

E2SHB 1888 - S COMM AMD

By Committee on Financial Institutions, Housing & Consumer
Protection

ADOPTED 04/07/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.190.010 and 2003 c 137 s 2 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Assist the transmission" means actions taken by a person to
8 provide substantial assistance or support which enables any person to
9 formulate, compose, send, originate, initiate, or transmit a commercial
10 electronic mail message or a commercial electronic text message when
11 the person providing the assistance knows or consciously avoids knowing
12 that the initiator of the commercial electronic mail message or the
13 commercial electronic text message is engaged, or intends to engage, in
14 any practice that violates the consumer protection act. "Assist the
15 transmission" does not include any of the following: (a) Activities of
16 an electronic mail service provider or other entity who provides
17 intermediary transmission service in sending or receiving electronic
18 mail, or provides to users of electronic mail services the ability to
19 send, receive, or compose electronic mail; or (b) activities of any
20 entity related to the design, manufacture, or distribution of any
21 technology, product, or component that has a commercially significant
22 use other than to violate or circumvent this section.

23 (2) "Commercial electronic mail message" means an electronic mail
24 message sent for the purpose of promoting real property, goods, or
25 services for sale or lease. It does not mean an electronic mail
26 message to which an interactive computer service provider has attached
27 an advertisement in exchange for free use of an electronic mail
28 account, when the sender has agreed to such an arrangement.

29 (3) "Commercial electronic text message" means an electronic text

1 message sent to promote real property, goods, or services for sale or
2 lease.

3 (4) "Electronic mail address" means a destination, commonly
4 expressed as a string of characters, to which electronic mail may be
5 sent or delivered.

6 (5) "Electronic mail message" means an electronic message sent to
7 an electronic mail address and a reference to an internet domain,
8 whether or not displayed, to which an electronic mail message can be
9 sent or delivered.

10 (6) "Electronic text message" means a text message sent to a
11 cellular telephone or pager equipped with short message service or any
12 similar capability, whether the message is initiated as a short message
13 service message or as an electronic mail message.

14 ((+6)) (7) "Initiate the transmission" refers to the action by the
15 original sender of an electronic mail message or an electronic text
16 message, not to the action by any intervening interactive computer
17 service or wireless network that may handle or retransmit the message,
18 unless such intervening interactive computer service assists in the
19 transmission of an electronic mail message when it knows, or
20 consciously avoids knowing, that the person initiating the transmission
21 is engaged, or intends to engage, in any act or practice that violates
22 the consumer protection act.

23 ((+7)) (8) "Interactive computer service" means any information
24 service, system, or access software provider that provides or enables
25 computer access by multiple users to a computer server, including
26 specifically a service or system that provides access to the internet
27 and such systems operated or services offered by libraries or
28 educational institutions.

29 ((+8)) (9) "Internet" means collectively the myriad of computer
30 and telecommunications facilities, including equipment and operating
31 software, that comprise the interconnected world wide network of
32 networks that employ the transmission control protocol/internet
33 protocol, or any predecessor or successor protocols to such protocol,
34 to communicate information of all kinds by wire or radio.

35 (10) "Internet domain name" refers to a globally unique,
36 hierarchical reference to an internet host or service, assigned through
37 centralized internet naming authorities, comprising a series of

1 character strings separated by periods, with the right-most string
2 specifying the top of the hierarchy.

3 ~~((+9))~~ (11) "Person" means ((a person, corporation, partnership,
4 or association)) an individual, corporation, business trust, estate,
5 trust, partnership, limited liability company, association, joint
6 venture, government, governmental subdivision, agency or
7 instrumentality, public corporation, or any other legal or commercial
8 entity.

9 (12) "Personally identifying information" means an individual's:
10 (a) Social security number; (b) driver's license number; (c) bank
11 account number; (d) credit or debit card number; (e) personal
12 identification number; (f) automated or electronic signature; (g)
13 unique biometric data; (h) account passwords; or (i) any other piece of
14 information that can be used to access an individual's financial
15 accounts or to obtain goods or services.

16 (13) "Web page" means a location, with respect to the world wide
17 web, that has a single uniform resource locator or other single
18 location with respect to the internet.

19 NEW SECTION. Sec. 2. A new section is added to chapter 19.190 RCW
20 to read as follows:

21 It is a violation of this chapter to solicit, request, or take any
22 action to induce a person to provide personally identifying information
23 by means of a web page, electronic mail message, or otherwise using the
24 internet by representing oneself, either directly or by implication, to
25 be another person, without the authority or approval of such other
26 person.

27 NEW SECTION. Sec. 3. A new section is added to chapter 19.190 RCW
28 to read as follows:

29 (1) A person who is injured under this chapter may bring a civil
30 action in the superior court to enjoin further violations, and to seek
31 up to five hundred dollars per violation, or actual damages, whichever
32 is greater. A person who seeks damages under this subsection may only
33 bring an action against a person or entity that directly violates
34 section 2 of this act.

35 (2) A person engaged in the business of providing internet access
36 service to the public, an owner of a web page, or trademark owner who

1 is adversely affected by reason of a violation of section 2 of this
2 act, may bring an action against a person who violates section 2 of
3 this act to:

4 (a) Enjoin further violations of section 2 of this act; and
5 (b) Recover the greater of actual damages or five thousand dollars
6 per violation of section 2 of this act.

7 (3) In an action under subsection (2) of this section, a court may
8 increase the damages up to three times the damages allowed by
9 subsection (2) of this section if the defendant has engaged in a
10 pattern and practice of violating this section. The court may award
11 costs and reasonable attorneys' fees to a prevailing party.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.190 RCW
13 to read as follows:

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

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

23 It is the intent of the legislature that this chapter is a matter
24 of statewide concern. This chapter supersedes and preempts all rules,
25 regulations, codes, ordinances, and other laws adopted by a city,
26 county, city and county, municipality, or local agency regarding the
27 practices covered by this chapter and notices to consumers from
28 computer software providers regarding information collection.

29 NEW SECTION. **Sec. 6.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected."

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1 On page 1, line 1 of the title, after "fraud;" strike the remainder
2 of the title and insert "amending RCW 19.190.010; adding new sections
3 to chapter 19.190 RCW; and prescribing penalties."

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