

2 **2SHB 1037** - S AMD **S2536.2** - 417  
3 By Senator Brown

4 ADOPTED AS AMENDED (FLR 410) 4/16/99

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

1 computer access by multiple users to a computer server, including  
2 specifically a service or system that provides access to the internet  
3 and such systems operated or services offered by libraries or  
4 educational institutions.

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

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

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

14 (1) No person(~~(, corporation, partnership, or association)~~) may  
15 initiate the transmission, conspire with another to initiate the  
16 transmission, or assist the transmission, of a commercial electronic  
17 mail message from a computer located in Washington or to an electronic  
18 mail address that the sender knows, or has reason to know, is held by  
19 a Washington resident that:

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

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

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

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

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

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

1 in 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) It is a violation of the consumer protection act, chapter 19.86  
5 RCW, to assist in the transmission of a commercial electronic mail  
6 message, when the person providing the assistance knows, or consciously  
7 avoids knowing, that the initiator of the commercial electronic mail  
8 message is engaged, or intends to engage, in any act or practice that  
9 violates the consumer protection act.

10 (3) The legislature finds that the practices covered by this  
11 chapter are matters vitally affecting the public interest for the  
12 purpose of applying the consumer protection act, chapter 19.86 RCW. A  
13 violation of this chapter is not reasonable in relation to the  
14 development and preservation of business and is an unfair or deceptive  
15 act in trade or commerce and an unfair method of competition for the  
16 purpose of applying the consumer protection act, chapter 19.86 RCW.

17 NEW SECTION. Sec. 4. RCW 19.190.005 (Findings) and 1998 c 149 s  
18 1 are each repealed.

19 NEW SECTION. Sec. 5. (1) The legislature finds that:

20 (a) The internet presents a new medium of communication through  
21 which speakers can publish false or defamatory statements about  
22 businesses or individuals to vast audiences at little or no cost to the  
23 speaker;

24 (b) The publication of false or defamatory statements via the  
25 internet has the potential to cause serious injury to the victims of  
26 such statements, particularly financial injury to businesses that are  
27 the victims of false or defamatory on-line rumors about their stock,  
28 products or services, or executives or personnel;

29 (c) False or defamatory statements on the internet are often  
30 published anonymously, making it difficult for victims to determine the  
31 identity and physical location of the speakers; and

32 (d) Current legal procedures do not adequately address the  
33 challenges and opportunities the internet presents as a new medium of  
34 communication, both as a tool for publishing false or defamatory  
35 statements and for pursuing legal recourse against the speakers of such  
36 statements.

37 (2) The legislature therefore intends that:

1 (a) When the internet is used to publish false or defamatory  
2 statements about individuals residing in Washington or businesses doing  
3 business in Washington, a rebuttable presumption is created that the  
4 statements are published in Washington; and

5 (b) When the identity or physical location of a speaker who has  
6 published false or defamatory statements via the internet about an  
7 individual residing in Washington or a business doing business in  
8 Washington is not known, a plaintiff in an action for libel or slander  
9 may serve a summons by publication via the internet.

10 **Sec. 6.** RCW 4.36.120 and Code 1881 s 99 are each amended to read  
11 as follows:

12 In an action for libel or slander, it shall not be necessary to  
13 state in the complaint any extrinsic facts, for the purpose of showing  
14 the application to the plaintiff, of the defamatory matter out of which  
15 the cause arose, but it shall be sufficient to state generally, that  
16 the same was published or spoken concerning the plaintiff; and if such  
17 allegation be controverted, the plaintiff shall be bound to establish  
18 on trial that it was so published or spoken. Where false or defamatory  
19 statements concerning a person residing in Washington or a business  
20 doing business in Washington are posted or electronically transmitted  
21 via the internet, a rebuttable presumption is created that the  
22 statements have been published in Washington.

23 **Sec. 7.** RCW 4.28.100 and 1981 c 331 s 13 are each amended to read  
24 as follows:

25 When the defendant cannot be found within the state, and upon the  
26 filing of an affidavit of the plaintiff, his agent, or attorney, with  
27 the clerk of the court, stating that he believes that the defendant is  
28 not a resident of the state, or cannot be found therein, and that he  
29 has deposited a copy of the summons (substantially in the form  
30 prescribed in RCW 4.28.110) and complaint in the post office, directed  
31 to the defendant at his place of residence, unless it is stated in the  
32 affidavit that such residence is not known to the affiant, and stating  
33 the existence of one of the cases hereinafter specified, the service  
34 may be made by publication of the summons, by the plaintiff or his  
35 attorney in any of the following cases:

36 (1) When the defendant is a foreign corporation, and has property  
37 within the state;

1 (2) When the defendant, being a resident of this state, has  
2 departed therefrom with intent to defraud his creditors, or to avoid  
3 the service of a summons, or keeps himself concealed therein with like  
4 intent;

5 (3) When the defendant is not a resident of the state, but has  
6 property therein and the court has jurisdiction of the subject of the  
7 action;

8 (4) When the action is for divorce in the cases prescribed by law;

9 (5) When the subject of the action is real or personal property in  
10 this state, and the defendant has or claims a lien or interest, actual  
11 or contingent, therein, or the relief demanded consists wholly, or  
12 partly, in excluding the defendant from any interest or lien therein;

13 (6) When the action is to foreclose, satisfy, or redeem from a  
14 mortgage, or to enforce a lien of any kind on real estate in the county  
15 where the action is brought, or satisfy or redeem from the same;

16 (7) When the action is against any corporation, whether private or  
17 municipal, organized under the laws of the state, and the proper  
18 officers on whom to make service do not exist or cannot be found;

19 (8) When the action is brought under RCW 4.08.160 and 4.08.170 to  
20 determine conflicting claims to property in this state; and

21 (9) When the action is for defamation concerning a person residing  
22 in Washington or a business doing business in Washington, where the  
23 false or defamatory statements were posted or electronically  
24 transmitted via the internet and the identity of the defendant is not  
25 known or readily ascertainable.

26 **Sec. 8.** RCW 4.28.110 and 1985 c 469 s 2 are each amended to read  
27 as follows:

28 The publication shall be made in a newspaper of general circulation  
29 in the county where the action is brought once a week for six  
30 consecutive weeks: PROVIDED, That publication of summons shall not be  
31 made until after the filing of the complaint, and the service of the  
32 summons shall be deemed complete at the expiration of the time  
33 prescribed for publication. The summons must be subscribed by the  
34 plaintiff or his attorney or attorneys. The summons shall contain the  
35 date of the first publication, and shall require the defendant or  
36 defendants upon whom service by publication is desired, to appear and  
37 answer the complaint within sixty days from the date of the first  
38 publication of the summons; and the summons for publication shall also

1 contain a brief statement of the object of the action. The summons for  
2 publication shall be substantially as follows:

3 In the superior court of the State of Washington for the county of  
4 . . . . .

5 . . . . ., Plaintiff,

6 vs. No. . . . .

7 . . . . ., Defendant.

8 The State of Washington to the said (naming the defendant or  
9 defendants to be served by publication):

10 You are hereby summoned to appear within sixty days after the date  
11 of the first publication of this summons, to wit, within sixty days  
12 after the . . . . day of . . . . ., 1. . . ., and defend the above  
13 entitled action in the above entitled court, and answer the complaint  
14 of the plaintiff . . . . ., and serve a copy of your answer upon the  
15 undersigned attorneys for plaintiff . . . . ., at his (or their)  
16 office below stated; and in case of your failure so to do, judgment  
17 will be rendered against you according to the demand of the complaint,  
18 which has been filed with the clerk of said court. (Insert here a  
19 brief statement of the object of the action.)

20 . . . . .,  
21 Plaintiff's Attorneys.

22 P.O. Address . . . . .

23 County . . . . .  
24 Washington.

25 When service of summons by publication is authorized under RCW  
26 4.28.100(9), the publication specified in this section may be made via  
27 the internet, provided that the summons shall be posted to the same on-  
28 line location where the false or defamatory statements were posted or  
29 electronically transmitted to the electronic address of the sender of  
30 the false or defamatory statements, once a week for six consecutive  
31 weeks.

32 NEW SECTION. Sec. 9. If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected."

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4 On page 1, line 1 of the title, after "mail;" strike the remainder  
5 of the title and insert "amending RCW 19.190.010, 19.190.020,  
6 19.190.030, 4.36.120, 4.28.100, and 4.28.110; creating a new section;  
7 and repealing RCW 19.190.005."

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