

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; providing for an appropriation
6 and authorizing a position; and providing for an effective
7 date.

8

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

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

13

14

ARTICLE 4

15

COMMERCIAL ELECTRONIC MAIL

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1 **40-12-401. Definitions.**

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3 (a) As used in this article:

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

14

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

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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;

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

7
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;

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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.

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9 **40-12-402. Sending unpermitted or misleading**
10 **electronic mail prohibited.**

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12 (a) No person may initiate the transmission, conspire
13 with another to initiate the transmission or assist the
14 transmission of a commercial electronic mail message from a
15 computer located in Wyoming or to an electronic mail
16 address that the sender knows or has reason to know is held
17 by a Wyoming resident that:

18

19 (i) Uses a third party's internet domain name
20 without permission of the third party, or otherwise
21 misrepresents or obscures any information in identifying
22 the point of origin or the transmission path of a
23 commercial electronic mail message; or

24

1 (ii) Contains false or misleading information in
2 the subject line.

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4 (b) For purposes of this section, a person knows that
5 the intended recipient of a commercial electronic mail
6 message is a Wyoming resident if that information is
7 available, upon request, from the registrant of the
8 internet domain name contained in the recipient's
9 electronic mail address.

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11 **40-12-403. Investigation of complaints; enforcement;**
12 **attorney's fees.**

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

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

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

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

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

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20 (c) In any civil litigation resulting from a
21 transaction involving a violation of this article, the
22 prevailing party, after judgment in the trial court and
23 exhaustion of all appeals, if any, shall receive reasonable
24 attorney's fees and costs from the nonprevailing party.

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

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6 **40-12-404. Immunity from liability for blocking of**
7 **commercial electronic mail by interactive computer service.**

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

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

20

21 **Section 2.**

22

23 (a) There is appropriated ninety-nine thousand four
24 hundred twenty-five dollars (\$99,425.00) from the general

1 fund to the office of the attorney general for purposes of
2 this act for the fiscal year beginning July 1, 2003.

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4 (b) The office of the attorney general is authorized
5 one (1) additional full-time position for purposes of this
6 act.

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8 **Section 3.** This act is effective July 1, 2003.

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(END)