

HOUSE BILL REPORT

HB 2752

As Reported By House Committee On:

Energy & Utilities

Title: An act relating to electronic mail.

Brief Description: Prohibiting unsolicited electronic mail.

Sponsors: Representatives Bush, Crouse, Gardner, Cairnes, Dyer, Mulliken, Morris, Linville, Reams, Romero, Smith, McDonald, Ogden, Dickerson, Butler, O'Brien, Ballasiotes, Talcott and Appelwick; by request of Attorney General.

Brief History:

Committee Activity:

Energy & Utilities: 1/28/98, 2/3/98 [DPS].

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Crouse, Chairman; DeBolt, Vice Chairman; Mastin, Vice Chairman; Poulsen, Ranking Minority Member; Morris, Assistant Ranking Minority Member; Bush; Cooper; Delvin; Honeyford; Kastama; Kessler; Mielke and B. Thomas.

Staff: Linda Brooks (786-7153).

Background: The Internet is an international network of computer networks, interconnecting computers ranging from simple personal computers to sophisticated mainframes. It is a dynamic, open-ended aggregation of computer networks, rather than a physical entity. Internet users can access or provide a wide variety of information, purchase goods and services, and communicate with other users electronically.

As a network of interconnected computers, the Internet also provides a new forum for advertising. Electronic mail messages sent over a computer network may advertise real property, goods, or services for sale or lease. In some cases a computer user may request information about the property, goods, or services. In other cases the computer user may receive the advertisements as unsolicited commercial electronic mail messages.

The Office of the Attorney General reports that it received 322 complaints over a five-month period in 1997 about unsolicited electronic messages. Although some of the

unsolicited messages were non-commercial in nature, many of the messages were commercial advertisements.

The sending of electronic messages uses resources. Messages must be stored, utilizing memory space on each recipient's computer. An unsolicited message may also delay the receipt of an expected message. Also, just as traffic slows on a freeway as it becomes more congested with cars without any corresponding increase in traffic lanes or alternate routes, there are concerns that traffic over a computer network may slow as the network becomes more congested with electronic messages without any corresponding increase in capacity.

Many consumers connect to the Internet through interactive computer services that charge fees for time spent utilizing a dial-up connection to their computer server. Via the interactive computer service's server, individual consumers are able to reach the Internet. As traffic over an interactive computer service's server increases, the service provider must add capacity; otherwise, electronic traffic over the server slows.

In 1990 the Legislature prohibited the sending of unsolicited facsimile messages unless the sender has the recipient's prior consent. Also, unsolicited facsimile messages may be sent to persons with whom the sender has had a prior business relationship. If the recipient has notified the sender not to send any further messages, however, then the sender must desist. Failure to comply with this law is a violation of the Consumer Protection Act. A recipient of an unsolicited facsimile message is entitled to bring a civil action against the sender for the greater of \$500 or actual damages.

Summary: The Legislature finds that the volume of unsolicited commercial electronic mail has grown exponentially. Unsolicited commercial electronic mail messages often impose costs on recipients, interactive computer services, other businesses and nonprofit organizations. The Legislature further finds that advertisers may reach electronic mail users by less intrusive means.

The sending of an unsolicited commercial electronic mail message from a computer located in Washington or to a Washington resident is generally prohibited. A person is responsible for knowing that a recipient is a Washington resident, if that information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address.

Although the sending of *unsolicited* commercial electronic messages is prohibited, commercial electronic mail messages may be sent under the following allowable conditions. Commercial electronic mail messages may be sent:

- 1) To a person who has an existing personal or business relationship with the sender;
- 2) For the purpose of collecting an existing obligation; or

3) To a person who has consented to the receipt of commercial electronic mail messages.

It is presumed that a person has consented to the receipt of messages for a 12-month period, if the person has requested information or contacted the sender to inquire about real property, goods, or services. Nonetheless, if a person with an existing business or personal relationship with the sender or a person who has consented to the receipt of messages notifies the sender at any time that the person does not wish to receive any further commercial electronic mail messages, then the sender must desist. Also, senders may not initiate a commercial electronic mail message, if the sender knows or reasonably should know that any of the recipients is a governmental entity, unless that entity has consented to the receipt of the commercial electronic mail message.

When a sender mails an commercial electronic message advertising real property, goods, or services under the allowable conditions, the first word in the subject line of the message must be the term, "advertisement." In the body of the message, the sender must also prominently identify his or her legal name, mailing address, true electronic mail address, physical address, area code and telephone number, and the date and time that the message was sent.

A person who does not comply with the allowable conditions for sending a commercial electronic mail message from a computer located in Washington or to a Washington resident violates the Consumer Protection Act. When a violation has occurred, any recipient of an unsolicited commercial message may bring a civil action against the sender for the greater of \$500 or actual damages. An interactive computer service provider may bring an action against the sender for the greater of \$1,000 or actual damages. A plaintiff bringing a civil suit against the sender of an unsolicited commercial electronic message may recover the costs of bringing the action, including attorney's fees. The court may also treble a plaintiff's damage award up to a maximum of \$10,000.

In addition to seeking civil remedies, an interactive computer service provider may also block the receipt or transmission through its service of any electronic mail which it reasonably believes is, or will be sent, in violation of the prohibition against unsolicited messages advertising real property, goods, or services. An interactive computer service provider cannot be held liable for any action voluntarily taken in good faith to block the receipt of unsolicited commercial electronic messages.

Substitute Compared to Original: Further clarification is made that only the transmission of unsolicited *commercial* electronic mail messages from a computer located in Washington or to a Washington resident is prohibited. Intervening interactive computer services cannot be held liable for transmitting unsolicited commercial electronic mail messages. A person is responsible for knowing that a recipient is a Washington

resident, if that information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address.

Commercial electronic mail messages may be sent for the purpose of collecting an existing obligation. Messages may also be sent to persons who have an existing business or personal relationship with the sender or to persons who have consented to the receipt of messages. It is presumed that a person has consented to the receipt of messages for a twelve month period, if the person has requested information or contacted the sender to inquire about real property, goods, or services.

Nonetheless, a person with an existing business or personal relationship with the sender or a person who has consented to the receipt of messages may notify the sender at any time that the person does not wish to receive any further commercial electronic mail messages.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: There is a need for reasonable restrictions on junk e-mail advertisements. Senders can send out thousands of electronic advertisements at virtually no cost, but their actions impose real out-of-pocket costs on others. Receiving one of these commercial electronic messages is the equivalent of receiving junk mail -- except it comes with postage due, since you have to pay the costs of receiving, opening, and deleting it from your computer. The Office of the Attorney General has tabulated 1,002 complaints about spam (unsolicited commercial electronic messages) since May 1997. Banning spam is not banning advertising from the Internet; everyone may still advertise goods or services on the World Wide Web.

Testimony Against: Some persons like to receive electronic advertisements. Sending advertisements over the Internet is also much cheaper than mailing them through the postal system. These cheaper costs help small businesses to compete. Advertising through an electronic medium also saves paper. A problem with a ban on sending commercial electronic messages to Washington residents is the fact that e-mail addresses do not indicate residency, so it's difficult to avoid sending messages to Washington residents. Most abuses of electronic messages such as pyramiding schemes or the unauthorized use of an e-mail address are already illegal. There is concern that regulation of the Internet should be done at the national level and not by each state.

Testified: Representative Bush (pro); Paula Selis, Attorney General's Office (pro); Dave Kramer, Wilson Sonsini Goodrich & Rosati (pro); Gary Gardner, Washington Association of Internet Service Providers (pro); Jim Kendall, Washington Association of Internet Service Providers (pro); Darwin Hill, Worldlink (pro); Ray Jones, Celestial Systems (pro); William Hayden, Virtual Solutions, Inc. (con); Joe Daniels, Direct Marketing Association (con); Jerry Sheehan, ACLU-W (con); Doug Klunder, ACLU-W (con); Erik J. Peterson, Northwest Media Services (pro); Jay Stewart Washington State Internet Lobby (pro); Ed McNichol, APS/EDcetra (pro); Debra Brunton, Microsoft (no position); and Glen Hudson, Realtors (with questions/concerns).