

SENATE BILL REPORT

2SHB 2479

As Reported By Senate Committee On:
Consumer Protection & Housing, February 28, 2008

Title: An act relating to disclosure of wireless numbers.

Brief Description: Requiring subscribers' consent to disclosure of wireless phone numbers.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Morrell, Bailey, Cody, Pedersen, Appleton, Sells, Lantz, Hasegawa, Ormsby, Conway, Condotta, Hurst, McIntire, Roberts, Kenney, Haigh, Schual-Berke, Campbell, VanDeWege, Rolfes, Kagi, Chase, Lias, Simpson, Barlow, Ericks, Green, Kelley and McDonald).

Brief History: Passed House: 2/07/08, 92-3.

Committee Activity: Consumer Protection & Housing: 2/21/08, 2/28/08 [DPA].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: Do pass as amended.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Haugen, Jacobsen, Kilmer, McCaslin and Tom.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: Wireless telephone companies may not publish their customers' wireless phone numbers in any directory unless the customer gives his or her explicit consent in writing or electronically. Further, the consent form must be located on a separate document or web page that has the sole purpose of authorizing publishing the customer's wireless number. The wireless company must provide the customer with a receipt of the consent. The customer may revoke his or her consent at any time. Any wireless company that violates the consent requirements may be fined up to \$50,000. The Attorney General's Office is charged with enforcement.

Summary of Bill: The bill as referred to committee was not considered.

SUMMARY OF BILL (Recommended Amendments): The restrictions on including wireless phone numbers in a directory are extended to cover "directory providers." "Directory providers" are defined as any person in the business of marketing, selling, and sharing the phone number of any subscriber for commercial purposes.

Reasonable Investigation. Before including any phone number in any sort of directory, a directory provider must undertake an on-going reasonable investigation to determine whether

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the number is a wireless number. A directory provider is presumed to have undertaken the required ongoing investigation if it compares the phone number against a commercially available list of wireless numbers or ported numbers at least every 30 days. The directory provider must also use up-to-date available technology when conducting its investigation.

If the investigation reveals that the number is a wireless number, the directory provider may not include the number in a directory unless the subscriber of the wireless number has given his or her express opt-in consent or unless an exception applies. Providers of reverse lookup services are exempt from these opt-in requirements.

Pre-existing Directories. A directory provider that has maintained a directory before the effective date of this act must within 30 days either: (1) secure the express, opt-in consent of each subscriber in the directory; or (2) remove the wireless phone numbers of any subscribers who have not provided their express, opt-in consent. These restrictions do not apply to the following: (1) a directory provider that has conducted a reasonable investigation and is unable to determine whether the number is a wireless number; (2) a person who publishes a wireless phone number in a directory where the subscriber pays a fee to have the number published for commercial purposes; (3) a person who publishes a wireless phone number in a directory that is obtained directly from a radio communications service company where the radio communications service company has already obtained express, opt-in consent; (4) a person who publishes a subscriber's phone number that was ported from listed wireline service to wireless service within the previous 15 months; and (5) providers of reverse lookup services.

Reverse Phone Number Search Services. Providers of reverse number search services must allow a subscriber to perform a reverse phone number search at no cost to determine whether the subscriber's wireless number is contained in the providers directory or database.

Subscribers may opt-out of having their wireless number included in a reverse phone number search service at any time. A violation of these provisions is a per se consumer protection act violation.

Penalties. If a directory provider includes a wireless phone number in a directory without the subscriber's express opt-in consent it may be fined up to \$50,000 for violating the act. However, a directory provider has not violated the act if it includes a wireless number in a directory after it undertook a reasonable investigation and was unable to determine whether the number was a wireless number.

EFFECT OF CHANGES MADE BY CONSUMER PROTECTION & HOUSING COMMITTEE (Recommended Amendments): Directory providers may not include a Washington resident's phone number in a directory until the directory provider has conducted a reasonable and ongoing investigation into whether the number is a wireless phone number. An investigation is presumed reasonable if the directory provider compares the phone number against a commercially available list of wireless numbers or ported numbers at least every 30 days. The directory provider has an obligation to use continually updated technology for the investigation.

A directory provider may only include a wireless number in a directory if either: (1) the owner of the number has opted-in; or (2) the directory provider undertook a reasonable investigation and was unable to determine whether the number was a wireless number.

Reverse search providers must allow a consumer a free search to determine whether the consumer's wireless number is in their database and consumers may opt-out of appearing in a reverse search directory. A violation of the reverse search provisions is a per se CPA violation. Directory providers and their employees may not be held civilly or criminally liable for publishing a wireless number as authorized by this act. Definitions and terms are added for clarity. The bill is restructured for ease of understanding.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Second Substitute Bill: PRO: The reasonable investigation standard in the proposed striking amendment is concerning. That could be replaced with a new service offered by a company called Nustar. This service allows identification of whether a phone number is a cell number. Reverse directories are generally fine, but provisions must be included to allow for people, such as domestic violence victims, to opt-out. The Attorney General would like to include an amendment that requires a warning letter to directory providers before they are fined. The intent is to keep cell numbers private. Nustar's services would be a reasonable investigation under the bill. Reverse lookup can be very intrusive because it may make identity theft easier.

CON: Whitepages.com allows people to opt-out of our directories. Whitepages.com feels favorably toward the general direction of the new striking amendment. Companies should not be penalized when a cell phone number is accidentally included in a directory. What a reasonable method entails to determine whether a number is a cell number is unclear. Some people, especially business owners, intend for their cell number to be publicly available; this bill needs to accommodate those people. Nustar does not maintain a list of all cell phone numbers; they just maintain a service to figure out whether a number has been ported or not. Also, Nustar's services do not address the situation when people want their cell phone numbers included in a directory. The opt-in provisions are unwieldy because there are so many websites offering these directories; it would be difficult to visit each one to opt-in.

OTHER: Intelius and the Attorney General's office have been in discussion that would address Intelius' concerns. Intelius supports the reverse lookup exception and the goals of preventing unwanted calls of cell phones. The credit reporting agencies would like an amendment that clarifies that companies governed by the Fair Credit Report Act and Graham Leach Bliley are exempt from the bill. Cell phone numbers are sometimes used on credit reports as an identifier, but is not included for the purpose of contacting the consumer.

Persons Testifying: PRO: Representative Dawn Morrell, prime sponsor; Lisa Erwin, Attorney General's Office.

CON: Tim Schellberg, Max Bardon, Resse Solberg, Whitepages.com.

OTHER: Michael Transue, Bill Keff, Ed Petersen, Intelius, Inc.; Lew McMurrin, Washington Technology Industry Association; Cliff Webster, Consumer Data Industry Association.