

[Second Reprint]

**ASSEMBLY, No. 617**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

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**District 4 (Camden and Gloucester)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Assemblyman DANIEL R. BENSON**

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**District 35 (Bergen and Passaic)**

**Assemblyman BOB ANDRZEJCZAK**

**District 1 (Atlantic, Cape May and Cumberland)**

**Co-Sponsored by:**

**Assemblymen Burzichelli, Prieto, Assemblywoman Lampitt, Assemblymen Greenwald, Conaway, Rumpf, Gusciora, Diegnan, Chivukula, Wisniewski, Schaer, C.J.Brown, Assemblywoman Mosquera, Assemblyman Lagana, Assemblywomen Jimenez, Riley, Watson Coleman, Caride, Handlin, Assemblyman Fiocchi, Senators Van Drew, Scutari and Allen**

**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**

As amended on November 13, 2014 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 9/23/2014)

1 AN ACT concerning the sending of unsolicited advertising by text  
2 messaging and the blocking of text messaging and supplementing  
3 <sup>2</sup>[P.L.1960, c.39 (C.56:8-1 et seq.)] Title 2A of the New Jersey  
4 Statutes<sup>2</sup>.

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

8  
9 1. As used in this act:

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

15 "Text messaging" means the wireless transmission of <sup>1</sup>[short  
16 messages of] <sup>1</sup>text <sup>1</sup>, images or a combination of text and images<sup>1</sup>  
17 by means of a cellular telephone, a paging or message service, a  
18 personal digital assistant or <sup>1</sup>[similar telecommunications  
19 technology] any other electronic communications device<sup>1</sup>.

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

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

30  
31 3. <sup>1</sup>[Prior permission of the recipient to send an advertisement  
32 by means of text messaging] No person may send an unsolicited  
33 advertisement by means of text messaging without first receiving  
34 permission from the intended recipient. Permission<sup>1</sup> may be  
35 granted only with prior express <sup>1</sup>[permission] authorization from  
36 the intended recipient<sup>1</sup> that includes the number to which the text  
37 message advertisement may be sent. The permission may be  
38 revoked at any time with a request that includes the number for  
39 which permission is being revoked.

40  
41 4. No telecommunications company shall sell, or offer to sell,  
42 text messaging services to customers in this State unless the

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ACO committee amendments adopted June 5, 2014.

<sup>2</sup>Assembly amendments adopted in accordance with Governor's  
recommendations November 13, 2014.

1 company offers an option to such customers to block all incoming  
2 and outgoing text messages <sup>2</sup>that result in telecommunications  
3 charges or usage allocation deductions<sup>2</sup>; provided, however, the  
4 telecommunications company may continue to send text messages  
5 to customers concerning their existing accounts if the customer will  
6 not incur a telecommunications charge or a usage allocation  
7 deduction as a result of the message being sent.

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

17  
18 <sup>2</sup>5. a. A person who violates this act shall be subject to a civil  
19 penalty in an amount not to exceed \$500 for the first violation and  
20 \$1,000 for each subsequent violation, collectible by the Attorney  
21 General in a summary proceeding pursuant to the "Penalty  
22 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

23 b. Nothing set forth in this act shall be construed as creating,  
24 establishing or authorizing a private cause of action by an aggrieved  
25 person against a person who has violated, or is alleged to have  
26 violated, the provisions of this act.<sup>2</sup>

27  
28 <sup>2</sup>**[6.** The Division of Consumer Affairs in the Department of Law  
29 and Public Safety, pursuant to the provisions of the "Administrative  
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall  
31 promulgate rules and regulations necessary to implement this act.]<sup>2</sup>

32  
33 <sup>2</sup>**[7.]** <sup>6.</sup><sup>2</sup> This act shall take effect on the first day of the  
34 thirteenth month following enactment <sup>2</sup>**[**, except that the Division  
35 of Consumer Affairs may take such action in advance of the  
36 effective date as shall be necessary to implement the provisions of  
37 the act]<sup>2</sup>.