SENATE, No. 1501

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MARCH 10, 2008

Sponsored by:
Senator SEAN T. KEAN
District 11 (Monmouth)
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District 19 (Middlesex)

Co-Sponsored by:
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SYNOPSIS

Prohibits sending unsolicited advertising by text messaging, and requires companies offering text messaging services to allow their customers to block all incoming and outgoing text messages.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 4/28/2009)

AN ACT concerning the sending of unsolicited advertising by text messaging and the blocking of text messaging and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Communication device capable of receiving text messaging" means a cellular telephone, a device for paging or message services, a personal digital assistant, or any other wireless telecommunication device or technology for short messaging services which receives text messages.

"Text messaging" means the wireless transmission of short messages of text by means of a cellular telephone, a paging or message service, a personal digital assistant or similar telecommunications technology.

"Unsolicited advertisement" means any message sent without the prior permission of the recipient to encourage the purchase or rental of, or investment in, merchandise as that term is defined in subsection (c) of section 1 of P.L.1960, c.39 (C.56:8-1).

2. No person shall send or cause to be sent to a resident of this State an unsolicited advertisement by means of text messaging to a communication device capable of receiving text messaging if the recipient of the message will incur a telecommunications charge or a usage allocation deduction as a result of the message being sent.

3. Prior permission of the recipient to send an advertisement by means of text messaging may be granted only with prior express permission that includes the number to which the text message advertisement may be sent. The permission may be revoked at any time with a request that includes the number for which permission is being revoked.

4. No telecommunications company shall sell or offer to sell text messaging services to customers in this State unless the company offers an option to such customers to block all incoming and outgoing text messages.

5. A violation of this act shall be an unlawful practice subject to the penalties applicable pursuant to section 1 of P.L.1966, c.39 (C.56:8-13) and section 2 of P.L.1999, c.129 (C.56:8-14.3), except that a person may not be held liable for a violation of section 2 of this act if any unsolicited advertisement sent by text messaging was an isolated message sent no more than one time in a 12-month period.

6. The Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations necessary to implement this act.

7. This act shall take effect on the first day of the thirteenth month following enactment, except that the Division of Consumer Affairs may take such action in advance of the effective date as shall be necessary to implement the provisions of the act.

STATEMENT

This bill prohibits the sending of an unsolicited advertisement by text messaging to a resident of New Jersey if it will cause the recipient to incur a telecommunications charge or a usage allocation deduction. Text messaging is the wireless transmission of short messages of text by means of a cellular telephone, a paging or message service, a personal digital assistant or similar telecommunications technology.

For purposes of this bill, an unsolicited advertisement means any message sent without the prior permission of the recipient to encourage the purchase or rental of, or investment in, merchandise, which, by definition, includes services. The bill provides that prior permission of the recipient to send an advertisement by means of text messaging may be granted only by the recipient’s prior express permission, which includes the number to which the text message advertisement may be sent.

The bill also requires any telecommunications company that sells or offers to sell text messaging services to offer an option allowing customers to block all incoming and outgoing text messages.

Any violation of the bill constitutes an unlawful practice subject to the monetary penalties of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.). These penalties include a payment of not more than $10,000 for the first offense and not more than $20,000 for the second and any subsequent offense, and additional payments of as much as $30,000 if the violator knew or should have known the victim is a senior citizen or person with a disability. See P.L.1966, c.39, s.1 (C.56:8-13) and P.L.1999, c.129, s.2 (C.56:8-14.3). A person may not be held liable for a violation if any unsolicited advertisement sent by text messaging was an isolated message sent no more than one time in a 12-month period.

The bill would be enforced by the Division of Consumer Affairs in the Department of Law and Public Safety and the penalties would be in accordance with the violation provisions of the Consumer Fraud Act. A person would not be held liable for a violation if any unsolicited advertisement sent by text messaging was an isolated message sent no more than one time in a 12-month period.

The bill would take effect on the first day of the thirteenth month following enactment.