

HOUSE BILL NO. HB0146

Commercial electronic mail.

Sponsored by: Representative(s) Lubnau

A BILL

for

1 AN ACT relating to electronic mail; providing a cause of
2 action against a person who sends commercial electronic
3 mail as specified; creating the crime of electronic mail
4 fraud; providing penalties; providing definitions; and
5 providing for an effective date.

6

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

8

9 **Section 1.** W.S. 6-3-506 and 40-12-405 are created to
10 read:

11

12 **6-3-506. Electronic mail fraud.**

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14 (a) A person commits the crime of electronic mail
15 fraud if he knowingly:

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1 (i) Accesses a computer without authorization,
2 and intentionally initiates the transmission of multiple
3 commercial electronic mail messages from or through such
4 computer;

5
6 (ii) Uses a computer to relay or retransmit
7 multiple commercial electronic mail messages, intentionally
8 and knowingly to deceive recipients, or any service
9 provider as defined in W.S. 40-12-401(a)(viii), as to the
10 origin of such messages;

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12 (iii) Materially falsifies information in the
13 subject line in multiple commercial electronic mail
14 messages and intentionally initiates the transmission of
15 such messages;

16
17 (iv) Registers, using information that
18 materially falsifies the identity of the actual registrant,
19 for five (5) or more electronic mail accounts or online
20 user accounts or two (2) or more domain names, and
21 intentionally initiates the transmission of multiple
22 commercial electronic mail messages from any combination of
23 such accounts or domain names; or

24

1 (v) Falsely represents himself to be the
2 registrant or the legitimate successor in interest to the
3 registrant of five (5) or more internet addresses, and
4 intentionally initiates the transmission of multiple
5 commercial electronic mail messages from such addresses, or
6 conspires to do so.

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8 (b) Electronic mail fraud is a misdemeanor punishable
9 by imprisonment for not more than six (6) months, a fine of
10 not more than seven hundred fifty dollars (\$750.00), or
11 both. A second conviction within two (2) years after a
12 conviction for a violation of this section is a felony
13 punishable by imprisonment for not more than three (3)
14 years, a fine of not more than ten thousand dollars
15 (\$10,000.00), or both.

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17 (c) This section shall not apply to a service
18 provider as defined in W.S. 40-12-401(a)(viii) who does not
19 initiate or assist in the transmission of the commercial
20 electronic mail message as provided by W.S. 40-12-402(c).

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22 **40-12-405. Civil actions permitted; limited immunity.**

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1 (a) In the case of any violation of this article, a
2 service provider whose network or facilities were used in
3 the transmission or attempted transmission of a commercial
4 electronic mail message may file a civil action in the
5 district court of the county in which a commercial
6 electronic mail message that violates this article has been
7 received or in the district court of Laramie county,
8 Wyoming and may, upon proof of such violation, recover such
9 sums as are allowed under this section.

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11 (b) In an action under this section, if the service
12 provider prevails, the provider shall be entitled to:

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14 (i) Actual damages;

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16 (ii) Statutory damages in the amount of one
17 thousand dollars (\$1,000.00) for each commercial electronic
18 mail message transmitted in violation of this section,
19 except that the total amount of statutory damages awarded
20 against a single defendant based on one (1) transaction or
21 occurrence shall not exceed ten million dollars
22 (\$10,000,000.00);

1 (iii) Attorney fees as provided in W.S.
2 40-12-403(c).

3

4 (c) At the request of any party to an action brought
5 pursuant to this section, the court may, in its discretion,
6 conduct all legal proceedings in such a manner as to
7 protect the secrecy and security of any computer, computer
8 network, computer data or computer software involved in
9 order to prevent possible recurrence of the same or similar
10 conduct by another person and to protect the trade secrets
11 of any party.

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13 (d) Service providers that adopt and implement terms,
14 conditions or technical measures with the intent to prevent
15 or prohibit the origination or transmission of commercial
16 electronic mail messages that violate this section shall be
17 immune from civil liability for the adoption or
18 implementation of any such measures. No provisions of this
19 article shall be construed to create any liability for
20 services providers that adopt and implement terms,
21 conditions or technical measures with the intent to prevent
22 or prohibit the origination or transmission of commercial
23 electronic mail messages that violate this section or for

1 the mere transmission of an electronic message over the
2 service provider's computer network or facilities.

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4 (e) This section shall not be construed to require
5 any service provider to carry or deliver any electronic
6 mail merely because a sender complies with the provisions
7 of this article.

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

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13 (g) An act of electronic mail fraud committed on a
14 computer located in this state, or by use of an e-mail
15 address principally located in this state shall constitute
16 a submission to the jurisdiction of the courts of the state
17 of Wyoming.

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19 **Section 2.** W.S. 40-12-403(a)(intro) is amended to
20 read:

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22 **40-12-403. Investigation of complaints; enforcement;**
23 **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:~~ one thousand dollars (\$1,000.00) for each commercial electronic mail message transmitted in violation of this article, except that the total amount of statutory damages awarded against a single defendant based on one (1) transaction or occurrence shall not exceed ten million dollars (\$10,000,000.00).

15 **Section 3.** W.S. 40-12-403(a)(i) through (iii) is
16 repealed.

18 **Section 4.** This act is effective July 1, 2008.

20 (END)