

SENATE FILE NO. SF0041

Commercial electronic mail.

Sponsored by: Senator(s) Case and Representative(s) McOmie
and Tipton

A BILL

for

1 AN ACT relating to consumer protection; prohibiting
2 deceptive electronic mail; providing definitions; providing
3 for investigation, enforcement and penalties; providing
4 immunity to an interactive computer service for blocking
5 deceptive electronic mail; and providing for an effective
6 date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 40-12-401 through 40-12-404 are
11 created to read:

12

13

ARTICLE 4

14

COMMERCIAL ELECTRONIC MAIL

15

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40-12-401. Definitions.

1

2 (a) As used in this article:

3

4 (i) "Assist the transmission" means actions
5 taken by a person to provide substantial assistance or
6 support which enables any person to formulate, compose,
7 send, originate, initiate or transmit a commercial
8 electronic mail message when the person providing the
9 assistance knows or consciously avoids knowing that the
10 initiator of the commercial electronic mail message is
11 engaged or intends to engage in any practice that violates
12 this article;

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14 (ii) "Commercial electronic mail message" means
15 an electronic mail message sent for the purpose of
16 promoting real property, goods or services for sale or
17 lease. It does not mean an electronic mail message to
18 which an interactive computer service provider has attached
19 an advertisement in exchange for free use of an electronic
20 mail account, when the sender has agreed to such an
21 arrangement;

22

1 (iii) "Electronic mail address" means a
2 destination, commonly expressed as a string of characters,
3 to which electronic mail may be sent or delivered;

4
5 (iv) "Enforcing authority" means the Wyoming
6 attorney general;

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8 (v) "Initiate the transmission" refers to the
9 action by the original sender of an electronic mail
10 message, not to the action by any intervening interactive
11 computer service that may handle or retransmit the message,
12 unless such intervening interactive computer service
13 assists in the transmission of an electronic mail message
14 when it knows or consciously avoids knowing that the person
15 initiating the transmission is engaged or intends to engage
16 in any act or practice that violates this article;

17
18 (vi) "Interactive computer service" means any
19 information service, system or access software provider
20 that provides or enables computer access by multiple users
21 to a computer server, including specifically a service or
22 system that provides access to the internet and such
23 systems operated or services offered by libraries or
24 educational institutions;

1

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

8

9 (viii) "Service provider" means an entity
10 offering the transmission, routing or providing of
11 connections for digital online communications between or
12 among points specified by a user, of material of the user's
13 choosing, without modification to the content of the
14 material sent or received.

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16 **40-12-402. Sending unpermitted or misleading**
17 **electronic mail prohibited.**

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

1 knows or has reason to know is located in a state or other
2 jurisdiction with laws similar to this state's laws
3 regarding commercial electronic mail, that:

4

5 (i) Uses a third party's internet domain name
6 without permission of the third party, or otherwise
7 misrepresents or obscures any information in identifying
8 the point of origin or the transmission path of a
9 commercial electronic mail message; or

10

11 (ii) Contains false or misleading information in
12 the subject line.

13

14 (b) For purposes of this section, a person knows that
15 the intended recipient of a commercial electronic mail
16 message is a Wyoming resident if that information is
17 available, upon request, from the registrant of the
18 internet domain name contained in the recipient's
19 electronic mail address.

20

21 (c) For purposes of this article, a service provider
22 does not assist in the transmission of a commercial
23 electronic mail message in violation of this article if:

24

1 (i) The activity which violates this article was
2 not directed by the service provider or its agent;

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4 (ii) The service provider does not receive a
5 financial benefit directly attributable to the violation of
6 this article by one (1) of its customers; and

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8 (iii) The service provider does not provide the
9 equipment or complete management of systems found to have
10 an open mail relay.

11

12 **40-12-403. Investigation of complaints; enforcement;**
13 **attorney's fees.**

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15 (a) The enforcing authority shall investigate any
16 complaints received concerning violations of this article.
17 If, after investigating any complaint, the enforcing
18 authority finds that there has been a violation of this
19 article, the enforcing authority may bring an action to
20 impose a civil penalty and to seek other relief, including
21 injunctive relief. The civil penalty imposed shall be as
22 follows:

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1 (i) For the first violation, not to exceed five
2 hundred dollars (\$500.00);

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4 (ii) For the second violation, not to exceed two
5 thousand five hundred dollars (\$2,500.00);

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7 (iii) For the third and subsequent violations,
8 not to exceed five thousand dollars (\$5,000.00) per
9 violation.

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11 (b) An action under this section may be brought in
12 the district court of the county in which a commercial
13 electronic mail message that violates this article has been
14 received or in the district court of Laramie county,
15 Wyoming. The civil penalty provided under this section may
16 be recovered in any action brought under this article by
17 the enforcing authority, or the enforcing authority may
18 terminate any investigation or action upon agreement with
19 the person violating this article to pay a stipulated civil
20 penalty.

21

22 (c) In any civil litigation resulting from a
23 transaction involving a violation of this article, the
24 prevailing party, after judgment in the trial court and

1 exhaustion of all appeals, if any, shall receive reasonable
2 attorney's fees and costs from the nonprevailing party.

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4 (d) The remedies provided by this section are not
5 exclusive and shall not preclude the imposition of any
6 other relief or criminal penalties provided by law.

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8 **40-12-404. Immunity from liability for blocking of**
9 **commercial electronic mail by interactive computer service.**

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11 (a) An interactive computer service may, upon its own
12 initiative, block the receipt or transmission through its
13 service of any commercial electronic mail that it
14 reasonably believes is, or will be, sent in violation of
15 this article.

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17 (b) No interactive computer service may be held
18 liable for any action voluntarily taken in good faith to
19 block the receipt or transmission through its service of
20 any commercial electronic mail which it reasonably believes
21 is, or will be, sent in violation of this article.

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1 **Section 2.** This act is effective July 1, 2003.

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(END)