

ORIGINAL SENATE
FILE NO. 0041

ENROLLED ACT NO. 34, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2003 GENERAL SESSION

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

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

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

ARTICLE 4
COMMERCIAL ELECTRONIC MAIL

40-12-401. Definitions.

(a) As used in this article:

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

(ii) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic

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mail account, when the sender has agreed to such an arrangement;

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

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

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

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

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

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

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

(a) No person may initiate the transmission, conspire with another to initiate the transmission or assist the transmission of a commercial electronic mail message from a computer located in Wyoming or to an electronic mail address that the sender knows or has reason to know is held by a Wyoming resident, or to an address that the sender knows or has reason to know is located in a state or other jurisdiction with laws similar to this state's laws regarding commercial electronic mail, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk