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H.B. 357
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Ghanbari

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SUMMARY

- Requires the implementation of certain security protections and the use of certain communication networks for the United States Phone Number Linked Mobile Texting Services.
- Permits the Attorney General to bring a civil action in a court of common pleas against any person to enforce the bill's requirements.
- Requires a court to enjoin and impose a forfeiture of \$10 per user per month on a defendant found by the court to be violation of the bill's requirements.
- Requires the Director of Public Safety to adopt rules to implement the bill not later than 90 days after the effective date of the bill.
- Titles the bill as the Safe and Reliable Texting Act.

DETAILED ANALYSIS

Mobile texting service requirements

The bill requires a United States Phone Number Linked Mobile Texting Service to do both of the following not later than six months after the effective date of the rules required to be adopted by the Director of Public Safety under the bill:

- Implement the following security protections when exchanging texts messages, including for group messaging, and when sending between iOS and Android OS:
 - Encryption of the data being transmitted;
 - Transmission and receipt of photos, videos, or other media in their original quality without degradation;
 - Real-time notification of the sender when the recipient has viewed the message, if the recipient has enabled the sending of the real-time notification to the sender;

- Real-time, graphical notification of a potential recipient when a potential sender is typing a message to that potential recipient;
- Support for message transmission over internet protocol based networks, which connect to end-user devices via cellular network or wi-fi systems.
- In selecting from among communications networks that are available to exchange a message with another device, as configured by the user of the device exchanging the message at the time of the exchange, use a network that supports the security protections listed above whenever possible.

As used in the bill, “United States Phone Number Linked Mobile Texting Service” means the default software on a smartphone that enables consumers to send text messages to and receive text messages from, all or substantially all, text-capable United States telephone numbers. “Group messaging” is defined as the use of a United States Phone Number Linked Mobile Texting Service to send a text message to more than one recipient at a time.¹

Enforcement

The Attorney General is permitted under the bill to bring a civil action against any person to enforce the mobile texting service requirements discussed above. The civil action is to be brought in any court of common pleas having jurisdiction over the person.

“Person” is defined in the bill as any natural person, trust, firm, joint stock company, corporation, company, partnership, limited liability company, association, or decentralized autonomous organization.²

Penalties

The bill requires a court to do both of the following if the court determines that there was a violation of the requirements discussed above:

- Issue an order immediately enjoining the unlawful activity and requiring the defendant to comply with the bill’s mobile texting service requirements;
- Impose a forfeiture of \$10 per user per month in which the United States Phone Number Linked Mobile Texting Service was in violation of the bill’s requirements.³

The bill does not specify where the money collected from the forfeiture is to be placed.

¹ R.C. 5502.81(A) and (C) and 5502.82.

² R.C. 5502.81(B) and 5502.83.

³ R.C. 5502.84.

Rules

The Director of Public Safety is required to adopt rules to implement the bill not later than 90 days after the bill's effective date. The Director of Public Safety administers the Department of Public Safety.⁴

Bill title

The bill is titled the Safe and Reliable Texting Act.⁵

Background – Commerce Clause and Preemption

Dormant Commerce Clause

The bill might be subject to challenge under the Dormant Commerce Clause since the bill's requirements might impact interstate commerce through application to all text capable United States telephone numbers. The U.S. Constitution grants Congress the power to “regulate Commerce . . . among the several states.”⁶ The U.S. Supreme Court has held that the Commerce Clause also “contain[s] a further negative command” that prohibits “certain state [economic regulations] even when Congress has failed to legislate on the subject,” which is known as the Dormant Commerce Clause.⁷ The Court notes, however, that at the “very core” of the doctrine is primarily the antidiscrimination principle prohibiting state laws from building up their own in-state commerce by burdening industries and businesses of other states. But, state laws that are not anti-discriminatory are not prohibited merely if they have the practical effect of controlling commerce outside of the state.⁸ Yet, it has been argued that there is still the potential for a state law that does not discriminate against out-of-state commerce to nonetheless be invalidated under the doctrine if the law imposes a substantial burden on interstate commerce.⁹ It would be up to a court to determine if the bill's requirements conflict with the dormant Commerce Clause.

Federal preemption

The bill might also be challenged as being preempted by federal law. A provision of the federal Communications Act states that “[N]o state or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.”¹⁰ If a court determines that the

⁴ R.C. 5502.85; R.C. 121.02(J), not in the bill.

⁵ Section 2.

⁶ U.S. Constitution Article I, Section 8, Clause 3.

⁷ *Nat'l Pork Producers Council v. Ross*, 143 S.Ct. 1142, 1152 (2023).

⁸ *Nat'l Pork Producers Council* at 1152-54, 1157.

⁹ *Nat'l Pork Producers Council* at 1165-66 (Sotomayor, J., concurring).

¹⁰ 47 United States Code 332(c)(3)(A).

bill regulates “the entry of or rate charged by any . . . commercial mobile service” then the bill likely could be invalidated as preempted. If the bill is instead “regulating the other terms and conditions of commercial mobile services” then the bill might survive review. Ultimately, a court would need to determine if the bill is preempted.

HISTORY

Action	Date
Introduced	12-06-23
