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**Technology, Telecommunications  
& Energy Committee**

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**HB 1885**

**Brief Description:** Regulating commercial electronic mail.

**Sponsors:** Representatives Ruderman and Nixon.

**Brief Summary of Bill**

- Prohibits certain practices by senders of unsolicited commercial electronic mail messages.
- Provides exemptions for certain senders of commercial electronic mail messages.
- Limits liability of interactive computer services when acting as an intermediary in the transmission of commercial electronic messages that violate the law.

**Hearing Date:** 2/19/03

**Staff:** Pam Madson (786-7166).

**Background:**

In 1998, legislation was enacted regulating commercial electronic mail (e-mail) messages. A commercial electronic mail message is an e-mail message sent for the purpose of promoting real property, goods, or services for sale or lease.

It is a violation of the Consumer Protection Act to send a commercial e-mail message from a computer located in Washington or to an e-mail address held by a Washington resident that contains deceptive or false information. A violation occurs when the message; (1) uses a third party's Internet domain name without permission of the third party, (2) misrepresents any information in identifying the point of origin or transmission path of the message, or (3) puts false or misleading information in the subject line of the message.

The law not only prohibits the sender from sending a false or misleading commercial e-mail message, but also prohibits any one who conspires with the sender or who assists in the transmission of the commercial e-mail message. A sender is responsible for knowing that a 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, typically the internet service provider. The Attorney General and the Washington Association of Internet Service Providers have established a voluntary on-line registry where a Washington resident can register their e-mail address.

An interactive computer service (includes internet service providers) may block the transmission of commercial e-mail that it reasonably believes is being sent in violation of the law and may not be held liable for this voluntary action taken in good faith.

A recipient or the internet service provider may bring a civil action against a sender who violates the laws relating to commercial electronic mail messages. In the case of a suit brought by a recipient, the penalty is the greater of \$500 or actual damages incurred. In the case of a lawsuit brought by an internet service provider, the penalty is the greater of \$1,000 or actual damages. A violation of laws relating to commercial electronic mail messages is also a violation of the Consumer Protection Act and may be enforced by the Attorney General. A violation of the Consumer Protection Act may result in a civil fine, treble damages, court costs, and attorneys' fees.

At least seven other states have enacted legislation that require an unsolicited commercial electronic mail message to include "ADV:" at the beginning of the subject line of the message.

### **Summary of Bill:**

Certain practices used for sending commercial electronic mail messages are prohibited.

A person may not send or assist in sending an unsolicited commercial electronic mail message from a computer in Washington or to a recipient who is a Washington resident without complying with certain conditions. The e-mail message must include "ADV:" in the first four characters of the subject line or must provide a mechanism to allow recipients to easily and at no cost inform the sender that they are Washington residents and they wish to remove their address from the sender's address list. Failure to do so is a violation of the laws regulating commercial electronic mail messages subject to certain exceptions.

The prohibition against sending unsolicited commercial e-mail does not apply to persons, business entities, or associations with whom the recipient of a message has an established business relationship. An established business relationship results from a voluntary communication between the recipient and a person, business entity, or association based on an inquiry, application, purchase, or use of products or services offered by the person, business entity or association.

In addition, the prohibition does not apply to e-mail messages where the sender is using the e-mail message to communicate exclusively with members, employees, or contractors.

No interactive computer service may be held liable for acting as an intermediary between the sender and the recipient in the transmission of commercial e-mail sent in violation of the law or for providing transmission over its computer network or facilities of an unsolicited commercial e-mail sent in violation of the law.

A violation of these provisions may result in damages as well as civil penalties under the Consumer Protection Act. In the case of a lawsuit by a recipient of an unsolicited commercial e-mail message, the damages are the greater of \$10 for each message received, or actual damages. Damages are capped at \$25,000 for each day that messages are received. In the case of a lawsuit brought by an interactive computer service, damages are the greater of \$10 for each message transmitted through the service, actual damages, or \$25,000 per day.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect ninety days after adjournment of session in which bill is passed.