

HOUSE BILL REPORT

ESHB 2752

As Passed Legislature

Title: An act relating to electronic mail.

Brief Description: Prohibiting unsolicited electronic mail.

Sponsors: By House Committee on Energy & Utilities (originally sponsored by 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].

Floor Activity:

Passed House: 2/16/98, 97-1.

Senate Amended.

House Concurred.

Passed Legislature.

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.

Some interactive computer service providers and Internet users report that senders have sometimes disguised advertisements by putting false or misleading information on the subject line of commercial electronic mail messages. There have also been reports of senders who have hidden their identities by using third parties' Internet domain names without permission or who have otherwise misrepresented the points of origin or transmission paths of messages.

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.

Summary: Violations of the Consumer Protection Act: A commercial electronic mail message means a message sent for the purpose of promoting real property, goods, or services for sale or lease. A person who initiates the transmission of a commercial electronic mail message from a computer located in Washington or to a Washington resident that contains untrue or misleading information may violate the Consumer Protection Act. Specifically, a violation of the Consumer Protection Act occurs when a sender:

- (1) Uses a third party's Internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point of origin or transmission path of the message; or
- (2) Puts false or misleading information in the subject line of the message.

A sender 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.

When a sender violates the Consumer Protection Act, the recipient of the commercial electronic mail message may bring a civil action against the sender for the greater of \$500 or actual damages. An interactive computer service provider may also bring an action against the sender for the greater of \$1,000 or actual damages. Additionally, a plaintiff who brings a civil suit against a sender 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 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 Consumer Protection Act. An interactive computer service provider cannot be held liable for any action voluntarily taken in good faith to block the receipt of commercial electronic messages sent in violation of the Consumer Protection Act.

Select Task Force on Commercial Electronic Messages. The Legislature creates a select task force on commercial electronic messages. The task force will consist of two Representatives, two Senators, and one person appointed by the Governor. The select task force will study technical, legal, and cost issues related to the transmission and receipt of commercial electronic messages over the Internet. The select task force will evaluate whether existing laws are sufficient to resolve technical, legal, or financial problems created by the increasing volume of commercial electronic mail messages. The select task force will also review efforts made by the federal government and other states to regulate the transmission of commercial electronic messages. The select task will prepare a report identifying policy options and recommendations for the House Energy and Utilities Committee by November 15, 1998.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Energy & Utilities substitute bill) 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: (Energy & Utilities substitute bill) 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).