
SENATE BILL 5925

State of Washington

58th Legislature

2003 Regular Session

By Senators Finkbeiner, Kline, Hale and Esser

Read first time 02/20/2003. Referred to Committee on Technology & Communications.

1 AN ACT Relating to commercial text messages; amending RCW
2 19.190.010 and 19.190.040; adding new sections to chapter 19.190 RCW;
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Assist the transmission" means actions taken by a person to
4 provide substantial assistance or support which enables any person to
5 formulate, compose, send, originate, initiate, or transmit a commercial
6 electronic mail message or a commercial electronic text message when
7 the person providing the assistance knows or consciously avoids knowing
8 that the initiator of the commercial electronic mail message or the
9 commercial electronic text message is engaged, or intends to engage, in
10 any practice that violates the consumer protection act.

11 (2) "Commercial electronic mail message" means an electronic mail
12 message sent for the purpose of promoting real property, goods, or
13 services for sale or lease. It does not mean an electronic mail
14 message to which an interactive computer service provider has attached
15 an advertisement in exchange for free use of an electronic mail
16 account, when the sender has agreed to such an arrangement.

17 (3) "Commercial electronic text message" means an electronic text
18 message sent to promote real property, goods, or services for sale or
19 lease.

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

23 ~~((+4))~~ (5) "Electronic text message" means a text message sent to
24 a cellular telephone or pager equipped with short message service or
25 any similar capability, whether the message is initiated as a short
26 message service message or as an electronic mail message.

27 (6) "Initiate the transmission" refers to the action by the
28 original sender of an electronic mail message or an electronic text
29 message, not to the action by any intervening interactive computer
30 service that may handle or retransmit the message, unless such
31 intervening interactive computer service assists in the transmission of
32 an electronic mail message when it knows, or consciously avoids
33 knowing, that the person initiating the transmission is engaged, or
34 intends to engage, in any act or practice that violates the consumer
35 protection act.

36 ~~((+5))~~ (7) "Interactive computer service" means any information
37 service, system, or access software provider that provides or enables
38 computer access by multiple users to a computer server, including

1 specifically a service or system that provides access to the internet
2 and such systems operated or services offered by libraries or
3 educational institutions.

4 ~~((6))~~ (8) "Internet domain name" refers to a globally unique,
5 hierarchical reference to an internet host or service, assigned through
6 centralized internet naming authorities, comprising a series of
7 character strings separated by periods, with the right-most string
8 specifying the top of the hierarchy.

9 ~~((7))~~ (9) "Person" means a person, corporation, partnership, or
10 association.

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

13 (1) No person conducting business in the state may initiate or
14 assist in the transmission of an electronic commercial text message to
15 a telephone number assigned to a Washington resident for cellular
16 telephone or pager service that is equipped with short message
17 capability or any similar capability allowing the transmission of text
18 messages.

19 (2) The legislature finds that the practices covered by this
20 section are matters vitally affecting the public interest for the
21 purpose of applying the consumer protection act, chapter 19.86 RCW. A
22 violation of this section is not reasonable in relation to the
23 development and preservation of business and is an unfair or deceptive
24 act in trade or commerce and an unfair method of competition for the
25 purpose of applying the consumer protection act, chapter 19.86 RCW.

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

28 (1) It is not a violation of section 2 of this act if:

29 (a) The commercial electronic text message is transmitted at the
30 direction of a person offering cellular telephone or pager service and
31 the subscriber has elected to receive these text messages;

32 (b) The commercial electronic text message is transmitted by a
33 person that has an existing business relationship with the subscriber
34 and the subscriber has elected to receive these text messages; or

35 (c) The commercial electronic text message is transmitted by an
36 affiliate of a person who has an existing business relationship with

1 the subscriber and the subscriber has provided consent to the person
2 with whom he or she has an existing business relationship to receive
3 these messages from affiliates of the person. For purposes of this
4 subsection, "affiliate" means any company that controls, is controlled
5 by, or is under common control with another company.

6 (2) No person offering cellular or pager service may be held liable
7 for serving merely as an intermediary between the sender and the
8 recipient of a commercial electronic text message sent in violation of
9 this chapter.

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

12 (1) Damages to the recipient of a commercial electronic mail
13 message or a commercial electronic text message sent in violation of
14 this chapter are five hundred dollars, or actual damages, whichever is
15 greater.

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

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