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SENATE BILL 5734

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State of Washington

58th Legislature

2003 Regular Session

By Senators Finkbeiner, Reardon, Schmidt, Poulsen, Eide, Stevens, Winsley and Esser

Read first time 02/10/2003. Referred to Committee on Technology & Communications.

1 AN ACT Relating to commercial electronic mail; amending RCW  
2 19.190.010 and 19.190.040; adding new sections to chapter 19.190 RCW  
3 creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the volume of  
6 commercial electronic mail is growing, and the consumer protection  
7 division of the attorney general's office reports an increasing number  
8 of consumer complaints about commercial electronic mail. Interactive  
9 computer service providers indicate that their systems sometimes cannot  
10 handle the volume of commercial electronic mail being sent and that  
11 filtering systems fail to screen out unsolicited commercial electronic  
12 mail messages when senders use a third party's internet domain name  
13 without the third party's permission, or otherwise misrepresent the  
14 message's point of origin. The legislature seeks to provide some  
15 immediate relief to interactive computer service providers by  
16 prohibiting the sending of commercial electronic mail messages that use  
17 a third party's internet domain name without the third party's  
18 permission, misrepresent the message's point of origin, or contain  
19 untrue or misleading information in the subject line.

1       **Sec. 2.** RCW 19.190.010 and 1999 c 289 s 1 are each amended to read  
2 as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

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

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

18       (3) "Electronic mail" means an electronic message or computer file  
19 containing an image of a message that is transmitted between two or  
20 more computers or electronic terminals and includes messages that are  
21 transmitted within or between computer networks.

22       (4) "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       ~~((4))~~ (5) "Established business relationship" means a prior or  
26 existing relationship formed by a voluntary communication between a  
27 person and the recipient with or without an exchange of consideration,  
28 on the basis of an inquiry, application, purchase, or use by the  
29 recipient regarding products or services offered by such person.

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

1       ~~((+5))~~ (7) "Interactive computer service" means any information  
2 service, system, or access software provider that provides or enables  
3 computer access by multiple users to a computer server, including  
4 specifically a service or system that provides access to the internet  
5 and such systems operated or services offered by libraries or  
6 educational institutions.

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

12       ~~((+7))~~ (9) "Person" means a person, corporation, partnership, or  
13 association.

14       (10) "Unsolicited commercial electronic mail message" means an  
15 electronic mail message sent without the consent of the recipient, by  
16 a person with whom the recipient does not have an established business  
17 relationship. Unsolicited commercial electronic messages do not  
18 include electronic mail where the sender is a person using electronic  
19 mail to communicate:

20       (a) Exclusively with members; or

21       (b) With its employees or contractors, or both.

22       **Sec. 3.** RCW 19.190.040 and 1998 c 149 s 5 are each amended to read  
23 as follows:

24       (1) Damages to the recipient of a commercial electronic mail  
25 message ~~((sent in))~~ resulting from a violation of this chapter ~~((are~~  
26 ~~five hundred))~~ shall be the greater of ten dollars for each unsolicited  
27 commercial electronic mail message received, or actual damages,  
28 ~~((whichever is greater))~~ but are not to exceed twenty-five thousand  
29 dollars for each day that the recipient received such messages.

30       (2) Damages to an interactive computer service resulting from a  
31 violation of this chapter ~~((are one thousand))~~ shall be the greater of  
32 ten dollars for each unsolicited commercial electronic mail message  
33 received, or actual damages, ((whichever is greater)) but not to exceed  
34 twenty-five thousand dollars for each day that the interactive computer  
35 service received such messages.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 19.190 RCW  
2 to read as follows:

3        No person may initiate the transmission, conspire with another to  
4 initiate the transmission, or assist the transmission of an unsolicited  
5 commercial electronic mail message from a computer located in  
6 Washington state or to an electronic mail address that the sender  
7 knows, or has reason to know, is held by a Washington state resident  
8 that fails to include "ADV:" as the first four characters in the  
9 subject line or which fails to provide a mechanism allowing recipients  
10 to easily and at no cost inform senders that they are Washington state  
11 residents and remove themselves from the sender's electronic mail  
12 address lists so that they are not included in future mailings.

13        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 19.190 RCW  
14 to read as follows:

15        No interactive computer service may be held liable for:  
16        (1) Serving as an intermediary between the sender and recipient in  
17 the transmission of a commercial electronic mail message sent in  
18 violation of this chapter; or  
19        (2) Providing transmission over the interactive computer service's  
20 computer network or facilities of an unsolicited commercial electronic  
21 mail message sent in violation of this chapter.

22        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 19.190 RCW  
23 to read as follows:

24        At the request of any party to an action brought pursuant to this  
25 chapter, the court may, in its discretion, conduct all legal  
26 proceedings in such a way as to protect the secrecy and security of the  
27 computer, computer network, computer data, computer program, and  
28 computer software involved to prevent possible recurrence of the same  
29 or a similar act by another person and to protect any trade secrets of  
30 any party.

31        NEW SECTION.    **Sec. 7.**    If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected.

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