

SHB 2007 - S COMM AMD

By Committee on Technology & Communications

ADOPTED 04/15/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that the number
4 of unsolicited commercial text messages sent to cellular telephones and
5 pagers is increasing. This practice is raising serious concerns on the
6 part of cellular telephone and pager subscribers. These unsolicited
7 messages often result in costs to the cellular telephone and pager
8 subscribers in that they pay for use when a message is received through
9 their devices. The limited memory of these devices can be exhausted by
10 unwanted text messages resulting in the inability to receive necessary
11 and expected messages.

12 The legislature intends to limit the practice of sending
13 unsolicited commercial text messages to cellular telephone or pager
14 numbers in Washington.

15 **Sec. 2.** RCW 19.190.010 and 1999 c 289 s 1 are each amended to read
16 as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

19 (1) "Assist the transmission" means actions taken by a person to
20 provide substantial assistance or support which enables any person to
21 formulate, compose, send, originate, initiate, or transmit a commercial
22 electronic mail message or a commercial electronic text message when
23 the person providing the assistance knows or consciously avoids knowing
24 that the initiator of the commercial electronic mail message or the
25 commercial electronic text message is engaged, or intends to engage, in
26 any practice that violates the consumer protection act.

27 (2) "Commercial electronic mail message" means an electronic mail
28 message sent for the purpose of promoting real property, goods, or
29 services for sale or lease. It does not mean an electronic mail

1 message to which an interactive computer service provider has attached
2 an advertisement in exchange for free use of an electronic mail
3 account, when the sender has agreed to such an arrangement.

4 (3) "Commercial electronic text message" means an electronic text
5 message sent to promote real property, goods, or services for sale or
6 lease.

7 (4) "Electronic mail address" means a destination, commonly
8 expressed as a string of characters, to which electronic mail may be
9 sent or delivered.

10 ((+4)) (5) "Electronic text message" means a text message sent to
11 a cellular telephone or pager equipped with short message service or
12 any similar capability, whether the message is initiated as a short
13 message service message or as an electronic mail message.

14 (6) "Initiate the transmission" refers to the action by the
15 original sender of an electronic mail message or an electronic text
16 message, not to the action by any intervening interactive computer
17 service or wireless network that may handle or retransmit the message,
18 unless such intervening interactive computer service assists in the
19 transmission of an electronic mail message when it knows, or
20 consciously avoids knowing, that the person initiating the transmission
21 is engaged, or intends to engage, in any act or practice that violates
22 the consumer protection act.

23 ((+5)) (7) "Interactive computer service" means any information
24 service, system, or access software provider that provides or enables
25 computer access by multiple users to a computer server, including
26 specifically a service or system that provides access to the internet
27 and such systems operated or services offered by libraries or
28 educational institutions.

29 ((+6)) (8) "Internet domain name" refers to a globally unique,
30 hierarchical reference to an internet host or service, assigned through
31 centralized internet naming authorities, comprising a series of
32 character strings separated by periods, with the right-most string
33 specifying the top of the hierarchy.

34 ((+7)) (9) "Person" means a person, corporation, partnership, or
35 association.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.190 RCW
2 to read as follows:

3 (1) No person conducting business in the state may initiate or
4 assist in the transmission of an electronic commercial text message to
5 a telephone number assigned to a Washington resident for cellular
6 telephone or pager service that is equipped with short message
7 capability or any similar capability allowing the transmission of text
8 messages.

9 (2) The legislature finds that the practices covered by this
10 section are matters vitally affecting the public interest for the
11 purpose of applying the consumer protection act, chapter 19.86 RCW. A
12 violation of this section is not reasonable in relation to the
13 development and preservation of business and is an unfair or deceptive
14 act in trade or commerce and an unfair method of competition for the
15 purpose of applying the consumer protection act, chapter 19.86 RCW.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.190 RCW
17 to read as follows:

18 (1) It is not a violation of section 3 of this act if:

19 (a) The commercial electronic text message is transmitted at the
20 direction of a person offering cellular telephone or pager service to
21 the person's existing subscriber at no cost to the subscriber unless
22 the subscriber has indicated that he or she is not willing to receive
23 further commercial text messages from the person; or

24 (b) The unsolicited commercial electronic text message is
25 transmitted by a person to a subscriber and the subscriber has clearly
26 and affirmatively consented in advance to receive these text messages.

27 (2) No person offering cellular or pager service may be held liable
28 for serving merely as an intermediary between the sender and the
29 recipient of a commercial electronic text message sent in violation of
30 this chapter unless the person is assisting in the transmission of the
31 commercial electronic text message.

32 **Sec. 5.** RCW 19.190.040 and 1998 c 149 s 5 are each amended to read
33 as follows:

34 (1) Damages to the recipient of a commercial electronic mail

1 message or a commercial electronic text message sent in violation of
2 this chapter are five hundred dollars, or actual damages, whichever is
3 greater.

4 (2) Damages to an interactive computer service resulting from a
5 violation of this chapter are one thousand dollars, or actual damages,
6 whichever is greater."

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7 On page 1, line 1 of the title, after "messages;" strike the
8 remainder of the title and insert "amending RCW 19.190.010 and
9 19.190.040; adding new sections to chapter 19.190 RCW; creating a new
10 section; and prescribing penalties."

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