

2 **2SHB 1037** - S COMM AMD
3 By Committee on Ways & Means
4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 19.190.010 and 1998 c 149 s 2 are each amended to
8 read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Assist the transmission" means actions taken by a person to
12 provide substantial assistance or support which enables any person to
13 formulate, compose, send, originate, initiate, or transmit a
14 commercial electronic mail message when the person providing the
15 assistance knows or consciously avoids knowing that the initiator of
16 the commercial electronic mail message is engaged, or intends to
17 engage, in any practice that violates the consumer protection act.

18 (2) "Commercial electronic mail message" means an electronic mail
19 message sent for the purpose of promoting real property, goods, or
20 services for sale or lease. It does not mean an electronic mail
21 message to which an interactive computer service provider has attached
22 an advertisement in exchange for free use of an electronic mail
23 account, when the sender has agreed to such an arrangement.

24 ~~((+2))~~ (3) "Electronic mail address" means a destination, commonly
25 expressed as a string of characters, to which electronic mail may be
26 sent or delivered.

27 ~~((+3))~~ (4) "Initiate the transmission" refers to the action by the
28 original sender of an electronic mail message, not to the action by any
29 intervening interactive computer service that may handle or retransmit
30 the message, unless such intervening interactive computer service
31 assists in the transmission of an electronic mail message when it
32 knows, or consciously avoids knowing, that the person initiating the
33 transmission is engaged, or intends to engage, in any act or practice
34 that violates the consumer protection act.

35 ~~((+4))~~ (5) "Interactive computer service" means any information
36 service, system, or access software provider that provides or enables
37 computer access by multiple users to a computer server, including

1 specifically a service or system that provides access to the internet
2 and such systems operated or services offered by libraries or
3 educational institutions.

4 ~~((5))~~ (6) "Internet domain name" refers to a globally unique,
5 hierarchical reference to an internet host or service, assigned through
6 centralized internet naming authorities, comprising a series of
7 character strings separated by periods, with the right-most string
8 specifying the top of the hierarchy.

9 (7) "Person" means a person, corporation, partnership, or
10 association.

11 (8) "Unsolicited commercial electronic mail message" means a
12 commercial electronic mail message:

13 (a) Sent without a recipient's prior consent;

14 (b) Sent to a recipient with whom the sender does not have a
15 preexisting or ongoing business or personal relationship; and

16 (c) Sent for a purpose other than collecting an existing
17 obligation.

18 **Sec. 2.** RCW 19.190.020 and 1998 c 149 s 3 are each amended to read
19 as follows:

20 (1) No person(~~(, corporation, partnership, or association)~~) may
21 initiate the transmission, conspire with another to initiate the
22 transmission, or assist the transmission, of a commercial electronic
23 mail message from a computer located in Washington or to an electronic
24 mail address that the sender knows, or has reason to know, is held by
25 a Washington resident that:

26 (a) Uses a third party's internet domain name without permission of
27 the third party, or otherwise misrepresents or obscures any information
28 in identifying the point of origin or the transmission path of a
29 commercial electronic mail message; ~~((or))~~

30 (b) Contains false or misleading information in the subject line;
31 or

32 (c) Fails to prominently display in the body of an unsolicited
33 commercial electronic mail message the following identifying
34 information: The legal name, mailing address, physical address, true
35 electronic mail address, and telephone number, including area code, of
36 the person initiating the transmission of the message, or his or her
37 registered agent in the state of Washington.

1 (2) For purposes of this section, a person(~~(, —corporation,~~
2 ~~partnership, or association))~~) knows that the intended recipient of a
3 commercial electronic mail message is a Washington resident if that
4 information is available, upon request, from the registrant of the
5 internet domain name contained in the recipient's electronic mail
6 address.

7 **Sec. 3.** RCW 19.190.030 and 1998 c 149 s 4 are each amended to read
8 as follows:

9 (1) It is a violation of the consumer protection act, chapter 19.86
10 RCW, to conspire with another person to initiate the transmission or to
11 initiate the transmission of a commercial electronic mail message that:

12 (a) Uses a third party's internet domain name without permission of
13 the third party, or otherwise misrepresents or obscures any information
14 in identifying the point of origin or the transmission path of a
15 commercial electronic mail message; ~~((or))~~

16 (b) Contains false or misleading information in the subject line;
17 or

18 (c) Fails to prominently display in the body of an unsolicited
19 commercial electronic mail message the following identifying
20 information: The legal name, mailing address, physical address, true
21 electronic mail address, and telephone number, including area code, of
22 the person initiating the transmission of the message, or his or her
23 registered agent in the state of Washington.

24 (2) It is a violation of the consumer protection act, chapter 19.86
25 RCW, to assist in the transmission of a commercial electronic mail
26 message, when the person providing the assistance knows, or consciously
27 avoids knowing, that the initiator of the commercial electronic mail
28 message is engaged, or intends to engage, in any act or practice that
29 violates the consumer protection act.

30 (3) The legislature finds that the practices covered by this
31 chapter are matters vitally affecting the public interest for the
32 purpose of applying the consumer protection act, chapter 19.86 RCW. A
33 violation of this chapter is not reasonable in relation to the
34 development and preservation of business and is an unfair or deceptive
35 act in trade or commerce and an unfair method of competition for the
36 purpose of applying the consumer protection act, chapter 19.86 RCW.

1 NEW SECTION. **Sec. 4.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Assist the transmission" means actions taken by a person to
4 provide substantial assistance or support which enables any person to
5 formulate, compose, send, originate, initiate, or transmit a
6 commercial electronic mail message when the person providing the
7 assistance knows or consciously avoids knowing that the initiator of
8 the commercial electronic mail message is engaged, or intends to
9 engage, in any practice that violates the consumer protection act.

10 (2) "Commercial electronic mail message" means an electronic mail
11 message sent for the purpose of promoting real property, goods, or
12 services for sale or lease. It does not mean an electronic mail
13 message to which an interactive computer service provider has attached
14 an advertisement in exchange for free use of an electronic mail
15 account, when the sender has agreed to such an arrangement.

16 (3) "Electronic mail address" means a destination, commonly
17 expressed as a string of characters, to which electronic mail may be
18 sent or delivered.

19 (4) "Initiate the transmission" refers to the action by the
20 original sender of an electronic mail message, not to the action by any
21 intervening interactive computer service that may handle or retransmit
22 the message, unless such intervening interactive computer service
23 assists in the transmission of an electronic mail message when it
24 knows, or consciously avoids knowing, that the person initiating the
25 transmission is engaged, or intends to engage, in any act or practice
26 that violates the consumer protection act.

27 (5) "Interactive computer service" means any information service,
28 system, or access software provider that provides or enables computer
29 access by multiple users to a computer server, including specifically
30 a service or system that provides access to the internet and such
31 systems operated or services offered by libraries or educational
32 institutions.

33 (6) "Person" means a person, corporation, partnership, or
34 association.

35 (7) "Publish" means to do either of the following with respect to
36 the interactive computer service provider's policy on unsolicited
37 commercial electronic mail messages:

38 (a) Make that policy available upon request in written form at no
39 charge; or

1 (b) Display that policy through an on-line notice on the internet
2 home page of the interactive computer service provider, or a page
3 accessible through a conspicuous link on the internet home page of the
4 interactive computer service provider.

5 (8) "Registered user" means a person that maintains an electronic
6 mail address with an interactive computer service provider.

7 (9) "Unsolicited commercial electronic mail message" means a
8 commercial electronic mail message:

9 (a) Sent without a recipient's prior consent;

10 (b) Sent to a recipient with whom the sender does not have a
11 preexisting or ongoing business or personal relationship; and

12 (c) Sent for a purpose other than collecting an existing
13 obligation.

14 NEW SECTION. **Sec. 5.** No registered user shall use or cause to be
15 used the registered user's interactive computer service provider's
16 service or equipment located in this state in violation of the
17 interactive computer service provider's published policy prohibiting or
18 restricting the use of its service or equipment for the initiation of
19 unsolicited commercial electronic mail messages.

20 NEW SECTION. **Sec. 6.** No person shall initiate, conspire with
21 another person to initiate, or assist the transmission of an
22 unsolicited commercial electronic mail message and use, or cause to be
23 used, an interactive computer service provider's equipment located in
24 this state in violation of that interactive computer service provider's
25 published policy prohibiting or restricting the use of its service or
26 equipment to deliver unsolicited commercial electronic messages.

27 NEW SECTION. **Sec. 7.** An interactive computer service provider is
28 not required to create a policy prohibiting or restricting the use of
29 its service or equipment for the initiation or delivery of unsolicited
30 commercial electronic mail messages.

31 NEW SECTION. **Sec. 8.** This chapter does not limit or restrict the
32 rights of an interactive computer service provider under Section
33 230(c)(1) of Title 47 of the United States Code, under chapter 19.190
34 RCW, or any decision of an interactive computer service provider to

1 permit to restrict access to or use of its system, or any exercise of
2 its editorial function.

3 NEW SECTION. **Sec. 9.** (1) In addition to any other action
4 available under law, any interactive computer service provider whose
5 published policy on unsolicited commercial electronic mail messages is
6 violated as provided in this chapter may bring a civil action against
7 a person or a registered user:

8 (a) Who initiates or conspires to initiate a message transmitted in
9 violation of the interactive computer service provider's published
10 policy; or

11 (b) Who assists in the transmission of a message, when the person
12 providing the assistance knows, or consciously avoids knowing, that the
13 person initiating the transmission is engaged in, or intends to engage
14 in, any acts or practices that violate an interactive computer service
15 provider's published policy.

16 (2) In any action brought pursuant to subsection (1) of this
17 section, an interactive computer service provider shall be required to
18 establish as an element of its cause of action that prior to the
19 alleged violation, the defendant had notice of both of the following:

20 (a) The policy of the interactive computer service provider
21 regarding unsolicited commercial electronic mail messages; and

22 (b) The fact that the defendant's unsolicited commercial electronic
23 mail message would use or cause to be used the interactive computer
24 service provider's equipment located in this state.

25 (3) In addition to any other action available under law, a customer
26 of an interactive computer service provider who receives commercial
27 electronic mail in violation of the interactive computer service
28 provider's published policy on unsolicited commercial electronic mail
29 messages as provided in this chapter may bring a civil action against
30 a person:

31 (a) Who initiates or conspires to initiate a message to a customer
32 that is transmitted in violation of an interactive computer service
33 provider's published policy; or

34 (b) Who assists in the transmission of a message to a customer,
35 when the person providing the assistance knows, or consciously avoids
36 knowing, that the person initiating the transmission is engaged in, or
37 intends to engage in, any acts or practices that violate an interactive
38 computer service provider's published policy.

1 (4) In any action brought pursuant to subsection (3) of this
2 section, a customer of an interactive computer service provider shall
3 be required to establish as an element of his or her cause of action
4 that prior to the alleged violation, the defendant had notice of both
5 of the following:

6 (a) The policy of the customer's interactive computer service
7 provider regarding unsolicited commercial electronic mail messages; and

8 (b) The fact that the defendant's unsolicited commercial electronic
9 mail message would use or cause to be used the interactive computer
10 service provider's equipment located in this state.

11 (5) An interactive computer service provider may recover the actual
12 monetary loss suffered by that provider by reason of a violation of its
13 published policy, or liquidated damages of fifty dollars for each
14 message initiated or delivered in violation of this chapter, up to a
15 maximum of twenty-five thousand dollars per day, whichever amount is
16 greater.

17 (6) A customer may recover liquidated damages of five hundred
18 dollars for each unsolicited commercial electronic mail message
19 received by the customer in violation of this chapter, up to a maximum
20 of twenty-five thousand dollars per day, whichever amount is greater.

21 (7) The prevailing party in any action brought under this section
22 is entitled to recover costs and reasonable attorneys' fees.

23 NEW SECTION. Sec. 10. RCW 19.190.005 (Findings) and 1998 c 149 s
24 1 are each repealed.

25 NEW SECTION. Sec. 11. Sections 4 through 9 of this act constitute
26 a new chapter in Title 19 RCW."

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30 On page 1, line 1 of the title, after "mail;" strike the remainder
31 of the title and insert "amending RCW 19.190.010, 19.190.020, and
32 19.190.030; adding a new chapter to Title 19 RCW; repealing RCW
33 19.190.005; and prescribing penalties."

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