

SUBJECT: Requiring consent before publishing mobile telephone numbers

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 4 ayes — P. King, Hunter, R. Cook, Crabb

0 nays

1 present not voting — Hartnett

2 absent — Baxter, Turner

WITNESSES: None

DIGEST: CSHB 2553 would prohibit a commercial mobile telecommunications service provider doing business in Texas from publishing the name and phone number of a customer in a directory without the express consent of the customer. Consent would have to be given:

- in writing on a separate document that included the customer's signature and the date;
- verbally; or
- on a Web site maintained by the service provider.

Before a customer consented, a provider would have to inform the customer that by consenting the customer would be agreeing to have his or her telephone number sold or licensed and that the customer's telephone number could be included in a public directory. Also, the provider would inform a customer that the customer might incur additional charges by consenting if the customer's calling plan billed for unsolicited calls or text messages from telemarketers.

A customer could revoke consent at any time, and a provider would have to comply with such a request within 60 days. A customer could not be billed for refusing to consent.

The attorney general could investigate violations of the bill and seek injunctive relief, attorney's fees, and civil penalties up to \$1,000 for each

violation. The penalty could be increased up to \$3,000 for each violation if a court found that a provider willfully or knowingly violated the provisions of the bill.

Utilities Code, ch. 15 – the judicial review, enforcement, and penalty provisions of the Public Utilities Regulatory Act – would not apply to a violation of the provisions of this bill.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 2553 would address a looming privacy concern for mobile phone consumers in Texas. Some trade groups are planning to create a wireless phone directory that could be similar to a standard white pages directory, which could include up to 75 percent of the 165 million mobile phone users in the nation. Many mobile phone users may not want to be included in such a directory and would prefer that their phone numbers remain private. The bill would ensure that a consumer who did not want his or her phone number published would have that right.

Because many service providers charge customers for calls and messages they receive, it would be unfair to make an individual's phone number available without that person's consent. Easy availability of mobile phone numbers would enable telemarketers and spammers to bombard citizens with unwanted calls and text e-mails. In Europe, mobile phone users already receive spam for pornography and other unwanted products, and the Legislature should head off any similar practices in Texas.

CSHB 2553 would include strong consumer protections necessary to deter companies from violating these provisions. It is essential that companies be required to obtain express consent from consumers because otherwise they could bury disclosure requirements in the fine print of a service agreement. Companies would be unable to bill a customer for not consenting, would have to disclose charges that might be incurred because of inclusion in a directory, and would have to allow a customer to revoke consent at any time. The attorney general could investigate and seek action against violators in order to protect the interest of Texas citizens.

CSHB 2553 would not prohibit the kind of directory being put together by some trade groups – it simply would require the permission of consumers for their numbers to be included. People who want their numbers in such a

directory, such as small business owners or those without landlines, could still opt into such a directory if this bill were enacted.

**OPPONENTS
SAY:**

CSHB 2553 would cut off Texans' ability to benefit from a mobile phone directory, an important tool for the industry, small businesses, and consumers. A national mobile phone directory could benefit owners of small businesses and mobile entrepreneurs who wanted customers to have access to their phone numbers. Millions of consumers who rely on mobile phones as their primary phone line currently miss out on the benefits of having their numbers listed in a public directory. A national mobile phone directory would be useful only if it were comprehensive, and CSHB 2553 would undermine this project.

This bill is unnecessary because sufficient safeguards are in place to prevent abuse by telemarketers. Most mobile phones are equipped with caller ID and other functions allowing users to avoid unwanted phone calls. Also, consumers are free to submit their phone numbers to the national Do Not Call Registry, a program that carries significant sanctions against violators. Further, most service providers offer refunds to customers who have received unwanted calls.

It is a mistake to assume that a national mobile phone directory would resemble a white pages directory open to telemarketers. The primary directory project would allow information to be available only after calling directory assistance. Consumers would be able to opt in to this directory. The Legislature should hold off on getting involved preemptively in regulating mobile phone directory services because there have been no abuses associated with what could be an innovative program.

**OTHER
OPPONENTS
SAY:**

Because it could be difficult to verify whether verbal consent was given, service providers should be required to receive written consent before using an individual's phone number in a directory.

NOTES:

As filed, HB 2553 would have required written consent before a provider could publish a number in a directory. The original bill also would have provided the Public Utility Commission with enforcement authority, rather than the attorney general.