

SENATE BILL REPORT

E2SHB 1888

As Reported By Senate Committee On:
Financial Institutions, Housing & Consumer Protection, March 29, 2005

Title: An act relating to electronic mail fraud.

Brief Description: Regulating internet fraud.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Nixon, Morris, Hunter, B. Sullivan, Simpson, Ormsby, Morrell, Haler, Clibborn, Ericks, Williams, Darneille, Dunn, Dickerson, P. Sullivan, Green and Hudgins).

Brief History: Passed House: 3/09/05, 96-0.

Committee Activity: Financial Institutions, Housing & Consumer Protection: 3/17/05, 3/29/05 [DPA].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Majority Report: Do pass as amended.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Delvin, Franklin, Prentice and Schmidt.

Staff: Joanne Conrad (786-7472)

Background: "Phishing" is a relatively new and growing form of financial fraud. Phishing occurs when a computer user receives a fraudulent e-mail that looks like it is a legitimate request for personal financial information from a bank or other business. Because it "looks real," some consumers respond by providing confidential financial information, which is then used to commit identity theft and other fraud.

Washington State's electronic mail fraud act does not specifically cover "phishing," and does not exclude innocent e-mail service providers from those who "assist the transmission" of the phishing e-mail.

Summary of Amended Bill: A person or business is prohibited from soliciting, requesting, or inducing anyone to provide confidential financial information by means of a website, e-mail, or other internet use through misrepresentation. E-mail service providers who do not have knowledge of the phishing activity are exempted.

Remedies for phishing victims include civil action in superior court, for injunctive relief and the greater of \$500 or actual damage. Internet service providers who are victims may seek to recover the greater of actual damages or \$5,000, as well as injunctive relief. The court may increase an award to "up to three times the damages allowed," plus costs and attorneys' fees. This provision does not affect any rights under the Consumer Protection Act.

The phishing chapter of the law preempts local government regulation, and supercedes any notices to consumers from computer software providers regarding information collection.

Amended Bill Compared to Original Bill: Government agencies are added to legal definition of "person," and the Consumer Protection Act can apply to violations.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: Phishing is a devastating and subtle crime. This bill may not eliminate the problem, but will increase prosecution of violators.

Testimony Against: None.

Who Testified: PRO: Representative Nixon, prime sponsor; Hunter Goodman, Attorney General's Office; Scott Hazelgrove, eBay; Gary Gardner, BECU, WA Assn of ISPs.