

SENATE BILL REPORT

SB 6568

As Reported By Senate Committee On:
Economic Development & Telecommunications, February 5, 2002

Title: An act relating to commercial electronic mail.

Brief Description: Requiring the sender of commercial electronic mail to identify itself as a commercial message.

Sponsors: Senators Finkbeiner, Benton, Gardner, Poulsen, T. Sheldon, Winsley, Oke, Hale and Rasmussen.

Brief History:

Committee Activity: Economic Development & Telecommunications: 2/1/02, 2/5/02 [DPS].

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6568 be substituted therefor, and the substitute bill do pass.

Signed by Senators T. Sheldon, Chair; B. Sheldon, Vice Chair; Fairley, Finkbeiner, McCaslin, Rossi and Stevens.

Staff: Kim Johnson (786-7486)

Background: The term SPAM refers to unsolicited bulk e-mail and can be commercial or non-commercial in nature. In 1998, the Legislature passed a law regulating commercial electronic mail messages. A commercial electronic mail message is defined as one sent for the purpose of promoting real property, goods, or services for sale or lease. Among other things, it is a violation of the Commercial Electronic Mail Act to send a commercial electronic mail message from a computer located in Washington or to a Washington resident that:

- 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
- Places false or misleading information in the subject line of the message.

A recipient may bring a civil action against a sender who violates the Commercial Electronic Mail Act for the greater of \$500 or actual damages incurred. A violation of the Commercial Electronic Mail Act is also a violation of the Consumer Protection Act, which among other things, provides for treble damages, court costs, and attorney's fees.

Summary of Substitute Bill: The Commercial Electronic Mail Act is expanded to prohibit the transmission of a commercial electronic mail message from a computer located in

Washington or to a Washington resident that does not include "ADV:" as the first four characters in the subject line.

Those persons with which the recipient has a current or prior business relationship are exempt from the requirement of including "ADV:" in the subject line of a commercial electronic mail message. "Current or prior business relationship" is defined.

The bill provides that a violation of this section is also a violation of the Consumer Protection Act.

Substitute Bill Compared to Original Bill: The substitute bill makes two substantive changes to the original. The first change creates a new section requiring "ADV:" to be included in the subject line of a commercial electronic message, rather than amending the existing language of the Commercial Electronic Mail Act. The substitute provides an exemption from having to place "ADV:" in the subject line for a person with whom the recipient has a current or prior business relationship. The new section omits the requirement in the original bill of the sender of commercial electronic mail to include identifying information in the body of the message. The new section contains a provision that a violation of this section is also a violation of the Consumer Protection Act. The second change includes on-line and printed directories as sources that may be used to determine whether a recipient is a resident of Washington.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: SPAM is a huge problem; in fact, it is the number one complaint Internet Service Providers receive from their customers. With SPAM the entire cost is born by the service providers and customers, not the senders. The "ADV:" requirement is a reasonable regulation and a legitimate business can easily comply with the law.

Testimony Against: None.

Testified: PRO: Gary Gardner, WA Assn. of Internet Service Providers; Dave Horn, Attorney General's Office; Lew McMurrin, WA Software Assn.; David Lyon, Integrity Marketing.