

HOUSE BILL REPORT

HB 2396

As Passed House:
February 17, 2020

Title: An act relating to the regulation of bot communication on public-facing internet web sites.

Brief Description: Concerning the regulation of bot communication on public-facing internet web sites.

Sponsors: Representatives Hudgins, Tarleton and Wylie.

Brief History:

Committee Activity:

Innovation, Technology & Economic Development: 1/15/20, 1/24/20 [DP];
Appropriations: 2/6/20, 2/10/20 [DP].

Floor Activity:

Passed House: 2/17/20, 70-28.

Brief Summary of Bill

- Provides that it is unlawful to use a bot to communicate to a person in Washington to incentivize a commercial transaction or engage in political advertising, under certain conditions, without providing clear disclosure that the communication is from a bot.
- Requires online platforms to enable users to report suspected violations which platforms must investigate and respond to within 72 hours.

HOUSE COMMITTEE ON INNOVATION, TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass. Signed by 9 members: Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Boehnke, Assistant Ranking Minority Member; Entenman, Slatter, Tarleton, Van Werven and Wylie.

Staff: Kyle Raymond (786-7190).

HOUSE COMMITTEE ON APPROPRIATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 19 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Caldier, Chandler, Corry, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Rude, Assistant Ranking Minority Member.

Staff: Jessica Van Horne (786-7288).

Background:

Consumer Protection Act.

Under the state's Consumer Protection Act (CPA), a variety of business practices are declared unlawful. These practices include engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce and monopolizing trade or commerce.

The CPA prohibits unfair methods of competition and unfair or deceptive practices in the conduct of any trade or commerce. The Office of the Attorney General (Office) may investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

A person injured by a violation of the CPA may bring a private cause of action for injunctive relief and the recovery of actual damages and reasonable attorneys' fees. Recovery may also include triple damages, in some circumstances. In addition, the CPA allows the Office to bring a CPA action in the name of the state or on behalf of persons residing in the state. An action by the Office may seek to prevent or restrain violations of the act and may seek restoration for persons injured by violation of the CPA.

The Public Disclosure Commission.

The Public Disclosure Commission (PDC) enforces the provisions of the campaign finance disclosure law and has authority to develop procedures, adopt rules, investigate complaints, and impose civil penalties for violations. The PDC is empowered to provide access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates.

The PDC may initiate its own investigations of violations of campaign finance and disclosure statutes or investigate complaints filed by any person. The PDC may conduct audits and field investigations as it deems appropriate, and issue subpoenas. Upon receiving a complaint, the PDC may:

- dismiss or otherwise resolve the complaint as appropriate after conducting a preliminary review;

- initiate an investigation to determine if a violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with the administrative procedure process; or
- refer the matter to the Office.

If the PDC initiates an investigation, the initial hearing must occur within 90 days of the complaint being filed.

Summary of Bill:

Disclosure of Bot Communication.

A person is prohibited from using a bot to communicate or interact with another person in Washington online with the intention of misleading the other person about its artificial identity for the purposes of knowingly deceiving the person about the content of the communication to either: (1) incentivize a purchase or sale of goods or services in a commercial transaction; or (2) engage in political advertising. A person using a bot is not liable if the person discloses that the communication is from a bot.

The bot disclosure provided must be clear, conspicuous, and reasonably designed to inform persons with whom the bot communicates or interacts that the communication is from a bot.

Online Platform Requirements. Online platforms are required to enable users to identify and report bots that users suspect of not being properly disclosed. The platforms must investigate and determine whether or not to disclose that the bot is not a natural person or remove the bot within 72 hours of receipt of the user request.

Upon request of the Office, an online platform shall provide reports detailing notices received and actions taken in response.

Other Provisions. A violation related to a bot communication that incentivizes the purchase or sale of goods or services in a commercial transaction is a violation of the Consumer Protection Act.

A violation related to a political advertising bot communication is enforced by the Public Disclosure Commission under the state's campaign finance disclosure law.

A severability clause is included.

Definitions. The following terms are defined:

"Bot" means an automated online account where all or substantially all of the actions or posts of that account are not the result of a person.

"Online" means appearing on any public-facing internet web site, web application, or digital application, including a social network or publication.

"Online platform" means any public-facing Internet website, web application, or digital application, including a social network or publication, that has 10 million or more unique

monthly United States visitors or users for a majority of months during the preceding 12 months.

"Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity or any combination thereof.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 2021.

Staff Summary of Public Testimony (Innovation, Technology & Economic Development):

(In support) The concern that this bill addresses is influencing our commercial marketplace and political discussion. This bill simply says that robots have to tell us they are robots. This bill is modeled off California legislation that was passed into law. The one difference is that the California law does not include platforms that host bot communication. They have the best visibility into whether these are real people or robots, so they should help protect both our commerce and political discussion.

(Opposed) None.

(Other) When people come to a newspaper website, they bring advertisements with them. The website operators don't know that the advertisement has come with a person and don't have control over those websites. Advertiser is not defined in the bill, which could result in liability for certain websites. The bill should define advertiser as the entity that created the advertisement.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill requires bots to tell people that they are not people. It is similar to legislation passed in California.

(Opposed) This bill places undue burdens on internet companies and will not result in better consumer protections. The requirement for companies to investigate a complaint and respond within 72 hours is an unrealistic timeline. Additionally, the bill allows the Attorney General to request reports on consumer complaints from companies, but does not specify a process or justification for requesting those reports. This may result in fishing expeditions rather than protecting consumers from deceptive practices. The creation of a private right of action is unwarranted, as consumers are already protected under the Consumer Protection Act. Creating a private right of action may overload the court system. Removing these requirements would make the bill more similar to the legislation in California.

Persons Testifying (Innovation, Technology & Economic Development): (In support) Representative Hudgins, prime sponsor.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Testifying (Appropriations): (In support) Representative Hudgins, prime sponsor.

(Opposed) Brooke Davies, Internet Association.

Persons Signed In To Testify But Not Testifying (Innovation, Technology & Economic Development): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.