

1 **SHB 2752 - H AMD 885 ADOPTED**

2 By Representative Bush

3 Strike everything after the enacting clause and insert the
4 following:

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.

20 The legislature also finds that the utilization of electronic mail
21 messages for commercial purposes merits further study. A select task
22 force should be created to explore technical, legal, and cost issues
23 surrounding the usage of electronic mail messages for commercial
24 purposes and to recommend to the legislature any potential legislation
25 needed for regulating commercial electronic mail messages.

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

28 (1) "Commercial electronic mail message" means an electronic mail
29 message sent for the purpose of promoting real property, goods, or
30 services for sale or lease.

31 (2) "Electronic mail address" means a destination, commonly
32 expressed as a string of characters, to which electronic mail may be
33 sent or delivered.

1 (3) "Initiate the transmission" refers to the action by the
2 original sender of an electronic mail message, not to the action by any
3 intervening interactive computer service that may handle or retransmit
4 the message.

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

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

16 NEW SECTION. **Sec. 3.** (1) No person, corporation, partnership, or
17 association may initiate the transmission of a commercial electronic
18 mail message from a computer located in Washington or to an electronic
19 mail address that the sender knows, or has reason to know, is held by
20 a Washington resident that:

21 (a) Uses a third party's internet domain name without permission
22 of the third party, or otherwise misrepresents any information in
23 identifying the point of origin or the transmission path of a
24 commercial electronic mail message; or

25 (b) Contains false or misleading information in the subject line.

26 (2) For purposes of this section, a person, corporation,
27 partnership, or association knows that the intended recipient of a
28 commercial electronic mail message is a Washington resident if that
29 information is available, upon request, from the registrant of the
30 internet domain name contained in the recipient's electronic mail
31 address.

32 NEW SECTION. **Sec. 4.** (1) It is a violation of the consumer
33 protection act, chapter 19.86 RCW, to initiate the transmission of a
34 commercial electronic mail message that:

35 (a) Uses a third party's internet domain name without permission
36 of the third party, or otherwise misrepresents any information in

1 identifying the point of origin or the transmission path of a
2 commercial electronic mail message; or

3 (b) Contains false or misleading information in the subject line.

4 (2) The legislature finds that the practices covered by this
5 chapter are matters vitally affecting the public interest for the
6 purpose of applying the consumer protection act, chapter 19.86 RCW. A
7 violation of this chapter is not reasonable in relation to the
8 development and preservation of business and is an unfair or deceptive
9 act in trade or commerce and an unfair method of competition for the
10 purpose of applying the consumer protection act, chapter 19.86 RCW.

11 NEW SECTION. **Sec. 5.** (1) Damages to the recipient of a
12 commercial electronic mail message sent in violation of this chapter
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 chapter are one thousand dollars, or actual damages,
16 whichever is greater.

17 NEW SECTION. **Sec. 6.** (1) An interactive computer service may,
18 upon its own initiative, block the receipt or transmission through its
19 service of any commercial electronic mail that it reasonably believes
20 is, or will 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 commercial electronic mail
24 which it reasonably believes is, or will be, sent in violation of this
25 chapter.

26 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
27 a new chapter in Title 19 RCW.

28 NEW SECTION. **Sec. 8.** (1) The select task force on commercial
29 electronic mail messages is hereby created. The select task force
30 shall:

31 (a) Identify technical, legal, and cost issues in relation to the
32 transmission and receipt of commercial electronic mail messages over
33 the internet;

1 (b) Evaluate whether existing laws are sufficient to resolve any
2 technical, legal, or financial problems created by the increasing
3 volume of commercial electronic mail messages;

4 (c) Review efforts being made by the federal government and other
5 states to regulate the transmission of commercial electronic mail
6 messages; and

7 (d) Prepare a report identifying policy options and
8 recommendations for any potential legislation needed to regulate
9 commercial electronic mail messages. The report shall be delivered to
10 the house of representatives energy and utilities committee by November
11 15, 1998.

12 (2) The select task force shall be composed of three members,
13 consisting of:

14 (a) Two members of the house of representatives, one from each of
15 the two largest caucuses, each member being a member of the house of
16 representatives energy and utilities committee, appointed by the
17 speaker of the house of representatives; and

18 (b) One person appointed by the governor.

19 (3) The select task force shall solicit input from interested
20 parties, including but not limited to, persons representing:

21 (a) Attorney general's consumer protection division;

22 (b) Internet service providers;

23 (c) Direct marketers;

24 (d) Manufacturers of electronic mail messaging software;

25 (e) Nonprofit organizations interested in free speech and other
26 civil liberty matters; and

27 (f) Internet users.

28 (4) Staff support for the select task force shall be provided by
29 the house of representatives office of program research.

30 (5) This section expires December 31, 1998."

1 Correct the title.

EFFECT: The substitute bill makes initiating the transmission of unsolicited commercial electronic mail messages a violation of the Consumer Protection Act but also specifies certain allowable circumstances when commercial electronic mail messages may be sent. This striking amendment replaces the substitute bill and contains two main parts. The first part makes initiating the transmission of a commercial electronic mail message from a computer located in Washington or to a Washington resident a violation of the Consumer Protection Act, if: (1) the sender uses a third party's Internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point of origin or transmission path of the message; or (2) the subject line of the message contains false or misleading information. The second part creates a select task force to identify technical, legal, and cost issues related to the transmission and receipt of commercial electronic mail messages. This select task force will prepare and submit a report to House Energy and Utilities Committee by November 15, 1998 identifying policy options and recommendations for any potential legislation needed to regulate commercial electronic mail messages. Definitions for "commercial electronic mail message" and "Internet domain name" are also added.

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