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SENATE BILL 6176

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State of Washington

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By Senators Eide, Schmidt, Poulsen and Kohl-Welles

Read first time 01/14/2004. Referred to Committee on Technology & Communications.

1 AN ACT Relating to commercial electronic mail; amending RCW  
2 19.190.010, 19.190.020, 19.190.030, and 19.190.040; adding new sections  
3 to chapter 19.190 RCW; prescribing penalties; and providing an  
4 effective date.

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

6 **Sec. 1.** RCW 19.190.010 and 2003 c 137 s 2 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Assist the transmission" means actions taken by a person to  
11 provide substantial assistance or support which enables any person to  
12 formulate, compose, send, originate, initiate, or transmit a commercial  
13 electronic mail message or a commercial electronic text message when  
14 the person providing the assistance knows or consciously avoids knowing  
15 that the initiator of the commercial electronic mail message or the  
16 commercial electronic text message is engaged, or intends to engage, in  
17 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

1 services for sale or lease. It does not mean an electronic mail  
2 message to which an interactive computer service provider has attached  
3 an advertisement in exchange for free use of an electronic mail  
4 account, when the sender has agreed to such an arrangement.

5 (3) "Commercial electronic text message" means an electronic text  
6 message sent to promote real property, goods, or services for sale or  
7 lease.

8 (4) "Direct consent" means that the recipient has expressly  
9 consented to receive electronic mail from the sender, either in  
10 response to a clear and conspicuous request to consent or at the  
11 recipient's own initiative.

12 (5) "Electronic mail" or "e-mail" means an electronic message that  
13 is sent to an electronic mail address and transmitted between two or  
14 more telecommunications devices, computers, or electronic devices  
15 capable of receiving electronic messages, whether or not the message is  
16 converted to hard copy format after receipt or is viewed upon  
17 transmission or stored for later retrieval. "Electronic mail" or  
18 "e-mail" includes electronic messages that are transmitted through a  
19 local, regional, or global computer network.

20 (6) "Electronic mail address" means a destination, commonly  
21 expressed as a string of characters, to which electronic mail may be  
22 sent or delivered.

23 ((+5)) (7) "Electronic text message" means a text message sent to  
24 a cellular telephone or pager equipped with short message service or  
25 any similar capability, whether the message is initiated as a short  
26 message service message or as an electronic mail message.

27 ((+6)) (8) "Initiate" means to transmit or cause to be transmitted  
28 a commercial electronic mail message or assist in the transmission of  
29 a commercial electronic mail message by providing electronic mail  
30 addresses where the electronic mail message may be sent, but does not  
31 include the routine transmission of commercial electronic mail through  
32 the network or system of a telecommunications utility or interactive  
33 service provider through its network or system.

34 (9) "Initiate the transmission" refers to the action by the  
35 original sender of an electronic mail message or an electronic text  
36 message, not to the action by any intervening interactive computer  
37 service or wireless network that may handle or retransmit the message,  
38 unless such intervening interactive computer service assists in the

1 transmission of an electronic mail message when it knows, or  
2 consciously avoids knowing, that the person initiating the transmission  
3 is engaged, or intends to engage, in any act or practice that violates  
4 the consumer protection act.

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

11 ((+8)) (11) "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 ((+9)) (12) "Person" means a person, corporation, partnership, or  
17 association.

18 (13) "Preexisting or current business relationship," as used in  
19 connection with the sending of a commercial electronic mail message,  
20 means that the recipient has made an inquiry and has provided his or  
21 her electronic mail address, or had made an application, purchase, or  
22 transaction, with or without consideration, regarding products or  
23 services offered by the sender.

24 Commercial electronic mail sent pursuant to the exemption provided  
25 for a preexisting or current business relationship shall provide the  
26 recipient of the commercial electronic mail with the ability to "opt-  
27 out" from receiving further commercial electronic mail by calling a  
28 toll-free telephone number or by sending an "unsubscribe" electronic  
29 mail message to the sender offering the products or services in the  
30 commercial electronic mail message. This opt-out provision does not  
31 apply to recipients who are receiving free electronic mail service with  
32 regard to commercial electronic mail messages sent by the interactive  
33 computer service.

34 (14) "Recipient" means the addressee of an unsolicited commercial  
35 electronic mail message. If an addressee of an unsolicited commercial  
36 electronic mail message has one or more electronic mail addresses to  
37 which unsolicited commercial electronic mail is sent, the addressee

1 shall be deemed to be a separate recipient for each electronic mail  
2 address to which the electronic mail is sent.

3 (15) "Unsolicited commercial electronic mail message" means  
4 commercial electronic mail sent to a recipient who meets both of the  
5 following criteria:

6 (a) The recipient has not provided direct consent to receive  
7 commercial electronic mail from the sender;

8 (b) The recipient does not have a preexisting or current business  
9 relationship, as defined in this section, with the sender promoting the  
10 lease, sale, rental, gift offer, or other disposition of any property,  
11 goods, services, or extension of credit.

12 (16) "Washington electronic mail address" or "Washington e-mail  
13 address" means any of the following:

14 (a) An electronic mail address furnished by an interactive service  
15 provider that sends bills for furnishing and maintaining that  
16 electronic mail address to a mailing address in this state.

17 (b) An electronic mail address furnished to a resident of this  
18 state.

19 **Sec. 2.** RCW 19.190.020 and 1999 c 289 s 2 are each amended to read  
20 as follows:

21 (1) No person may initiate the transmission, conspire with another  
22 to initiate the transmission, or assist the transmission, of ((a)) an  
23 unsolicited commercial electronic mail message from a computer located  
24 in Washington or to an electronic mail address that the sender knows,  
25 or has reason to know, is held by a Washington resident that:

26 (a) Uses a third party's internet domain name without permission of  
27 the third party, or otherwise misrepresents or obscures any information  
28 in identifying the point of origin or the transmission path of ((a)) an  
29 unsolicited commercial electronic mail message; ((e))

30 (b) Contains false or misleading information in the subject line;  
31 or

32 (c) Has a subject line that a person knows would be likely to  
33 mislead a recipient, acting reasonably under the circumstances, about  
34 a material fact regarding the contents or subject matter of the  
35 message.

36 (2) For purposes of this section, a person knows that the intended  
37 recipient of ((a)) an unsolicited commercial electronic mail message is

1 a Washington resident if that information is available, upon request,  
2 from the registrant of the internet domain name contained in the  
3 recipient's electronic mail address.

4 **Sec. 3.** RCW 19.190.030 and 1999 c 289 s 3 are each amended to read  
5 as follows:

6 (1) It is a violation of the consumer protection act, chapter 19.86  
7 RCW, to conspire with another person to initiate the transmission or to  
8 initiate the transmission of ((a)) an unsolicited commercial electronic  
9 mail message that:

10 (a) Uses a third party's internet domain name without permission of  
11 the third party, or otherwise misrepresents or obscures any information  
12 in identifying the point of origin or the transmission path of ((a)) an  
13 unsolicited commercial electronic mail message; ((~~a~~))

14 (b) Contains false or misleading information in the subject line;  
15 or

16 (c) Has a subject line that a person knows would be likely to  
17 mislead a recipient, acting reasonably under the circumstances, about  
18 a material fact regarding the contents or subject matter of the  
19 message.

20 (2) It is a violation of the consumer protection act, chapter 19.86  
21 RCW, to assist in the transmission of ((a)) an unsolicited commercial  
22 electronic mail message, when the person providing the assistance  
23 knows, or consciously avoids knowing, that the initiator of the  
24 unsolicited commercial electronic mail message is engaged, or intends  
25 to engage, in any act or practice that violates the consumer protection  
26 act.

27 (3) The legislature finds that the practices covered by this  
28 chapter are matters vitally affecting the public interest for the  
29 purpose of applying the consumer protection act, chapter 19.86 RCW. A  
30 violation of this chapter is not reasonable in relation to the  
31 development and preservation of business and is an unfair or deceptive  
32 act in trade or commerce and an unfair method of competition for the  
33 purpose of applying the consumer protection act, chapter 19.86 RCW.

34 **Sec. 4.** RCW 19.190.040 and 2003 c 137 s 5 are each amended to read  
35 as follows:

36 (1) In addition to any other remedies provided by this section or

1 by any other provisions of law, the recipient of unsolicited commercial  
2 electronic mail transmitted in violation of this section or an  
3 interactive computer service may bring an action against a person that  
4 violates any provision of this section to recover damages.

5 (a) Damages to the recipient of ((a)) an unsolicited commercial  
6 electronic mail message ((or a commercial electronic text message))  
7 sent in violation of this chapter are ((five hundred)) one thousand  
8 dollars, up to one million dollars per incident, or actual damages,  
9 whichever is greater.

10 ((+2)) (b) Damages to an interactive computer service resulting  
11 from a violation of this chapter are one thousand dollars, or actual  
12 damages, whichever is greater.

13 (c) Damages to the recipient of a commercial electronic text  
14 message sent in violation of this chapter are five hundred dollars, or  
15 actual damages, whichever is greater.

16 (d) The recipient or an interactive computer service, if the  
17 prevailing plaintiff, may also recover reasonable attorneys' fees and  
18 costs.

19 (2) If the court finds that the defendant established and  
20 implemented, with due care, practices and procedures reasonably  
21 designed to effectively prevent unsolicited commercial electronic mail  
22 that are in violation of this section, the court shall reduce the  
23 damages recoverable under subsection (1) of this section to a maximum  
24 of one hundred dollars for each unsolicited commercial electronic mail,  
25 or a maximum of one hundred thousand dollars per incident.

26 NEW SECTION. Sec. 5. A new section is added to chapter 19.190 RCW  
27 to read as follows:

28 (1) Notwithstanding any other provisions of law, a person may not  
29 do any of the following:

30 (a) Initiate or advertise in unsolicited commercial electronic mail  
31 from Washington or advertise in unsolicited electronic mail sent from  
32 Washington;

33 (b) Initiate or advertise in unsolicited commercial electronic mail  
34 to a Washington electronic mail address, or advertise in unsolicited  
35 commercial electronic mail sent to a Washington electronic mail  
36 address.

1 (2) The provisions of this section are severable. If any provision  
2 of this section or its application is held invalid, that invalidity  
3 shall not affect any other provision or application that can be given  
4 effect without the invalid provision or application.

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

7 (1) It is unlawful for any person to collect electronic mail  
8 addresses posted on the internet if the purpose of the collection is  
9 for the electronic mail addresses to be used to do either of the  
10 following:

11 (a) Initiate or advertise in unsolicited commercial electronic mail  
12 from Washington, or advertise in unsolicited commercial electronic mail  
13 sent from Washington;

14 (b) Initiate or advertise in unsolicited commercial electronic mail  
15 to a Washington electronic mail address, or advertise in unsolicited  
16 commercial electronic mail sent to a Washington electronic mail  
17 address.

18 (2) It is unlawful for any person to use an electronic mail address  
19 obtained by using automated means based on a combination of names,  
20 letters, or numbers to do either of the following:

21 (a) Initiate or advertise in unsolicited commercial electronic mail  
22 from Washington, or advertise in an unsolicited commercial electronic  
23 mail sent from Washington;

24 (b) Initiate or advertise in unsolicited commercial electronic mail  
25 to a Washington electronic mail address, or advertise in an unsolicited  
26 commercial electronic mail sent to a Washington electronic mail  
27 address.

28 (3) It is unlawful for any person to use scripts or other automated  
29 means to register for multiple electronic mail accounts from which to  
30 do, or to enable another person to do, either of the following:

31 (a) Initiate or advertise in unsolicited commercial electronic mail  
32 from Washington, or advertise in an unsolicited commercial electronic  
33 mail sent from Washington;

34 (b) Initiate or advertise in unsolicited commercial electronic mail  
35 to a Washington electronic mail address, or advertise in an unsolicited  
36 commercial electronic mail sent to a Washington electronic mail  
37 address.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 19.190 RCW  
2 to read as follows:

3        (1) For purposes of this section, the following words have the  
4 following meanings:

5        (a) "Electronic mail advertisement" means any electronic mail  
6 message, the principal purpose of which is to promote, directly or  
7 indirectly, the sale or other distribution of goods or services to the  
8 recipient.

9        (b) "Unsolicited electronic mail advertisement" means any  
10 electronic mail advertisement that meets both of the following  
11 requirements:

12        (i) It is addressed to a recipient with whom the initiator does not  
13 have an existing business or personal relationship.

14        (ii) It is not sent at the request of or with the express consent  
15 of the recipient.

16        (c) "Initiation" of an unsolicited electronic mail advertisement  
17 refers to the action by the initial sender of the electronic mail  
18 advertisement. It does not refer to the actions of any intervening  
19 electronic mail service provider that may handle or retransmit the  
20 electronic message.

21        (d) "Registered user" means any individual, corporation, or other  
22 entity that maintains an electronic mail address with an electronic  
23 mail service provider.

24        (2) No registered user of an interactive computer service shall use  
25 or cause to be used that service's equipment located in this state in  
26 violation of that electronic mail service's policy prohibiting or  
27 restricting the use of its service or equipment for the initiation of  
28 unsolicited electronic mail advertisements.

29        (3) No individual, corporation, or other entity shall use or cause  
30 to be used, by initiating an unsolicited electronic mail advertisement,  
31 an interactive computer service located in this state in violation of  
32 that service's policy prohibiting or restricting the use of its  
33 equipment to deliver unsolicited electronic mail advertisements to its  
34 registered users.

35        (4) An interactive computer service shall not be required to create  
36 a policy prohibiting or restricting the use of its equipment for the  
37 initiation or delivery of unsolicited electronic mail advertisements.



1 (5) Nothing in this section shall be construed to limit or restrict  
2 the rights of an interactive computer service under section 230(c)(1)  
3 of Title 47 of the United States Code, or any decision of an  
4 interactive computer service to permit or to restrict access to or use  
5 of its system, or any exercise of its editorial function.

6 (6)(a) In addition to any other action available under law, any  
7 interactive computer service whose policy on unsolicited electronic  
8 mail advertisements is violated as provided in this section may bring  
9 a civil action to recover the actual monetary loss suffered by that  
10 service by reason of that violation, or damages of fifty dollars for  
11 each electronic mail message initiated or delivered in violation of  
12 this section, up to a maximum of twenty-five thousand dollars per day,  
13 whichever amount is greater.

14 (b) In any action brought pursuant to (a) of this subsection, the  
15 court may award reasonable attorneys' fees to a prevailing party.

16 (c)(i) In any action brought pursuant to (a) of this subsection,  
17 the interactive computer service shall be required to establish as an  
18 element of its cause of action that prior to the alleged violation, the  
19 defendant had actual notice of both of the following:

20 (A) The interactive computer service's policy on unsolicited  
21 electronic mail advertising;

22 (B) The fact that the defendant's unsolicited electronic mail  
23 advertisements would use or cause to be used the interactive computer  
24 service's equipment located in this state.

25 (ii) In this regard, the legislature finds that with rapid advances  
26 in internet technology, and electronic mail technology in particular,  
27 interactive computer services are already experimenting with embedding  
28 policy statements directly into the software running on the computers  
29 used to provide electronic mail services in a manner that displays the  
30 policy statements every time an electronic mail delivery is requested.  
31 While the state of the technology does not support such a finding at  
32 present, the legislature believes that, in a given case at some future  
33 date, a showing that notice was supplied via electronic means between  
34 the sending and receiving computers could be held to constitute actual  
35 notice to the sender for purposes of this subsection (6)(c)(ii).

36 (d)(i) An interactive computer service who has brought an action  
37 against a party for a violation subject to RCW 19.190.030 or 19.190.040

1 shall not bring an action against that party under this section for the  
2 same unsolicited commercial electronic mail advertisement.

3 (ii) An interactive computer service who has brought an action  
4 against a party for a violation of this section shall not bring an  
5 action against that party under RCW 19.190.030 or 19.190.040 for the  
6 same unsolicited commercial electronic mail advertisement.

7 (7) A cause of action that is in existence before the effective  
8 date of this act shall not be affected by this act, but shall instead  
9 be governed by the law that was in effect at the time the cause of  
10 action arose.

11 NEW SECTION. **Sec. 8.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2004.

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