

ASSEMBLY, No. 617

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

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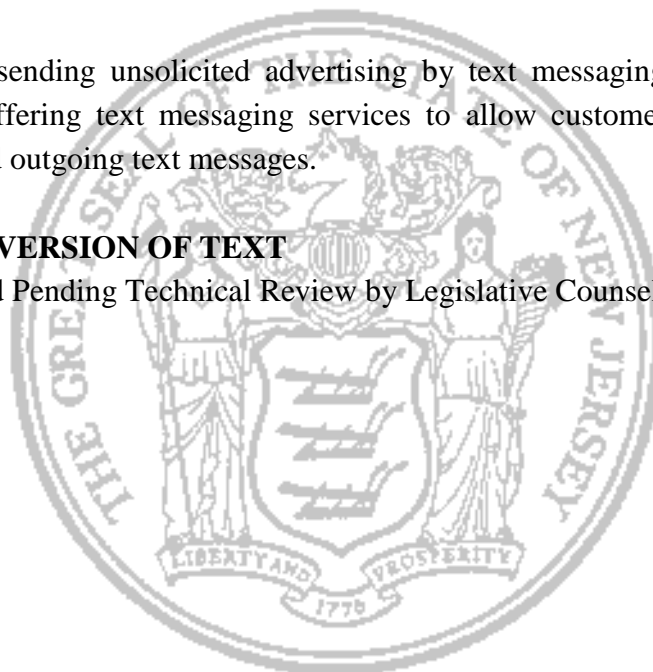
Assemblymen Burzichelli, Prieto, Assemblywoman Lampitt, Assemblymen Greenwald, Conaway, Rumpf, Gusciora, Diegnan, Chivukula, Wisniewski, Schaer, C.J.Brown, Assemblywoman Mosquera, Assemblyman Lagana and Assemblywoman Jimenez

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/6/2014)

A617 MORIARTY, BRAMNICK

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1 AN ACT concerning the sending of unsolicited advertising by text
2 messaging and the blocking of text messaging and supplementing
3 P.L.1960, c.39 (C.56:8-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

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

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

18 "Unsolicited advertisement" means any message sent without the
19 prior permission of the recipient to encourage the purchase or rental
20 of, or investment in, merchandise as that term is defined in
21 subsection (c) of section 1 of P.L.1960, c.39 (C.56:8-1).
22

23 2. No person shall send or cause to be sent to a resident of this
24 State an unsolicited advertisement by means of text messaging to a
25 communication device capable of receiving text messaging if the
26 recipient of the message may incur a telecommunications charge or
27 a usage allocation deduction as a result of the message being sent.
28

29 3. Prior permission of the recipient to send an advertisement by
30 means of text messaging may be granted only with prior express
31 permission that includes the number to which the text message
32 advertisement may be sent. The permission may be revoked at any
33 time with a request that includes the number for which permission
34 is being revoked.
35

36 4. No telecommunications company shall sell, or offer to sell,
37 text messaging services to customers in this State unless the
38 company offers an option to such customers to block all incoming
39 and outgoing text messages; provided, however, the
40 telecommunications company may continue to send text messages
41 to customers concerning their existing accounts if the customer will
42 not incur a telecommunications charge or a usage allocation
43 deduction as a result of the message being sent.
44

45 5. A violation of this act shall be an unlawful practice subject
46 to the penalties applicable pursuant to section 1 of P.L.1966, c.39
47 (C.56:8-13) and section 2 of P.L.1999, c.129 (C.56:8-14.3), except
48 that a person may not be held liable for a violation of section 2 of

1 this act if any unsolicited advertisement sent by text messaging was
2 an isolated message sent no more than one time in a 12-month
3 period.

4
5 6. The Division of Consumer Affairs in the Department of Law
6 and Public Safety, pursuant to the provisions of the "Administrative
7 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall
8 promulgate rules and regulations necessary to implement this act.

9
10 7. This act shall take effect on the first day of the thirteenth
11 month following enactment, except that the Division of Consumer
12 Affairs may take such action in advance of the effective date as
13 shall be necessary to implement the provisions of the act.

14
15
16 STATEMENT

17
18 This bill prohibits the sending of an unsolicited advertisement by
19 means of a text message to a resident of New Jersey if it may cause
20 the recipient to incur a telecommunications charge or a usage
21 allocation deduction. Text messaging is the wireless transmission of
22 short messages of text by means of a cellular telephone, a paging or
23 message service, a personal digital assistant, or similar
24 telecommunications technology.

25 For purposes of this bill, an unsolicited advertisement means any
26 message sent, without the prior permission of the recipient, to
27 encourage the purchase or rental of, or investment in, merchandise
28 or services. The bill requires the recipient's express permission,
29 including the number to which text message advertisements may be
30 sent, before any such advertisements may be sent.

31 In addition, the bill requires any telecommunications company
32 that sells, or offers to sell, text messaging services to offer an option
33 allowing customers to block all incoming and outgoing text
34 messages. Under the bill, the telecommunications company may
35 continue to send customers text messages concerning their existing
36 accounts, if the customer will not incur a telecommunications
37 charge or a usage allocation deduction as a result of the message
38 being sent.

39 A violation of the provisions of the bill constitutes an unlawful
40 practice. An unlawful practice under the Consumer Fraud Act is
41 punishable by a monetary penalty of not more than \$10,000 for a
42 first offense and not more than \$20,000 for any subsequent offense.
43 In addition, violations can result in cease and desist orders issued
44 by the Attorney General, the assessment of punitive damages and
45 the awarding of treble damages and costs to the injured party.

46 Under the provisions of the bill, a person may not be held liable
47 for a violation if any unsolicited advertisement sent by text

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- 1 messaging was an isolated message sent no more than one time in a
- 2 12-month period.