

SENATE BILL REPORT

ESHB 2752

As Reported By Senate Committee On:
Energy & Utilities, February 24, 1998

Title: An act relating to electronic mail.

Brief Description: Prohibiting unsolicited electronic mail.

Sponsors: 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: 2/24/98 [DP].

SENATE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass.

Signed by Senators Finkbeiner, Chair; Hochstatter, Vice Chair; Brown, Jacobsen, Rossi, T. Sheldon and Strannigan.

Staff: Karen Kirkpatrick (786-7403)

Background: Unsolicited commercial electronic mail (e-mail), often referred to as "spam," is an emerging issue of discussion on the Internet. Advertisers can reach thousands or even millions of consumers at little or no cost to themselves through spamming. As a result, some Internet users regularly receive substantial amounts of unsolicited commercial e-mail while others receive little or none.

The sending of e-mail messages uses resources of recipients. Many consumers connect to the Internet through interactive computer services that charge in increments of time so that recipients must pay to download these messages, messages must be stored, using memory on each recipient's computer, and an unsolicited message may delay the receipt of an expected message. Just as traffic slows on a freeway as it becomes more congested with cars without a corresponding increase in traffic lanes, there are concerns that traffic over a computer network may slow as the network becomes more congested.

The office of the Attorney General reports that it received 322 complaints about unsolicited e-mail over a five-month period in 1997. Some Internet service providers (ISPs) and Internet users report that senders sometimes disguise advertisements by putting false or misleading information on the subject line of the messages, hide their identities by using third parties' Internet domain names without permission or otherwise misrepresent the points of origin or transmission paths of messages.

The Attorney General's office is requesting this legislation to prohibit the sending of unsolicited commercial e-mail that contains untrue or misleading information, make it a violation of the Consumer Protection Act (CPA), authorize ISPs to block transmission under specified circumstances, and create minimum damages.

Summary of Bill: The sending of a commercial e-mail message from a computer located in Washington or to a Washington resident that contains untrue or misleading information is prohibited under specified conditions. A violation of the CPA occurs when a sender uses a third party's Internet domain name without permission, misrepresents any information in identifying the point of origin or transmission path of the message, or puts false or misleading information in the subject line of the message.

A commercial electronic mail message is defined as a message sent for the purpose of promoting real property, goods, or services for sale or lease.

A sender is deemed 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 e-mail address.

Minimum damages of \$500 for individuals and \$1,000 for ISPs or actual damages, whichever are greater, are established for each message sent in violation of the section. A plaintiff who brings a civil suit against a sender may also recover the costs of bringing the action, including attorney's fees, and treble damages to a maximum of \$10,000.

An ISP is given the authority to block the receipt or transmission of e-mail which it reasonably believes is or will be sent in violation of this chapter and is exempt from liability for blocking such e-mail.

A select task force on commercial electronic mail is created to study technical, legal, and cost issues related to the transmission and receipt of commercial e-mail messages, evaluate whether existing laws are sufficient to resolve problems created by the increasing volume of commercial e-mail, review efforts made by the federal government and other states to regulate the transmission of commercial e-mail, and report back to the House Energy and Utilities Committee by November 15, 1998.

Findings are made, definitions are added and other clarifying and technical changes are made.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Unsolicited electronic mail is causing network congestion and costing computer users and Internet service providers money. The Attorney General's office has received over 1,000 complaints related to unsolicited electronic mail. This legislation is not a cure all, but it will address the issue of fraudulent or misleading messages that constitute 200,000 messages per day. The select task force will study technical, legal and cost issues

related to the transmission and receipt of commercial e-mail. It will give everyone an opportunity to work on the more controversial issues and propose a solution for next year.

Testimony Against: None.

Testified: Rep. Bush, prime sponsor; Gary Gardner, Washington Association of Internet Service Prov. (pro); Sally Gustafson, Attorney General's Office, Consumer Protection (pro); Craig Berman, Sprynet (pro); Joe Daniels, Direct Marketing Association (pro); Rowland Thompson, Allied Daily Newspapers (neutral).