

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1218

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 10, 2012

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Assembly Bill No. 1218.

As amended, 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. 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 or services. The bill requires the recipient's express permission, including the number to which text message advertisements may be sent, before any such advertisements may be sent.

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. Under the bill, the telecommunications company may continue to send customers text messages concerning their existing accounts, if the customer will not incur a telecommunications charge or a usage allocation deduction as a result of the message being sent.

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

Under the provisions of the bill, 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.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended section 2 of the bill to remove the term “will” and replace it with the term “may.”