

HOUSE BILL NO. 710  
INTRODUCED BY RASER

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES AN UNFAIR OR DECEPTIVE BUSINESS PRACTICE IN VIOLATION OF THE CONSUMER PROTECTION ACT; REQUIRING COMMERCIAL ELECTRONIC MAIL TO USE "ADV" IN THE MESSAGE SUBJECT LINE AND "ADV-ADULT" IN THE MESSAGE SUBJECT LINE IN ~~SEXUALLY-ORIENTED~~ ELECTRONIC MAIL THAT CONTAINS OBSCENE SEXUAL WRITINGS OR PICTURES; AND ALLOWING COMPUTER SERVICES TO BLOCK TRANSMISSION OF PROHIBITED ELECTRONIC MESSAGES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Assist in the transmission" means actions taken by a person to provide substantial assistance or support that 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 in or intends to engage in any practice that violates the consumer protection act.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting the sale or lease of real property, goods, or services. 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 mail account when the sender has agreed to that arrangement.

(3) "Consumer protection act" means the Montana Unfair Trade Practices and Consumer Protection Act of 1973 provided for in Title 30, chapter 14, part 1.

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

(5) "Initiate the transmission" refers to the action by the original sender of an electronic mail message and not to the action by any intervening interactive computer service that may handle or retransmit the message, unless the 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 in or intends

to engage in any act or practice that violates the consumer protection act.

(6) "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 those systems operated or services offered by libraries or educational institutions.

(7) "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.

(8) "Person" means an individual, corporation, partnership, or association.

**NEW SECTION. Section 2. Unpermitted or misleading electronic mail -- prohibition.** (1) It is an unfair or deceptive act or practice and a violation of 30-14-103 to initiate the transmission, conspire with another to initiate the transmission, or assist in the transmission of a AN UNSOLICITED commercial electronic mail message from a computer located in Montana or to an electronic mail address that the sender knows or has reason to know is held by a Montana resident that:

(a) 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;

(b) contains false or misleading information in the subject line;

(c) fails to include "ADV" as the first three characters in the subject line of a commercial electronic mail message; or

(d) fails to include "ADV-ADULT" as the first nine characters in the subject line of a message that contains ~~sexually oriented information~~ OBSCENE SEXUAL WRITINGS OR PICTURES.

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

(3) It is an unfair or deceptive act or practice and a violation of 30-14-103 to assist in the transmission of a AN UNSOLICITED 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 in or intends to engage in any act or practice that violates the consumer protection act.

(4) The legislature finds that the practices covered by [sections 1 through 3] are matters vitally affecting

the public interest for the purpose of applying the consumer protection act. A violation of [sections 1 through 3] is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act.

**NEW SECTION. Section 3. Blocking of commercial electronic mail by interactive computer service -- immunity from liability.** (1) 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 chapter.

(2) An interactive computer service is not liable for any action voluntarily taken in good faith to 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 chapter.

**NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 3].

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