SENATE BILL REPORT
SB 5976

As of January 29, 2026

Title: An act relating to modifying the Washington commercial electronic mail act.

Brief Description: Modifying the Washington commercial electronic mail act.

Sponsors: Senators Harris, Liias and Nobles.

Brief History:
Committee Activity: Business, Trade & Economic Development: 1/29/26.

Brief Summary of Bill

- Modifies the Commercial Electronic Mail Act (Act) by narrowing who can seek damages under the Act, and when a commercial email subject line is considered misleading.
- Repeals the *per se* violation of the Consumer Protection Act for commercial emails in violation of the Act.

SENATE COMMITTEE ON BUSINESS, TRADE & ECONOMIC DEVELOPMENT

Staff: William Bridges (786-7312)

Background: Commercial Electronic Mail Act. Enacted in 1998, the Commercial Electronic Mail Act (Act) regulates commercial email. A commercial email is one that is sent for the purpose of promoting real property, goods, or services for sale or lease. It is illegal under the Act for a person to send, conspire with another to send, or assist in the transmission of a commercial email from a computer in Washington or to an email address that the sender knows, or has reason to know, is held by a Washington resident that:

- uses a third party's internet domain name without permission;
- misrepresents or obscures the point of origin or transmission path; or
- contains a false or misleading subject line.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Enforcement of the Commercial Electronic Mail Act. A recipient of commercial email in violation of this Act may seek statutory damages of $500. The recipient may bring a per se claim under the Consumer Protection Act (CPA).

Consumer Protection Act. The CPA allows a person injured by an unfair or deceptive practice to bring a private cause of action for actual damages, injunctive relief, reasonable attorney's fees, and treble damages. The Office of the Attorney General may investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

To prevail on a CPA claim, a plaintiff must prove five elements:

- an unfair or deceptive act or practice occurred;
- the act or practice occurred in trade or commerce;
- there is a public interest impact;
- there is an injury to the plaintiff's business or property; and
- there is causation.

When the Legislature declares a specific act or practice a *per se* violation of the CPA, a plaintiff need only to show injury and causation to prevail.

Summary of Bill: Narrowing the Application of the Commercial Electronic Mail Act. A sender must have a reliable basis, rather than reason, to know that an email is held by a Washington resident for the sender to be in violation of the Act. A commercial email's subject line must be likely to mislead a recipient, acting reasonably, about a fact material to the relevant transaction and be material to the recipient completing the transaction.

A recipient of a commercial email in violation of the Act may only claim damages if they received, reviewed, and detrimentally relied upon the email, rather than just received the email.

Repealing Specified Per Se Violations of the Consumer Protection Act. The following *per se* CPA violations are repealed:

- initiating or conspiring with another person to initiate the transmission of a commercial email that:
    1. uses a third party internet domain name without the third party's consent;
    2. misrepresents or obscures any information in identifying the point of origin or transmission path of the email; or
    3. contains false or misleading information in the subject line; and
- assisting in the transmission of a commercial email when the person knows, or consciously avoids knowing, that the initiator of the commercial email is engaged, or intends to engage, in any act or practice that violates the CPA.

Lawsuits filed on or after the effective date are subject to the provisions, regardless of when the conduct occurred.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is really important for the state of Washington because all it really does is tweak the current law. It still gives consumers what they need, but removes the motivation driving the gold rush of litigation that has come into Washington. There have been over 100 class actions. Litigation is greatly harming businesses.

The WA Retail Association has prepared a chart showing over 80 lawsuits that have been filed claiming false subject lines since the recent state supreme court *Brown vs Old Navy* decision. The practices attacked in the lawsuits are routine marketing subject lines, such as up to 40% off, select styles, last chance, or sale extended. The lawsuits are devastating and damaging to businesses of all sizes. Retailers have a huge concern, especially smaller ones, because there is legal uncertainty about what used to be routine practices. Retailers know that the Attorney General's office has expressed concerns the retailers have been working very closely with them to address those concerns. A proposed substitute is being worked on for the House companion bill.

The bill restores the Washington commercial electronic mail act to its original purpose, protecting consumers from truly deceptive conduct without punishing legitimate routine marketing communication. Many Washington businesses use email to communicate with their customers about receipts, promotions, seasonal sales, account updates and other services. These are not misleading messages; they are part of modern commerce. Retailers consistently need to modify and update their messaging to remain competitive, whether that is dealing with seasonal changes, pricing changes new product offerings and the like.

Email is one of the most affordable and effective tools a small business has. It is used for things like confirming orders, sharing sales, and most importantly, weekly newsletters. Email is how small retailers stay connected to their customers. Small business owners wear many hats, legal department is one of them, and they do not have the capacity to fight lawsuits. Many of the subject lines that will be deemed fraudulent under the current law puts small businesses in danger of fraudulent and opportunistic lawsuits. For small business owners, this bill isn't about avoiding responsibility, it's about being able to operate without fear of predatory litigation.

Hotels operate on very thin margins and the demand is unpredictable. The biggest challenge is last-minute cancellations. Hotels may send emails advertising 20 percent off this weekend when they see a large number of cancellations due to weather, travel, or just tourism

changes. These are not deceptive practices, it is advertising a limited time to fill those rooms. Local hotels should not have to fear sending out these types of emails.

When a single court decision, like *Brown v. Old Navy*, suddenly triggers a wave of litigation, that should signal to the Legislature that something is wrong and needs to be fixed. AWB supports House proposed substitute that addresses many of the expressed concerns.

Small e-commerce companies, often those employing just a few people, also fear the threat of class action litigation, in which attorneys representing just one person are able to sue and seek recovery for thousands of people who never saw the email, read the e-mail, or rely on the e-mail. Consider your own communication practices during an election cycle. Have legislators ever authorized an email urging people to donate today because of a midnight deadline? Could you imagine if those types of emails subjected you to personal litigation where every person who received the email could seek to recover $500? If you think that's fair and the businesses should live by it, then let's make political solicitations subject to the law. If you think that's unfair, then you should support the bill.

The addition of a materiality requirement is already required in federal class actions. Under the bill, anyone who received an email that mentions a percent off, they can still sue if they relied on the email and made a purchase. Under the current law, even if the email is sent in good faith, a company still needs to pay hundreds of thousands of dollars to defend against the lawsuit.

CON: The Commercial Electronic Mail Act prohibits email subject lines telling consumers they have to hurry or act fast to take advantage of the final hours of a sale when there is, in fact, no end to the promotion in sight. This is not about one off innocent mistakes, but sophisticated marketing campaigns built on lies. False messages have been illegal under Washington law for a long time; for example, under current law, a retailer cannot falsely advertise going out of business sales.

Washington State has always been a leader in protecting consumers this proposal is a giant step backwards. The bill guts the ability of consumers to hold corporations accountable, even in the most egregious violations of Commercial Electronic Mail Act. First, by repealing the provision that makes a violation of Commercial Electronic Mail Act a violation of the Consumer Protection Act. Second by creating a reliance standard that will prevent any ability to bring a class action, which is the only practical way to enforce violations.

Persons Testifying: PRO: Senator Paul Harris, Prime Sponsor; Sean DeWitz, Washington Hospitality Association; Poonam Patel, S&P Hotel; Crystal Leatherman, Washington Retail Association; Curt Wike, CSWW, Inc., dba North 40 Outfitters; Jennifer Luna, Paper Luxe & The Curious Bear Toy & Book Shop, Owner; Stephanie Sheridan, Benesch Friedlander Coplan & Aronoff LLP; Max Martin, Association of Washington Business; David Carter;

Meegan Brooks, Benesch Friedlander Coplan & Aronoff LLP.

CON: Blythe Chandler, WA State Association for Justice; Jason Rittereiser, HKM Employment Attorneys.

Persons Signed In To Testify But Not Testifying: No one.