone number when
24 the phone number is supplied.

25 (4) "Subscriber" means a person who resides in the state of
26 Washington and subscribes to radio communications services, radio
27 paging, or cellular communications service.

28 (5) "Wireless phone number" means a phone number unique to the

1 subscriber that permits the subscriber to receive radio communications,
2 radio paging, or cellular communications from others.

3 **Sec. 3.** RCW 19.250.010 and 2005 c 322 s 1 are each amended to read
4 as follows:

5 (1) A radio communications service company(~~(, as defined in RCW~~
6 ~~80.04.010,)) or any direct or indirect affiliate or agent of a~~
7 ~~((provider)) radio communications service company shall not include the~~
8 wireless phone number of any subscriber for inclusion in any directory
9 of any form, nor shall it sell the contents of any directory database,
10 without first obtaining the express, opt-in consent of that subscriber.
11 The subscriber's consent must be obtained either in writing or
12 electronically, and a receipt must be provided to the subscriber. The
13 consent shall be a separate document or located on a separate screen or
14 web page that has the sole purpose of authorizing a radio
15 communications service company to include the subscriber's wireless
16 phone number in a publicly available directory assistance database.

17 (2) In obtaining the subscriber's consent, the ((provider)) radio
18 communications service company or direct or indirect affiliate or agent
19 of a radio communications service company shall unambiguously disclose
20 that, by consenting, the subscriber agrees to ((have)) the following:

21 (a) That the subscriber's wireless phone number may be sold or
22 licensed as part of a list of subscribers and that the wireless phone
23 number may be included in a publicly available directory assistance
24 database(~~(. The provider must also disclose that by consenting to be~~
25 included in the directory,));

26 (b) That the subscriber may incur additional charges for receiving
27 unsolicited calls or text messages; and

28 (c) That the subscriber's express, opt-in consent will be construed
29 as consent for the subsequent publication of the wireless phone number
30 to and by third parties in other directories or databases.

31 ~~((2) A subscriber who provides express consent pursuant to~~
32 ~~subsection (1) of this section may revoke that consent at any time. A~~
33 ~~radio communications service company shall comply with the subscriber's~~
34 ~~request to opt out within a reasonable period of time, not to exceed~~
35 ~~sixty days.~~

36 ~~(3) A subscriber shall not be charged for opting not to be listed~~
37 ~~in the directory.~~

1 ~~(4) This section does not apply to the provision of telephone~~
2 ~~numbers, for the purposes indicated, to:~~

3 ~~(a) Any law enforcement agency, fire protection agency, public~~
4 ~~health agency, public environmental health agency, city or county~~
5 ~~emergency services planning agency, or private for profit corporation~~
6 ~~operating under contract with, and at the direction of, one or more of~~
7 ~~these agencies, for the exclusive purpose of responding to a 911 call~~
8 ~~or communicating an imminent threat to life or property. Information~~
9 ~~or records provided to a private for profit corporation pursuant to (b)~~
10 ~~of this subsection shall be held in confidence by that corporation and~~
11 ~~by any individual employed by or associated with that corporation.~~
12 ~~Such information or records shall not be open to examination for any~~
13 ~~purpose not directly connected with the administration of the services~~
14 ~~specified in this subsection;~~

15 ~~(b) A lawful process issued under state or federal law;~~

16 ~~(c) A telecommunications company providing service between service~~
17 ~~areas for the provision of telephone services to the subscriber between~~
18 ~~service areas, or to third parties for the limited purpose of providing~~
19 ~~billing services;~~

20 ~~(d) A telecommunications company to effectuate a customer's request~~
21 ~~to transfer the customer's assigned telephone number from the~~
22 ~~customer's existing provider of telecommunications services to a new~~
23 ~~provider of telecommunications services;~~

24 ~~(e) The utilities and transportation commission pursuant to its~~
25 ~~jurisdiction and control over telecommunications companies; and~~

26 ~~(f) A sales agent to provide the subscriber's cell phone numbers to~~
27 ~~the cellular provider for the limited purpose of billing and customer~~
28 ~~service.~~

29 ~~(5) Every knowing violation of this section is punishable by a fine~~
30 ~~of up to fifty thousand dollars for each violation.~~

31 ~~(6) The attorney general may bring actions to enforce compliance~~
32 ~~with this section. For the first violation by any company or~~
33 ~~organization of this section, the attorney general may notify the~~
34 ~~company with a letter of warning that the section has been violated.~~

35 ~~(7) No telecommunications company, nor any official or employee of~~
36 ~~a telecommunications company, shall be subject to criminal or civil~~
37 ~~liability for the release of customer information as authorized by this~~
38 ~~section.))~~

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.250 RCW
2 to read as follows:

3 (1) A directory provider shall not include any phone number that
4 belongs to a Washington state resident in any directory of any form, or
5 sell the contents of any directory database, without first undertaking
6 a reasonable ongoing investigation as to whether the phone number is a
7 wireless phone number. An investigation under this section is presumed
8 reasonable if the directory provider compares the phone number at least
9 every thirty days against: (a) A commercially available list of
10 central office code assignment records offered through the North
11 American numbering plan administration or other similar service; or (b)
12 a commercially available list of intermodal ports of telephone numbers
13 between wireline-to-wireless ports and wireless-to-wireline ports. A
14 directory provider also has a duty to continually use up-to-date,
15 commercially available technology when conducting its investigation of
16 a phone number. If an investigation reveals that the phone number is
17 a wireless phone number, the directory provider shall not include the
18 number in any directory of any form, or sell the contents of any
19 directory database without first obtaining the subscriber's express,
20 opt-in consent. The subscriber's consent must be obtained either in
21 writing or electronically, and a receipt must be provided to the
22 subscriber. The consent must be a separate document or located on a
23 separate screen or web page that has the sole purpose of authorizing a
24 directory provider to include the subscriber's wireless phone number in
25 a publicly available directory assistance database.

26 (2) In obtaining the subscriber's consent, the directory provider
27 shall unambiguously disclose that, by consenting, the subscriber agrees
28 to the following:

29 (a) That the subscriber's wireless phone number may be sold or
30 licensed as part of a list of subscribers and that the wireless phone
31 number may be included in a publicly available directory assistance
32 database;

33 (b) That the subscriber may incur additional charges for receiving
34 unsolicited calls or text messages; and

35 (c) That the subscriber's express, opt-in consent will be construed
36 as consent for the subsequent publication of the wireless phone number
37 to and by third parties in other directories or databases.

1 (3) This section does not preclude a directory provider from
2 providing a reverse phone number search service. However, a subscriber
3 whose wireless phone number is contained in a reverse phone number
4 search service may utilize the opt-out provisions set forth in section
5 5 of this act.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.250 RCW
7 to read as follows:

8 (1) A subscriber who provides express, opt-in consent under RCW
9 19.250.010 and section 4 of this act may revoke that consent at any
10 time. A radio communications service company and a directory provider
11 shall comply with the subscriber's request to opt out within a
12 reasonable period of time, not to exceed sixty days for printed
13 directories and not to exceed thirty days for online directories.

14 (2) At the subscriber's request, a provider of a reverse phone
15 number search service must allow a subscriber to perform a reverse
16 phone number search free of charge to determine whether the
17 subscriber's wireless phone number is listed in the reverse phone
18 number search service. If the subscriber finds that his or her
19 wireless phone number is contained in the reverse phone number search
20 service, the subscriber may opt out of having his or her wireless phone
21 number included in the reverse phone number search service at any time.
22 The provider of the reverse phone number search service must comply
23 with the subscriber's request to opt out within a reasonable period of
24 time, not to exceed thirty days.

25 (3) A subscriber shall not be charged for opting out of having his
26 or her wireless phone number listed in a directory or reverse phone
27 number search service.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.250 RCW
29 to read as follows:

30 The legislature finds that allowing a subscriber to opt out of a
31 reverse phone number search service vitally affects the public interest
32 for the purpose of applying chapter 19.86 RCW. A violation of section
33 5 of this act by a provider of a reverse phone number search service is
34 not reasonable in relation to the development and preservation of
35 business and is an unfair or deceptive act in trade or commerce and an

1 unfair method of competition for the purpose of applying chapter 19.86
2 RCW.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.250 RCW
4 to read as follows:

5 (1) Every knowing violation of RCW 19.250.010 is punishable by a
6 fine of not less than two thousand dollars and no more than fifty
7 thousand dollars for each violation. Including a wireless phone number
8 in a directory without a subscriber's express, opt-in consent pursuant
9 to section 4 of this act is a violation of this chapter and is
10 punishable by a fine of up to fifty thousand dollars unless the
11 directory provider first conducted a reasonable investigation as
12 required in section 4 of this act and was unable to determine if the
13 published number was a wireless phone number.

14 (2) The attorney general may bring actions to enforce compliance
15 with this section. For the first violation by any company,
16 organization, or person under this chapter, the attorney general may
17 notify the company, organization, or person with a letter of warning
18 that this chapter has been violated.

19 (3) A telecommunications company or directory provider, or any
20 official or employee of a telecommunications company or directory
21 provider, is not subject to criminal or civil liability for the release
22 of customer information as authorized by this chapter.

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.250 RCW
24 to read as follows:

25 (1) A radio communications service company or a directory provider,
26 who has maintained a directory before the effective date of this
27 section, must within thirty days either:

28 (a) Secure the express, opt-in consent of each subscriber listed in
29 the directory as specified in RCW 19.250.010 or section 4 of this act;
30 or

31 (b) Remove the wireless phone numbers of any subscribers who have
32 not provided their express, opt-in consent.

33 (2) This section does not apply to the following:

34 (a) A directory provider that has undertaken a reasonable
35 investigation pursuant to section 4 of this act and is unable to
36 determine whether the phone number is a wireless phone number;

1 (b) A directory provider that publishes a subscriber's wireless
2 phone number in a directory that is obtained directly from a radio
3 communications service company and that radio communications service
4 company has obtained the required express, opt-in consent for including
5 in any directory the subscriber's wireless phone number as specified in
6 RCW 19.250.010;

7 (c) A person that publishes a subscriber's wireless phone number in
8 a directory where the subscriber pays a fee to have the number
9 published for commercial purposes; and

10 (d) A person that publishes a subscriber's wireless phone number
11 that was ported from listed wireline service to wireless service within
12 the previous fifteen months.

13 (3) This section does not preclude a directory provider from
14 providing a reverse phone number search service. However, a subscriber
15 whose wireless phone number is contained in a reverse phone number
16 search service may utilize the opt-out provisions set forth in section
17 5 of this act.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.250 RCW
19 to read as follows:

20 This chapter does not apply to the provision of wireless phone
21 numbers, for the purposes indicated, to:

22 (1) Any law enforcement agency, fire protection agency, public
23 health agency, public environmental health agency, city or county
24 emergency services planning agency, or private for-profit corporation
25 operating under contract with, and at the direction of, one or more of
26 these agencies, for the exclusive purpose of responding to a 911 call
27 or communicating an imminent threat to life or property. Information
28 or records provided to a private for-profit corporation pursuant to
29 subsection (2) of this section must be held in confidence by that
30 corporation and by any individual employed by or associated with that
31 corporation. Such information or records are not open to examination
32 for any purpose not directly connected with the administration of the
33 services specified in this subsection;

34 (2) A lawful process issued under state or federal law;

35 (3) A telecommunications company providing service between service
36 areas for the provision of telephone services to the subscriber between

1 service areas, or to third parties for the limited purpose of providing
2 billing services;

3 (4) A telecommunications company to effectuate a customer's request
4 to transfer the customer's assigned telephone number from the
5 customer's existing provider of telecommunications services to a new
6 provider of telecommunications services;

7 (5) The utilities and transportation commission pursuant to its
8 jurisdiction and control over telecommunications companies;

9 (6) A sales agent to provide the subscriber's wireless phone
10 numbers to the radio communications service company for the limited
11 purpose of billing and customer service;

12 (7) A directory provider that has undertaken a reasonable
13 investigation pursuant to section 4 of this act and is unable to
14 determine whether the phone number is a wireless phone number;

15 (8) A directory provider that publishes a subscriber's wireless
16 phone number in a directory that is obtained directly from a radio
17 communications service company and that radio communications service
18 company has obtained the required express, opt-in consent for including
19 in any directory the subscriber's wireless phone number as specified in
20 RCW 19.250.010;

21 (9) A person that publishes a subscriber's wireless phone number in
22 a directory where the subscriber pays a fee to have the number
23 published for commercial purposes;

24 (10) A person that publishes a subscriber's wireless phone number
25 that was ported from listed wireline service to wireless service within
26 the previous fifteen months; and

27 (11) A consumer reporting agency as defined in RCW 19.182.010 for
28 use as a unique identifier of a consumer in a consumer report as
29 defined in RCW 19.182.010."

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30 On page 1, line 1 of the title, after "numbers;" strike the

1 remainder of the title and insert "amending RCW 19.250.010; adding new
2 sections to chapter 19.250 RCW; creating a new section; and prescribing
3 penalties."

EFFECT: Directory providers may not include a Washington resident's phone number in a directory until the directory provider has conducted a reasonable ongoing investigation into whether the number is a wireless phone number.

An investigation is presumed reasonable if the directory provider compares the phone number against a commercially available list of wireless numbers or ported numbers at least every 30 days.

The directory provider has an obligation to use continually updated technology that is used for the investigation.

A directory provider may only include a wireless number in a directory if either: (1) The owner of the number has opted in; or (2) the directory provider undertook a reasonable investigation and was unable to determine whether the number was a wireless number.

Reverse search providers must allow a consumer a free search to determine whether his or her wireless number is in their database and consumers may opt out of appearing in a reverse search directory.

A violation of the reverse search provisions is a per se CPA violation.

Clarifies that a directory provider may not be held civilly or criminally liable for publishing a wireless number as authorized by this act.

Adds definitions and terms for clarity.

Restructures the bill for clarity.

--- END ---