

SENATE BILL REPORT

ESHB 2274

As Passed Senate, March 6, 2026

Title: An act relating to modifying the Washington commercial electronic mail act.

Brief Description: Modifying the Washington commercial electronic mail act.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Springer, McClintock and Bernbaum).

Brief History: Passed House: 2/16/26, 86-11.

Committee Activity: Business, Trade & Economic Development: 2/19/26, 2/25/26 [DP, w/oRec].

Floor Activity: Passed Senate: 3/6/26, 43-5.

Brief Summary of Bill

- Requires the sender of a commercial email to have knowledge that the subject line is considered false or misleading to be a violation of the Commercial Electronic Mail Act.
- Decreases the statutory damages for a recipient of a prohibited commercial email or text message to the greater of \$100 or actual damages.

SENATE COMMITTEE ON BUSINESS, TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Kauffman, Chair; Dozier, Ranking Member; Fortunato, Hasegawa, Lovick, Stanford and Wilson, J..

Minority Report: That it be referred without recommendation.

Signed by Senator McCune.

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

Staff: William Bridges (786-7312)

Background: Commercial Electronic Mail Act. Enacted in 1998, the Commercial Electronic Mail Act (CEMA) regulates commercial email. A commercial email is one that is sent for the purpose of promoting real property, goods, or services for sale or lease. It is illegal under CEMA for a person to send, conspire with another to send, or assist in the transmission of a commercial email from a computer in Washington or to an email address that the sender knows, or has reason to know, is held by a Washington resident that:

- uses a third party's internet domain name without permission;
- misrepresents or obscures the point of origin or transmission path; or
- contains a false or misleading subject line.

Businesses are also prohibited from sending a commercial text message to a cell phone or pager unless the text message was sent to a subscriber who has clearly and affirmatively consented in advance to receive text messages or the text message is sent by a cellular or pager service to an existing subscriber at no cost to the subscriber.

Enforcement. A recipient of a prohibited commercial email or commercial text message may seek statutory damages of \$500, or actual damages, whichever is greater. The recipient may bring an action under the Consumer Protection Act (CPA).

Consumer Protection Act. The CPA allows a person injured by an unfair or deceptive practice to bring a private cause of action for actual damages, injunctive relief, reasonable attorney's fees, and treble damages. The Office of the Attorney General may investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Summary of Bill: Narrowing the Application of the Commercial Electronic Mail Act. In order for a commercial email subject line to be considered false or misleading under CEMA, the subject line must, based on the person's actual knowledge or knowledge fairly implied on the basis of objective circumstances, contain false or misleading information.

Decreasing Statutory Damages. Statutory damages to a recipient of a prohibited commercial email or commercial text message are decreased to \$100, or actual damages, whichever is greater. Lawsuits filed on or after the effective date are subject to the provisions, regardless of when the conduct occurred.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The bill arose out of a recent court case regarding CEMA, a law enacted in 1998 when people were using dial-up modems and being charged to access their electronic mail accounts. From the enactment of the law through June 2025, there were only eight CEMA lawsuits against retailers. Since June there have been over 100 CEMA lawsuits. This is because the Washington Supreme Court ruled in June that the falsity of a commercial email was determined by the subject line, not the body of the email. This was not the legislative intent. The bill is the result of extensive negotiations between trial lawyers and retailers to reach a temporary compromise with an agreement to continue working over the interim to develop a permanent solution. The Attorney General is neutral on the bill. The compromise is designed to lessen the impact on small retailers.

Communities are stronger when retailers operate under clear and predictable rules. This compromise bill does not dismantle CEMA or weaken consumer protections. The bill keeps intact the ability to sue under the Consumer Protection Act. The bill addresses proportionality and modernization, and courts maintain the authority to address deceptive conduct. A 1998 statute should not dictate 2026 digital commerce without thoughtful review. Current court decision has resulted in many lawsuits, relying on statutory damages untethered from allegations of actual harm. The bill is a measured reset, narrower than the original Senate companion bill.

Stakeholders have engaged in productive discussions to develop the current bill as a temporary step for a more comprehensive solution. Consumer advocates continue to believe the recent court interpretation of CEMA is critical to protect consumers but recognize a solution is needed to protect small retailers from inadvertently violating CEMA. Focusing on knowingly false subject lines addresses the actions on the bad actors using mass emails they know or should know are false or misleading. There is an expectation that additional work will occur over the interim to further refine the damages under CEMA.

OTHER: The bill is being considered under a false sense of urgency. The bill reduces the statutory damages for commercial text messages, which will lead to an increase in bulk commercial text messages because the damages currently deter such actions by businesses.

Persons Testifying: PRO: Representative Larry Springer, Prime Sponsor; Beth Terrell, Board Chair, NW Consumer Law Center; Crystal Leatherman, Washington Retail Association.

OTHER: Joe Wright, HKM Employment Attorneys, LLP.

Persons Signed In To Testify But Not Testifying: No one.