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HOUSE BILL 2752

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State of Washington

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1998 Regular Session

By Representatives Bush, Crouse, Gardner, Cairnes, Dyer, Mulliken, Morris, Linville, Reams, Romero, Smith, McDonald, Ogden, Dickerson, Butler, O'Brien, Ballasiotes, Talcott and Appelwick; by request of Attorney General

Read first time 01/19/98. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to electronic mail; adding a new chapter to Title  
2 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that the volume of  
5 unsolicited electronic mail has grown exponentially in the past year as  
6 individuals and organizations have discovered that they are able to  
7 send electronic advertisements to hundreds of thousands or millions of  
8 internet users at virtually no cost.

9 Unsolicited commercial electronic mail messages constitute the  
10 majority of unsolicited electronic mail. Unsolicited commercial  
11 electronic mail messages often impose an out-of-pocket monetary cost on  
12 recipients who cannot refuse such messages and incur incremental fees  
13 for time spent accessing and reviewing each message.

14 To the recipient, unsolicited commercial electronic mail messages  
15 are often indistinguishable from other electronic mail messages. The  
16 unsolicited messages thus diminish the utility of electronic mail  
17 service because users must wade through unwanted advertisements to  
18 obtain those messages they wish to receive.

1 Unsolicited commercial electronic mail messages cannot be  
2 effectively blocked and, thus, invade the privacy of recipients. This  
3 invasion of privacy is exacerbated for recipients whose electronic mail  
4 service issues an alert for each message received, resulting in  
5 repeated disruption of computer use.

6 Advertisers may reach electronic mail users by less intrusive  
7 means, means which do not impose the cost of unwanted advertisements on  
8 recipients and do not interfere with recipients' ability to use  
9 electronic mail service. Advertisers may also continue to use  
10 electronic mail as a low-cost method of reaching a wide audience, if  
11 their mailings are solicited.

12 Unsolicited electronic mail sent in bulk often imposes significant  
13 monetary costs on interactive computer services, businesses, and  
14 educational and nonprofit institutes because they must divert a  
15 significant portion of their limited computing resources to processing  
16 and storing those messages and to responding to ensuing complaints by  
17 recipients. Unsolicited electronic mail is increasingly diminishing  
18 the quality of service provided to customers of interactive computer  
19 services and is harming the interactive computer services themselves.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply  
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Electronic mail address" means a destination, commonly  
23 expressed as a string of characters, to which electronic mail may be  
24 sent or delivered.

25 (2) "Initiate the transmission" refers to the action by the  
26 original sender of an electronic mail message, not to the action by any  
27 intervening interactive computer service that may handle or retransmit  
28 the message, unless the intervening interactive computer service  
29 retransmits the message with an intent to engage in activities  
30 prohibited by this section.

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

1        NEW SECTION.    **Sec. 3.**    (1) No person, corporation, partnership, or  
2 association may initiate the transmission of an unsolicited electronic  
3 mail message from a computer located in Washington or to a Washington  
4 resident's electronic mail address, to promote real property, goods, or  
5 services for purchase or lease by the recipient.

6        (2) Except as provided in subsection (3) of this section, this  
7 section does not apply to: (a) An electronic mail message intended to  
8 be delivered exclusively to existing customers who have previously  
9 purchased or leased goods or services from the sender; (b) an  
10 electronic mail message sent for the purpose of collecting an existing  
11 obligation; or (c) an electronic mail message sent with the consent of  
12 all intended recipients. However, if an existing customer provides to  
13 a business written or electronic notice that the customer does not wish  
14 to receive further electronic mail messages from that business, the  
15 business shall not send the customer any further unsolicited electronic  
16 mail messages.

17        (3) A person may not initiate an unsolicited electronic mail  
18 message under the provisions of subsection (2) of this section if the  
19 person knows or reasonably should know that any of the recipients is a  
20 governmental entity, unless that entity has consented to the receipt of  
21 the electronic mail message.

22        NEW SECTION.    **Sec. 4.**    (1) If a person, corporation, partnership,  
23 or association initiates the transmission of an unsolicited commercial  
24 electronic mail message from a computer located in Washington or to a  
25 Washington resident's electronic mail address to promote real property,  
26 goods, or services for purchase or lease by the recipient, that person  
27 or entity shall cause the following information to appear in each  
28 electronic mail message transmitted:

29        (a) The term "advertisement"; and

30        (b) The legal name, mailing address, true electronic mail address,  
31 physical address, and telephone number, including area code, of the  
32 person, corporation, partnership, or association initiating  
33 transmission of the message and the date and time the message was sent.

34        (2) The information specified in subsection (1)(a) of this section  
35 must appear as the first word on the subject line of the electronic  
36 mail message, without any prior text or symbol.

37        (3) The information specified in subsection (1)(b) of this section  
38 must appear prominently in the body of the message.

1        NEW SECTION.    **Sec. 5.**    The unsolicited transmission of electronic  
2 mail messages promoting real property, goods, or services for purchase  
3 or lease by the recipient in violation of this section is a matter  
4 affecting the public interest for the purpose of applying the consumer  
5 protection act, chapter 19.86 RCW.    The transmission of unsolicited  
6 electronic mail messages in violation of this section is not reasonable  
7 in relation to the development and preservation of business.    A  
8 violation of this section is an unfair or deceptive act in trade or  
9 commerce for the purpose of applying the consumer protection act,  
10 chapter 19.86 RCW.

11        NEW SECTION.    **Sec. 6.**    (1) Damages to the recipient of an  
12 unsolicited electronic mail message sent in violation of this section  
13 are five hundred dollars, or actual damages, whichever is greater.

14        (2) Damages to an interactive computer service resulting from a  
15 violation of this section are one thousand dollars, or actual damages,  
16 whichever is greater.

17        NEW SECTION.    **Sec. 7.**    (1) An interactive computer service may,  
18 upon its own initiative, block the receipt or transmission through its  
19 service of any electronic mail which it reasonably believes is, or will  
20 be, sent in violation of this chapter.

21        (2) No interactive computer service may be held liable for any  
22 action voluntarily taken in good faith to block the receipt or  
23 transmission through its service of any electronic mail which it  
24 reasonably believes is, or will be, sent in violation of this section.

25        NEW SECTION.    **Sec. 8.**    Sections 1 through 7 of this act constitute  
26 a new chapter in Title 19 RCW.

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