

HOUSE BILL ANALYSIS

HB 1037

Title: An Act relating to commercial electronic mail.

Brief Description: Relating to commercial electronic mail.

Sponsors: Representative Bush, Morris and Ruderman.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Meeting Date: January 26, 1999.

Bill Analysis Prepared by: Linda Brooks (786-7153).

Background: The Internet is an international network of computer networks, interconnecting computers ranging from simple personal computers to sophisticated mainframes. It is a dynamic, open-ended aggregation of computer networks, rather than a physical entity. Internet users can access or provide a wide variety of information, purchase goods and services, and communicate with other users electronically.

Last year the Legislature passed a law regulating commercial electronic mail messages. The law defines a commercial electronic mail message as one sent for the purpose of promoting real property, goods, or services for sale or lease. A person who initiates the transmission of a commercial electronic mail message from a computer located in Washington or to a Washington resident that contains untrue or misleading information may violate the Consumer Protection Act. Specifically, a violation of the Consumer Protection Act occurs when a sender:

- Uses a third party's Internet domain name without permission of the third party, or otherwise misrepresents any information in identifying the point or origin or transmission path of the message.
- Puts false or misleading information in the subject line of the message.

Only the person who actually clicks or pushes a send- button on a computer screen or keyboard to transmit a message is liable under the Consumer Protection Act. An interactive computer service provider that routes or re-transmits the message is not liable.

When a sender violates the Consumer Protection Act, the recipient of the commercial electronic mail message may bring a civil action against the sender for the greater of \$500 or actual damages. An interactive computer service provider may also bring an action against the sender for the greater of \$1,000 or actual damages.

A sender is responsible for knowing that a message recipient is a Washington resident if that information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address. To facilitate access to residency information, the Washington Association of Internet Service Providers (WAISP) has voluntarily created an electronic registry in cooperation with the Attorney General's Office. This WAISP registry serves as a place where a citizen may indicate Washington residency by recording his or her electronic mail address.

Last year the Legislature also created a select task force on commercial electronic mail messages to further study technical, legal, and cost issues related to the transmission and receipt of commercial electronic mail messages over the Internet. The select task force completed its work and issued a report with policy recommendations on November 16, 1998.

Washington is one of three states that have enacted laws regulating commercial electronic mail messages; Nevada and California are the other two states. One of California's new laws takes a property rights approach towards regulating commercial electronic mail messages. The California law permits each interactive computer service provider to publish a policy prohibiting or restricting the use of its service or equipment for the initiation or delivery of unsolicited commercial electronic mail messages. If a person violates an interactive computer service provider's published policy, then the interactive computer service provider may bring a civil action against the person for \$50 per message sent in violation, up to a maximum of \$25,000 per day.

Summary of Bill: Definitions

The definition of a commercial electronic mail message is clarified as excluding advertisements that are attached to messages sent through a free electronic mail account, when the message sender has consented to the advertising as a condition for free use of the account. An unsolicited commercial electronic message is defined as one sent without a recipient's prior consent, sent to a recipient with whom the sender does not have a pre-existing and ongoing personal or business relationship, or is sent for a purpose other than collecting an existing obligation.

Electronic Registry

The electronic registry created by the Washington Association of Internet Service Providers is made a formal, state-operated database. The Attorney General's Office is responsible for maintaining and operating the electronic registry. Citizens may indicate their Washington residency by registering their electronic mail addresses in this database. An interactive computer service provider may also register its Internet domain name as a single registration covering all electronic mail addresses that belong to its customers, when the interactive computer service provider's clientele is exclusively located in Washington. Registrations in the database are declarations of Washington residency made under penalty of perjury. All records in the database are exempted from public disclosure requirements so that electronic mail addresses cannot be harvested from the database by persons seeking to compile lists of electronic mail addresses.

Assistors May Be Liable

The prohibitions against sending electronic mail messages that contain misleading information is expanded to apply not only to persons who initiate the transmission of messages but also to persons who substantially assist the initiators. However, an assistor only violates the Consumer Protection Act, if the assistor knows, or consciously avoids knowing, that the initiator of a message is violating or intends to violate the Consumer Protection Act.

Similarly, interactive computer service providers continue to be exempt from liability for unknowingly handling or re-transmitting a message sent in violation of the Consumer Protection Act. However, an interactive computer service provider may be liable for violating the Consumer Protection Act, if the interactive computer service provider knows, or consciously avoids knowing, that it is assisting a person who is sending messages in violation of the Consumer Protection Act.

Identifying Information Required

When a person sends an unsolicited commercial electronic mail message, the body of the message must include the sender's legal name, mailing address, physical address, and telephone number.

Interactive Computer Service Providers May Publish & Enforce Policies

Each interactive computer service provider may publish a policy prohibiting or restricting the use of its service and equipment located in this state for the initiation or delivery of unsolicited commercial electronic mail messages. An interactive computer service provider may bring a civil suit against a person who initiates or assists in the transmission of a message sent in violation of its published policy. The interactive computer service provider may sue for damages

of \$50 per message sent in violation of its published policy, up to a maximum of \$25,000 per day.

Additionally, a customer may sue a person who initiates or assists in the transmission of a message sent in violation of the published policy of the customer's interactive computer service provider. A customer may sue for damages of \$500 per each unsolicited commercial electronic message received by the customer in violation of an interactive computer service provider's published policy, up to a maximum of \$25,000 in damages per day.

Appropriation: None.

Fiscal Note: Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.