

Chapter 19.190 RCW
COMMERCIAL ELECTRONIC MAIL

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RCW 19.190.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "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 or a commercial electronic text message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message or the commercial electronic text message is engaged, or intends to engage, in any practice that violates the consumer protection act. "Assist the transmission" does not include any of the following: (a) Activities of an electronic mail service provider or other entity who provides intermediary transmission service in sending or receiving electronic mail, or provides to users of electronic mail services the ability to send, receive, or compose electronic mail; or (b) activities of any entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent this section.

(2) "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 mail account, when the sender has agreed to such an arrangement.

(3) "Commercial electronic text message" means an electronic text message sent to promote real property, goods, or services for sale or lease.

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

(5) "Electronic mail message" means an electronic message sent to an electronic mail address and a reference to an internet domain,

whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) "Electronic text message" means a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.

(7) "Initiate the transmission" refers to the action by the original sender of an electronic mail message or an electronic text message, not to the action by any intervening interactive computer service or wireless network 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 the consumer protection act.

(8) "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.

(9) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(10) "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.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(12) "Personally identifying information" means an individual's: (a) Social security number; (b) driver's license number; (c) bank account number; (d) credit or debit card number; (e) personal identification number; (f) automated or electronic signature; (g) unique biometric data; (h) account passwords; or (i) any other piece of information that can be used to access an individual's financial accounts or to obtain goods or services.

(13) "Web page" means a location, with respect to the world wide web, that has a single uniform resource locator or other single location with respect to the internet. [2005 c 378 s 1; 2003 c 137 s 2; 1999 c 289 s 1; 1998 c 149 s 2.]

Severability—2005 c 378: See note following RCW 19.190.080.

Intent—2003 c 137: See note following RCW 19.190.060.

RCW 19.190.020 Unpermitted or misleading electronic mail—Prohibition. (1) 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 Washington or to an electronic mail address that the sender knows, or has reason to know, is held by a Washington 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; or
 - (b) Contains false or misleading information in the subject line.
- (2) For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a Washington resident if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address. [1999 c 289 s 2; 1998 c 149 s 3.]

RCW 19.190.030 Unpermitted or misleading electronic mail—Violation of consumer protection act. (1) It is a violation of the consumer protection act, chapter 19.86 RCW, to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message 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; or
 - (b) Contains false or misleading information in the subject line.
- (2) It is a violation of the consumer protection act, chapter 19.86 RCW, to assist in the transmission of 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 act or practice that violates the consumer protection act.
- (3) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter 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, chapter 19.86 RCW. [1999 c 289 s 3; 1998 c 149 s 4.]

RCW 19.190.040 Violations—Damages. (1) Damages to the recipient of a commercial electronic mail message or a commercial electronic text message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.

(2) Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater. [2003 c 137 s 5; 1998 c 149 s 5.]

Intent—2003 c 137: See note following RCW 19.190.060.

RCW 19.190.050 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) 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 chapter. [1998 c 149 s 6.]

RCW 19.190.060 Commercial electronic text message—Prohibition on initiation or assistance—Violation of consumer protection act.

(1) No person conducting business in the state may initiate or assist in the transmission of an electronic commercial text message to a telephone number assigned to a Washington resident for cellular telephone or pager service that is equipped with short message capability or any similar capability allowing the transmission of text messages.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section 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, chapter 19.86 RCW. [2003 c 137 s 3.]

Intent—2003 c 137: "The legislature recognizes that the number of unsolicited commercial text messages sent to cellular telephones and pagers is increasing. This practice is raising serious concerns on the part of cellular telephone and pager subscribers. These unsolicited messages often result in costs to the cellular telephone and pager subscribers in that they pay for use when a message is received through their devices. The limited memory of these devices can be exhausted by unwanted text messages resulting in the inability to receive necessary and expected messages.

The legislature intends [intends] to limit the practice of sending unsolicited commercial text messages to cellular telephone or pager numbers in Washington." [2003 c 137 s 1.]

RCW 19.190.070 Commercial electronic text message—When allowed.

(1) It is not a violation of RCW 19.190.060 if:

(a) The commercial electronic text message is transmitted at the direction of a person offering cellular telephone or pager service to the person's existing subscriber at no cost to the subscriber unless the subscriber has indicated that he or she is not willing to receive further commercial text messages from the person; or

(b) The unsolicited commercial electronic text message is transmitted by a person to a subscriber and the subscriber has clearly and affirmatively consented in advance to receive these text messages.

(2) No person offering cellular or pager service may be held liable for serving merely as an intermediary between the sender and the recipient of a commercial electronic text message sent in violation of this chapter unless the person is assisting in the

transmission of the commercial electronic text message. [2003 c 137 s 4.]

Intent—2003 c 137: See note following RCW 19.190.060.

RCW 19.190.080 Personally identifying information—Violation of chapter. It is a violation of this chapter to solicit, request, or take any action to induce a person to provide personally identifying information by means of a web page, electronic mail message, or otherwise using the internet by representing oneself, either directly or by implication, to be another person, without the authority or approval of such other person. [2005 c 378 s 2.]

Severability—2005 c 378: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 378 s 6.]

RCW 19.190.090 Civil actions. (1) A person who is injured under this chapter may bring a civil action in the superior court to enjoin further violations, and to seek up to five hundred dollars per violation, or actual damages, whichever is greater. A person who seeks damages under this subsection may only bring an action against a person or entity that directly violates RCW 19.190.080.

(2) A person engaged in the business of providing internet access service to the public, an owner of a web page, or trademark owner who is adversely affected by reason of a violation of RCW 19.190.080, may bring an action against a person who violates RCW 19.190.080 to:

(a) Enjoin further violations of RCW 19.190.080; and

(b) Recover the greater of actual damages or five thousand dollars per violation of RCW 19.190.080.

(3) In an action under subsection (2) of this section, a court may increase the damages up to three times the damages allowed by subsection (2) of this section if the defendant has engaged in a pattern and practice of violating this section. The court may award costs and reasonable attorneys' fees to a prevailing party. [2005 c 378 s 3.]

Severability—2005 c 378: See note following RCW 19.190.080.

RCW 19.190.100 Violation—Consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter 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, chapter 19.86 RCW. [2005 c 378 s 4.]

Severability—2005 c 378: See note following RCW 19.190.080.

RCW 19.190.110 Intent—Preemption of local laws. It is the intent of the legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the practices covered by this chapter and notices to consumers from computer software providers regarding information collection. [2005 c 378 s 5.]

Severability—2005 c 378: See note following RCW 19.190.080.