

# FINAL BILL REPORT

## SHB 2007

---

---

C 137 L 03

Synopsis as Enacted

**Brief Description:** Prohibiting unsolicited commercial text messages.

**Sponsors:** By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Nixon, Ruderman, Bush, Dickerson and Hudgins).

**House Committee on Technology, Telecommunications & Energy**  
**Senate Committee on Technology & Communications**

**Background:**

Commercial messages that are sent by telephone or by the Internet are subject to state and federal regulations. Text messages sent by a fax machine are also regulated. However, text messages sent to cellular phones or pagers do not fall within their regulations and restrictions.

State telemarketing laws prohibit unfair or deceptive commercial telephone solicitations. Commercial telephone solicitors must not make any calls before 8 a.m. or after 9 p.m., and a commercial solicitor may not engage in any conduct that intimidates or harasses a person in connection with the telephone call. Commercial solicitors must also be registered with the Department of Licensing prior to doing business in the state. Federal rules restrict the use of the telephone network for unsolicited commercial messages including faxed messages.

Commercial electronic mail (e-mail) messages that contain deceptive or false information may not be sent from a computer located in Washington or to an e-mail address held by a Washington resident. A violation occurs when the message: (1) uses a third party's Internet domain name without permission of the third party, (2) misrepresents any information in identifying the point of origin or transmission path of the message, or (3) puts false or misleading information in the subject line of the message. A commercial e-mail message is an e-mail message sent for the purpose of promoting real property, goods, or services for sale or lease.

A recipient of a commercial e-mail message or the Internet service provider may bring a civil action against a sender who violates the laws relating to commercial e-mail messages. In the case of a suit brought by a recipient, the penalty is the greater of \$500 or actual damages incurred. In the case of a lawsuit brought by an Internet service provider, the penalty is the greater of \$1,000 or actual damages. A violation of laws relating to commercial e-mail messages is also a violation of the Consumer Protection Act

and may be enforced by the Attorney General. A violation of the Consumer Protection Act may result in a civil fine, treble damages, court costs, and attorneys' fees.

**Summary:**

Commercial electronic text messages may not be sent by businesses in the state of Washington to a telephone number assigned to a Washington resident for cellular or pager service equipped with short message capability. A commercial electronic text message is a message sent to promote real property, goods, or services for sale or lease. An electronic text message is a message sent to a cell phone or a pager equipped with short message service. The message can be initiated as a short message or as an e-mail message.

Certain messages are exempt from this prohibition. A cellular or pager service provider may send commercial text messages to existing subscribers at no cost to the subscriber unless the subscriber has indicated they are unwilling to receive these text messages. A sender of an unsolicited commercial text message may send messages to a subscriber only if the subscriber has consented in advance to receive these messages.

A cellular phone or pager service provider may not be held liable for acting merely as an intermediary between the sender and the recipient of a commercial electronic text message sent in violation of the law, but may be liable if they knowingly assist in transmitting messages sent in violation of the law. A wireless network is not considered a initiator of an electronic mail message if the wireless network is the intervening transmitter of the message.

A violation of the commercial electronic text messaging law provides penalties similar to those for commercial e-mail messages. A recipient of a commercial electronic text message or the cellular or pager service provider may bring a civil action against a sender who violates the laws relating to commercial electronic text messages. In the case of a suit brought by a recipient, the penalty is the greater of \$500 or actual damages incurred. In the case of a lawsuit brought by a cellular or pager service provider, the penalty is the greater of \$1,000 or actual damages. A violation of laws relating to commercial electronic text messages is also a violation of the Consumer Protection Act and may be enforced by the Attorney General. A violation of the Consumer Protection Act may result in a civil fine, treble damages, court costs, and attorneys' fees.

**Votes on Final Passage:**

House 96 0  
Senate 47 0 (Senate amended)  
House 97 0 (House concurred)

**Effective:** July 27, 2003

