

HOUSE BILL REPORT

2SHB 2479

As Passed Legislature

Title: An act relating to disclosure of wireless numbers.

Brief Description: Requiring subscribers' consent to disclosure of wireless phone numbers.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Morrell, Bailey, Cody, Pedersen, Appleton, Sells, Lantz, Hasegawa, Ormsby, Conway, Condotta, Hurst, McIntire, Roberts, Kenney, Haigh, Schual-Berke, Campbell, VanDeWege, Rolfes, Kagi, Chase, Lias, Simpson, Barlow, Ericks, Green, Kelley and McDonald).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/16/08, 1/22/08 [DPS];
Appropriations: 1/30/08, 1/31/08 [DP2S(w/o sub TEC)].

Floor Activity:

Passed House: 2/7/08, 92-3.
Senate Amended.
Passed Senate: 3/7/08, 48-0.
House Concurred.
Passed House: 3/10/08, 94-0.
Passed Legislature.

Brief Summary of Second Substitute Bill

- Requires directory providers to undertake an investigation to determine whether a phone number is a wireless phone number before including the phone number in a directory.
- Requires providers of reverse phone number search services to allow a subscriber to perform a search for free to determine whether the subscriber's phone number is contained in the directory.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives McCoy, Chair; Eddy, Vice Chair; Hudgins, Hurst, Kelley, Morris, Takko and Van De Wege.

Minority Report: Without recommendation. Signed by 4 members: Representatives Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Hankins and Herrera.

Staff: Kara Durbin (786-7133).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 22 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Kagi, Kenney, Kessler, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, Sullivan and Walsh.

Minority Report: Do not pass. Signed by 8 members: Representatives Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Hunter, Ross and Schmick.

Staff: Owen Rowe (786-7391).

Background:

In 2005 the Legislature passed Substitute House Bill 1185 which prohibited wireless telephone companies from publishing a subscriber's wireless phone number in a directory without first obtaining the subscriber's express, opt-in consent. Consent must be obtained in writing or electronically, and a receipt must be provided to the subscriber. The subscriber may revoke his or her consent at any time, and the company must comply with the subscriber's request within a reasonable period of time. In addition, the subscriber may not be charged for choosing not to be listed in the directory.

These restrictions were limited to wireless telephone companies and did not restrict third parties from including a subscriber's wireless phone number in a public directory.

Summary of Second Substitute Bill:

The restrictions on including wireless phone numbers in a directory are extended to cover "directory providers." A directory provider is defined as any person in the business of marketing, selling, or sharing the phone number of any subscriber for commercial purposes.

Reasonable Investigation. Before including any phone number in a directory, a directory provider must undertake an ongoing, reasonable investigation to determine whether the number is a wireless number. A directory provider is presumed to have undertaken a reasonable investigation 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 also must use up-to-date, available technology when conducting its investigation.

If the investigation reveals that the number is a wireless phone number, the directory provider may not include the number in a directory, unless the subscriber of the wireless phone number has given his or her express, opt-in consent or unless an exception applies. Providers of reverse lookup services are exempt from these opt-in requirements.

Pre-existing Directories. A directory provider that has maintained a directory before the effective date of this act must within 30 days either: (1) secure the express, opt-in consent of each subscriber in the directory; or (2) remove the wireless phone numbers of any subscribers who have not provided their express, opt-in consent. These restrictions do not apply to the following: (1) a directory provider that has conducted a reasonable investigation and is unable to determine whether the number is a wireless number; (2) a person who publishes a wireless phone number in a directory where the subscriber pays a fee to have the number published for commercial purposes; (3) a person who publishes a wireless phone number in a directory that is obtained directly from a radio communications service company where the radio communications service company has already obtained express, opt-in consent; (4) a person who publishes a subscriber's phone number that was ported from listed wireline service to wireless service within the previous 15 months; and (5) providers of reverse phone number search services.

Reverse Phone Number Search Services. Providers of reverse phone number search services must allow a subscriber to perform a reverse phone number search at no cost to determine whether the subscriber's wireless number is contained in the providers directory or database.

Subscribers may opt-out of having their wireless number included in a reverse phone number search service at any time. A violation of these provisions is a per se violation of the Consumer Protection Act.

Penalties. If a directory provider includes a wireless phone number in a directory without the subscriber's express opt-in consent it may be fined up to \$50,000 for violating the act. However, a directory provider has not violated the act if it includes a wireless number in a directory after it undertook a reasonable investigation and was unable to determine whether the number was a wireless number.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony: (Technology, Energy & Communications)

(In support) A person's private wireless number should be kept private. When we passed the original legislation in 2005, we did not anticipate that a third party could compile wireless

phone numbers from other sources and then sell those phone numbers. We do not want domestic violence victims or seniors to have their phone numbers exploited.

(In support with amendment) We supported the legislation in 2005 and believe the same standard should apply to third parties. We support this bill, provided that amendatory language is offered to cover phone numbers that have been published in the yellow pages or phone numbers that have already been included in a wireless company's directory.

(With concerns) Our company does not sell cell phone numbers, but we do deliver products on cell phones and personal digital assistants (PDAs). Our customers sign for service and provide consent at that time, but not in the same format that is prescribed in existing law.

(Opposed) Our company focuses on providing protection and safety services. We are not against regulation in this area, but we do oppose this bill. Our system is used frequently by parents to look up an unknown phone number or learn more information about a potential nanny. Some customers use our system to track down old friends. We do not sell our phone numbers to other companies. Our data comes from a variety of public record sources. This is a very complex issue and we want to be part of the solution.

Staff Summary of Public Testimony: (Appropriations)

(In support) This is an important bill for consumers of wireless telephones. It maintains the privacy of wireless telephone numbers, and it gives consumers the ability to opt-out of a published directory. The second substitute bill would expand consumer protection compliance to companies that are compiling directories, not just wireless telephone companies. The bill clarifies that when a consumer moves a telephone number from a land-line to a wireless telephone service there is an option to opt-out of the number being listed in a directory. This bill came about because consumers were being called on cell phones by telemarketers. Recognizing this as an issue for wireless telephone consumers, our company developed a product that instead of sharing a name and number, provides area based information from where the call is made. We appreciate the comprehensive look the committee is taking of this issue.

(With concerns) Telemarketing to wireless telephones is already illegal using automated dialers. Much of this information is already in the public domain. The Attorney General may be underestimating the fiscal impact of this bill. Due to interest in the media and public concern there may be additional litigation on this issue that could cost the state more than anticipated. This bill could have drastic impacts for certain companies that rely on this information and could cause companies to move out of state, thereby causing a loss of tax revenue. Another difficulty with this bill is there is an inability to differentiate between a land-line and a wireless telephone number. This bill is targeted at a couple of businesses in Washington and the committee should be careful when targeting businesses with employees in the state.

(Opposed) None.

Persons Testifying: (Technology, Energy & Communications) (In support) Representative Morrell, prime sponsor.

(In support with amendment) Dan Youmans, AT&T.

(With concerns) Scott Hazelgrove, Yahoo!

(Opposed) Ed Petersen, Intelius and Ryan Pennington, MWW Group.

Persons Testifying: (Appropriations) (In support) Lisa Erwin and Kathryn McLeod, Office of the Attorney General; and Scott Weller, Cequent.

(With concerns) Ryan Pennington, Intelius; and Lew McMurrin, Washington Software Alliance.

Persons Signed In To Testify But Not Testifying: (Technology, Energy & Communications) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.