

HOUSE BILL REPORT

SHB 1816

As Passed Legislature

Title: An act relating to changing provisions related to wireless phone numbers used by directory providers.

Brief Description: Regarding wireless phone numbers used by directory providers.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morrell, Bailey, Eddy, Rodne, Crouse and Hudgins).

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/11/09, 2/16/09 [DPS].

Floor Activity:

Passed House: 3/3/09, 97-0.

Senate Amended.

Passed Senate: 4/13/09, 45-0.

House Concurred.

Passed House: 4/20/09, 91-1.

Passed Legislature.

Brief Summary of Substitute Bill

- Provides that wireless telephone companies and directory providers must remove a subscriber's wireless phone number from a directory upon request.
- Exempts certain uses of wireless phone numbers from the act, including: use by law enforcement when carrying out official duties; use in comprehensive reports or legal records; and uses permitted under the Fair Credit Reporting Act or the Gramm-Leach-Bliley Act.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives McCoy, Chair; Crouse, Ranking Minority Member; Halder, Assistant Ranking Minority Member; Carlyle, Condotta, Eddy, Finn, Hasegawa, Herrera, Hudgins, Jacks, McCune, Morris, Takko and Van De Wege.

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.

Staff: Kara Durbin (786-7133)

Background:

In 2005 the Legislature enacted a provision that restricted wireless telephone companies from publishing a subscriber's wireless phone number in a directory without first obtaining the subscriber's opt-in consent. Subscribers may not be charged for choosing not to be listed in a 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 directory.

In 2008 similar restrictions were extended to directory providers. Directory providers may not include a Washington resident's phone number in a directory of any form without first undertaking a reasonable investigation as to whether that phone number is a wireless phone number. An investigation is presumed to be reasonable if the directory provider compares the phone number every 30 days against either: (1) a commercially available list of central office code assignment records offered through the North American Numbering Plan (NANP) or other similar service; or (2) a commercially available list of intermodal ports of telephone numbers. If an investigation reveals that a phone number is a wireless phone number, the directory provider cannot include the number in a directory without first obtaining the subscriber's opt-in consent.

A provider of a reverse phone number search service must allow a subscriber to perform a reverse phone number search free of charge to determine whether the subscriber's wireless phone number is listed. If the subscriber's wireless phone number is listed in a reverse phone number search service, the subscriber may opt-out of having their number included in the reverse phone number search service. The subscriber cannot be charged for opting out of having their wireless phone number listed.

Any violation of these reverse phone number search service provisions is a violation of the Consumer Protection Act.

Any provider of a directory maintained before June 12, 2008, must secure opt-in consent from each subscriber listed in the directory or remove the wireless phone numbers of any subscribers who have not provided opt-in consent. This requirement does not apply to:

- a directory provider if it cannot be determined upon reasonable investigation whether the phone number is a wireless phone number;
- a directory provider that has obtained the number from a wireless telephone company that already secured opt-in consent from the subscriber; or
- a person that publishes a subscriber's wireless phone number that was ported from listed wireline service to wireless service within the previous 15 months.

The Attorney General may bring an action to enforce compliance with any of these provisions. The Attorney General may send a warning letter for a first violation.

A wireless telephone company that lists a wireless phone number in a directory without obtaining the subscriber's opt-in consent is punishable by a fine of at least \$2,000, but no more than \$50,000 for each violation.

A directory provider that lists a wireless phone number in a directory without obtaining the subscriber's opt-in consent is punishable by a fine of up to \$50,000, unless a reasonable investigation was conducted and the directory provider was unable to determine whether the phone number was a wireless phone number.

Summary of Substitute Bill:

Directory providers and wireless telephone companies must remove a subscriber's wireless phone number from a directory upon request. The wireless phone number must be removed within a reasonable period of time, not to exceed 60 days for printed directories and 30 days for online directories. Failure to remove a wireless phone number within a reasonable period of time is punishable by a fine of up to \$50,000.

The prohibitions on disclosure of wireless phone numbers do not apply to use of phone numbers pursuant to the Fair Credit Reporting Act or the Gramm-Leach-Bliley Act, or to phone numbers in comprehensive reports or legal records when the record is not altered from its original form. The prohibition on disclosure of wireless phone numbers also does not apply when the number is provided to, or maintained by, a law enforcement agency, fire protection agency, public health agency, public environmental agency, or emergency services planning agency, when carrying out official duties.

Provisions requiring directory provider to secure opt-in consent for directories in existence before June 12, 2008, are repealed.

The term "directory" is defined.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Wireless phone numbers are more prevalent than ever before. It is hard to come up with a workable solution that protects privacy. After much consideration, I decided to pursue an opt-out model instead. Last year's law was too narrow for law enforcement purposes. The proposed substitute bill restores some of the exemptions that were needed. It is important that we protect individuals who want their wireless phone number removed from a directory. We support removal of the database search and the opt-in requirements. This approach is much simpler.

(Opposed) Our businesses provide services to locate fugitives, witnesses, organ donors, and other beneficial uses. It is very difficult for large database operators to scan documents and try to take wireless phone numbers out of those documents when they need to stay whole. We would like to see the bill exclude public records when obtained and given out in

substantially the same format. Our business is currently suppressing all wireless phone numbers associated with Washington residents in order to comply with the directory provider requirements under existing law. Using those phone numbers is important to be able to confirm identify for fraud protection. Verification has become even more important with the portability of phone numbers.

Persons Testifying: (In support) Representative Morrell, prime sponsor; and Bryce Yaclon, Whitepages.com.

(Opposed) Eric Ellman, Consumer Data Industry Association; Terry Jennings, Reed Elsevier; Eric Rosenberg, TransUnion; Murray Johnson, Experian; and Steve Gano, AT&T.

Persons Signed In To Testify But Not Testifying: None.