

SENATE BILL REPORT

2SHB 1037

As Reported By Senate Committee On:
Energy, Technology & Telecommunications, April 1, 1999
Ways & Means, April 5, 1999

Title: An act relating to commercial electronic mail.

Brief Description: Creating a registry of Washington resident's electronic mail addresses to facilitate a program that allows private interactive computer service providers to limit unsolicited commercial electronic mail messages.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Bush, Morris and Ruderman).

Brief History:

Committee Activity: Energy, Technology & Telecommunications: 3/25/99, 4/1/99 [DPA-WM].

Ways & Means: 4/5/99 [DPA].

SENATE COMMITTEE ON ENERGY, TECHNOLOGY & TELECOMMUNICATIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means. Signed by Senators Brown, Chair; Goings, Vice Chair; Fraser and Roach.

Staff: Karen Kirkpatrick (786-7403)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Loveland, Chair; Bauer, Vice Chair; Brown, Vice Chair; Fraser, Kline, Long, McDonald, Rasmussen, Rossi, B. Sheldon, Snyder, Spanel, West, Winsley, Wojahn and Zarelli.

Minority Report: Do not pass.

Signed by Senator Fairley.

Staff: Steve Jones (786-7440)

Background: The 1998 Legislature passed a law prohibiting 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 under specified conditions. Under the law, a violation of the Consumer Protection Act 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 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. To facilitate access to residency information, the Washington Association of Internet Service Providers (WAISP), in cooperation with the Attorney General's Office, has voluntarily created an electronic registry where a citizen may indicate Washington residency by recording his or her electronic mail address.

The 1998 legislation also created a select task force on commercial electronic mail messages to study technical, legal, and cost issues related to the transmission and receipt of commercial electronic mail messages over the Internet. The select task force completed its work and issued a report with policy recommendations on November 16, 1998.

Summary of Amended Bill: The definition of "initiate a transmission" is expanded to include those persons that assist or conspire to initiate a transmission.

An unsolicited commercial electronic (UCE) mail message must contain the legal name, mailing address, physical address, and telephone number of the sender or sender's registered Washington agent.

An ISP or its customer is permitted to bring a civil action against a person who initiates, conspires, or assists in the transmission of a message sent in violation of the ISP's published policy prohibiting or restricting the use of its equipment located in Washington for initiation or delivery of UCE mail messages. The ISP may recover \$50 per message, up to \$25,000 per day. A customer of an ISP may recover \$500 per message, up to \$25,000 per day.

Definitions are modified and other clarifying and technical changes are made.

Ways & Means Amended Bill Compared to Energy, Technology & Telecommunications Amended Bill: The establishment of an electronic registry within the Attorney General's office is deleted.

Energy, Technology & Telecommunications Amended Bill Compared to Substitute Bill: The original bill extended the select task force for an additional year. The amended bill does not extend the select task force.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This legislation is a product of the work of the task force and input of stakeholders. It is nonpartisan and technologically neutral. It closes loopholes and corrects flaws in the law. The legislation allows expansion of Internet usage while curtailing abuses before they reach crisis. This is consumer protection legislation, not undue Internet regulation. The cost of unsolicited commercial e-mail is born by the recipient or Internet Service Provider and spam is the highest category of consumer complaints received by the Attorney General's office. This legislation would protect private networks being invaded,

and sometimes shut down, by spam by making it a violation of law to violate an Internet service provider's policy against spam.

Testimony Against: The Internet is a global network that should not be regulated at the state and local level. This legislation would require small businesses to navigate many different laws in different jurisdictions. There are ways for consumers to filter or block unwanted mail now. Education is needed, not a new law. This legislation is premature because technology is changing so quickly and federal legislation is pending.

Testified: PRO: Representative Bush, Representative Ruderman, prime sponsors; Gary Gardner, Washington Association of ISPs; Sheldon Koehler, Ten Forward Communications; Paula Selis and Elaine Rose, Attorney General's Office; Keith Christensen, Forum for Responsible, Ethical, E-mail; Bruce Miller; CON: Terry Byington, American Electronic Association.