

ASSEMBLY BILL NO. 617
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 617 (First Reprint) with my recommendations for reconsideration.

This bill prohibits the sending of an unsolicited advertisement by means of a text message to a resident of New Jersey if it may cause the recipient to incur a telecommunications charge or a usage allocation deduction. In addition, the bill 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.

This bill's intent is laudatory, and cell phone customers should be able to avoid receiving unsolicited advertising text messages that result in unwarranted charges. However, this bill places its prohibitions within the Consumer Fraud Act, thereby triggering significant penalties normally reserved for fraudulent, not aggressive, business practices. Although we wish to discourage businesses from sending unsolicited text messages because they place unwarranted burdens on the consumer, it is important to note that such text messages are not automatically fraudulent or deceptive. Accordingly, I recommend placing the bill's prohibitions outside the Consumer Fraud Act and maintaining enforcement authority with the Attorney General.

Accordingly, I herewith return Assembly Bill No. 617 (First Reprint) and recommend that it be amended as follows:

Page 2, Title, Line 3:

Delete "P.L.1960, c.39
(C.56:8-1 et seq.)" and
insert "Title 2A of the New
Jersey Statutes"

Page 2, Section 4, Line 43:

After "messages" insert "that
result in telecommunications"

charges or usage allocation deductions"

Page 3, Section 5, Lines 6-13:

Delete in their entirety

Page 3, Section 6, Lines 15-18:

Delete in their entirety

Page 3, Line 19:

Insert new section 5 to read as follows: "5. a. A person who violates this act shall be subject to a civil penalty in an amount not to exceed \$500 for the first violation and \$1,000 for each subsequent violation, collectible by the Attorney General in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against a person who has violated, or is alleged to have violated, the provisions of this act."

Page 3, Section 7, Line 20:

Delete "7." and insert "6."

Page 3, Section 7, Line 21:

Delete ", except that the Division of Consumer" and insert "."

Page 3, Section 7, Lines 22-23:

Delete in their entirety

[seal]

Respectfully,
/s/ Chris Christie
Governor

Attest:

/s/ Christopher S. Porrino
Chief Counsel to the Governor