

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/22/99**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Meyer (608) 266-5780**

By/Representing: **Brian Brooks**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Regulation of commercial advertising by electronic mail

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rkite 03/31/99	chanaman 03/31/99	martykr 04/6/99	_____	lrb_docadmin 04/6/99	lrb_docadmin 05/14/99	
				_____	lrb_docadmin 05/13/99		
				_____	lrb_docadmin 05/13/99		

FE Sent For:

<END>

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/1	rkite 03/31/99	chanaman 03/31/99	martykr 04/6/99	_____	lrb_docadmin 04/6/99		

FE Sent For:

<END>

Handwritten note in a circle:  
 "/1" re-sent  
 05-13-99  
 (they lost 1st copy)

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1?	rkite	CMH 1  3/31	Jm 4 1	H# 4 <del>Jm 1</del>			

FE Sent For:

<END>

1-20-99

Brooks

Brian ~~from~~ from Mark Meyer 6-5780

bill<sup>to</sup> regulate commercial advertising  
e-mail

wants ~~the~~ same as Nevada statute  
will send this

also include portion from Cal.  
article that Re is sending



REP. MARK MEYER

RNIK  
2

**LIABILITY OF PERSONS WHO TRANSMIT ITEMS OF ELECTRONIC MAIL THAT INCLUDE  
ADVERTISEMENTS**

**NRS 41.705 Definitions.** As used in NRS 41.705 to 41.735, inclusive, unless the context otherwise requires, the words and terms defined in NRS 41.710 to 41.725, inclusive, have the meanings ascribed to them in those sections. (Added to NRS by 1997, 1255)

**NRS 41.710 "Advertisement" defined.** "Advertisement" means material that:

1. Advertises for commercial purposes the availability or the quality of real property, goods or services; or
2. Is otherwise designed or intended to solicit a person to purchase real property, goods or services.

(Added to NRS by 1997, 1256)

**NRS 41.715 "Electronic mail" defined.** "Electronic mail" means a message, a file or other information that is transmitted through a local, regional or global network, regardless of whether the message, file or other information is:

1. Viewed;
2. Stored for retrieval at a later time;
3. Printed onto paper or other similar material; or
4. Filtered or screened by a computer program that is designed or intended to filter or screen items of electronic mail.

(Added to NRS by 1997, 1256)

**NRS 41.720 "Network" defined.** "Network" means a network comprised of one or more computers that may be accessed by a modem, electronic or optical technology, or other similar means.

(Added to NRS by 1997, 1256)

**NRS 41.725 "Recipient" defined.** "Recipient" means a person who receives an item of electronic mail.

(Added to NRS by 1997, 1256)

**NRS 41.730 Action for damages; exceptions; injunctive relief.**

1. Except as otherwise provided in NRS 41.735, if a person transmits or causes to be transmitted to a recipient an item of electronic mail that includes an advertisement, the person is liable to the recipient for civil damages unless:

- (a) The person has a preexisting business or personal relationship with the recipient;
- (b) The recipient has expressly consented to receive the item of electronic mail from the person; or
- (c) The advertisement is readily identifiable as promotional, or contains a statement providing that it is an advertisement, and clearly and conspicuously provides:

(1) The legal name, complete street address and electronic mail address of the person transmitting the electronic mail; and

(2) A notice that the recipient may decline to receive additional electronic mail that includes an advertisement from the person transmitting the electronic mail and the procedures for declining such electronic mail.

2. If a person is liable to a recipient pursuant to subsection 1, the recipient may recover from the person:

- (a) Actual damages or damages of \$10 per item of electronic mail received, whichever is greater; and
- (b) Attorney's fees and costs.

3. In addition to any other recovery that is allowed pursuant to subsection 2, the recipient may apply to the district court of the county in which the recipient resides for an order enjoining the person from transmitting to the recipient any other item of electronic mail that includes an advertisement.

(Added to NRS by 1997, 1256)

**NRS 41.735 Immunity for persons who provide users with access to network; applicability to items of electronic mail obtained voluntarily.**

1. If a person provides users with access to a network and, as part of that service, transmits items of electronic mail on behalf of those users, the person is immune from liability for civil damages pursuant to NRS 41.705 to 41.735, inclusive, unless the person transmits an item of electronic mail that includes an advertisement he prepared or caused to be prepared.

2. The provisions of NRS 41.705 to 41.735, inclusive, do not apply to an item of electronic mail that is obtained by a recipient voluntarily. This subsection includes, but is not limited to, an item of electronic mail that is obtained by a recipient voluntarily from an electronic bulletin board.

(Added to NRS by 1997, 1256)

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messages were sent in 1997, and the number is expected to grow to nearly 6.9 trillion next year.

The service providers must allot customer service and system administrator time to try to monitor their systems for spam and filter it out. If spammers start to tie up the Internet service provider's pipeline to the Internet, the ISP is left few choices. It can swallow the costs of adding "bandwidth." Or it can raise rates.

Whatever the ISP chooses, the spammer gets off pretty much scot-free. One of the reasons e-mail is easily abused and spam is increasingly sent out in higher volume is that it costs the spammer next to nothing to send all those messages. At times, the amount of junk e-mail crisscrossing the wires of America Online has reached 30 percent of all messages. Industry publications have estimated that 10 percent of the monthly fee Internet users pay goes to fighting Internet abuse.

It's a tough battle for states and Internet service providers, because junk e-mailers have a strong incentive for doing what they do. The fact is, they can make money with their rat-a-tat, hit-every-mailbox approach. Sanford Wallace should know. Wallace, known as the "spam king" from 1994 to 1997, until he was hit by lawsuits from a dozen Internet service providers, was one of the few who actually did get rich from the Internet, grossing millions of dollars selling software and services to help others profit from the spam business. AOL said it was getting 1.8 million messages a day from Wallace's company, Cyber Promotions Inc., until it got a court injunction to put an end to it.

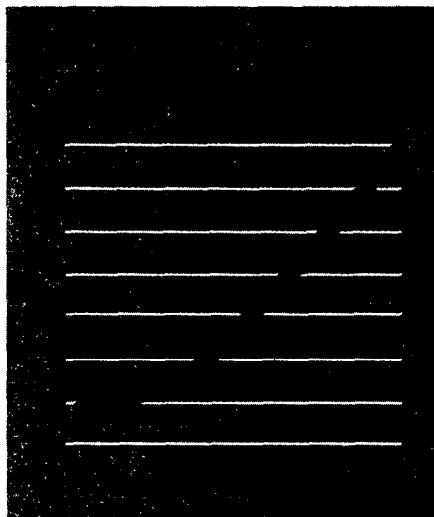
**W**hether legislative action at the state level can slow down the Sanford Wallaces of the online world remains to be seen. Just getting the attention of legislators in a busy legislative session can be the first stumbling block for Internet companies and others with an interest in the issue. It's a somewhat easier sell in such technologically intensive states as Washington and California. "In economies as driven by high technology, legislators are more in tune with the problem," says Gary Gardner, executive director of the Washington Association of Internet Service Providers.

California passed a law last January that extended to e-mail messaging the rules that already regulate telephone marketers and businesses that want to advertise by fax. Under that law, businesses may not send unsolicited advertising material unless cer-

tain conditions are satisfied, such as a pre-existing relationship between sender and recipient. [California's e-mail law also requires that all spam must contain a label indicating it is an advertisement, thus enabling the use of software programs that filter out e-mail without opening it. Junk e-mails must provide a toll-free telephone number or valid e-mail address so recipients can get themselves removed from e-mail lists. Those who ignore a removal request are subject to a \$50 fine for each junk e-mail message sent.

Nevada's law doesn't go as far as California's. After numerous complaints by computer users, the state passed a law allowing recipients to go after junk e-mailers for \$10 per message plus legal costs. For that amount of money, no one expects the law to result in a lot of lawsuits. But it's available for situations where people are harassed by a bombardment of unwanted e-mail. "For the occasional spam, it's a lot easier to use the delete key," says Lorne Malkiewich, director of Nevada's Legislative Counsel Bureau.

How much of an effect the law has had is difficult to determine because Nevada has found that complaints about spam



have ebbed for a different reason. The highest volume of complaints came more than a year ago, before flat-rate monthly Internet accounts became common. When e-mail users had to pay for Internet time by the hour, reading and deleting unwanted messages was more than just a time-waster. "It's like a meter running in a cab and you're spending time waiting in traffic," says Richard Linstrom, chief deputy attorney general.

But Nevada's law could end up having the opposite of its intended effect, warns

John Mozena, co-founder of the Coalition Against Unsolicited Commercial E-mail. The law requires e-mail advertisers to include a notice that recipients can opt out of receiving more e-mail messages from that sender. That, Mozena fears, may serve to legitimize unsolicited commercial e-mail. And since the burden is on recipients to send a request to each e-mailer to be taken off a list, "it would be an e-mail treadmill," Mozena says. "It would realistically do more harm than good." While Malkiewich agrees that the law may not be the strongest possible, he points out that it at least puts in place some restrictions on spammers and gives recipients some power.

**M**ost of those who want to banish spam from the Internet aren't looking to the states for relief, however. At least four anti-spam bills were introduced in Congress in the last session, and the new Congress is likely to consider more of them. The anti-spam forces will have a new ally on Capitol Hill: Gary Miller, the sponsor of California's legislation, was elected to Congress in November. "This is an issue I consider high-level," he says.

Still, crusaders against unsolicited e-mail aren't urging states to wait for Congress to act. At the very least, Mozena thinks, legislatures could consider laws making it a crime to forge or disguise information on commercial e-mail. "That would go a long way toward making it easier to track down abusive spammers and terminate accounts," he says.

It's a difficult position to oppose, even by those groups that want the freedom to advertise on the Internet. "It would be hard for the Direct Marketing Association to stand up and say, 'No, we want to send from a phony address,'" says Gardner. In reality, spam is such a widely hated practice that few legitimate companies use it.

That has left the field open mostly to those in the get-rich-quick category. The first lawsuit Washington State has brought under its new law is against a 24-year-old who sent, by his own admission, 100,000 to 1 million messages per week.

Selis, of the attorney general's office, alleges that Jason Heckel and his Salem-based company violated Washington's law prohibiting misleading information in the e-mail subject line, masking the route of transmission over the Internet and carrying an invalid reply address. Heckel was trying to sell a book online for \$39.95. Its title: "How to Profit from the Internet." **G**





cmj

D-Note

1999 BILL

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AN ACT <sup>gen cat.</sup> relating to: restrictions on the transmission of unsolicited electronic mail.

this or her

If  
the solicitor receives a request to discontinue sending the electronic mail solicitations, but fails to do so, the solicitor is liable to the person solicited.

solicitor  
Analysis by the Legislative Reference Bureau  
imposes liability upon who sends

This bill, with certain exceptions, prohibits a person from sending electronic mail to a person, without their consent, for the purpose of soliciting the person to purchase property, goods or services. The exceptions under the bill permit a person to send an electronic mail solicitation if the electronic mail is sent to a person with whom the solicitor has or had a business or personal relationship. The exceptions also permit a person to send an electronic mail solicitation if the solicitation contains a statement that it is made for the purpose of encouraging the person to purchase property, goods or services. If a solicitor is permitted to make an electronic mail solicitation under one of the exceptions, the solicitor must provide in the electronic mail solicitation the solicitor's name and address, a notice that the person solicited may request that the solicitations be discontinued and a statement of the procedures a person may use to request that the solicitations be discontinued. The prohibitions under the bill do not apply to a person who provides computer users with access to a computer network and who, as part of that service, transmits electronic mail to those users.

\* The bill provides that a person who is damaged by an electronic mail solicitation made in violation of the provisions of the bill may recover the amount of the person's

receives

**BILL**

damages or an amount equal to \$10 for each electronic mail solicitation the person received from the solicitor, whichever is greater.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 134.74 of the statutes is created to read:

2 **134.74 Restrictions on unsolicited electronic mail.** (1) DEFINITIONS. In  
3 this section:

4 (a) "Electronic mail solicitation" means the unsolicited transmission of a  
5 message by electronic mail for the purpose of encouraging a person to purchase  
6 property, goods or services.

7 (b) "Solicitor" means a person who makes an electronic mail solicitation.

8 (2) PROHIBITIONS. (a) Subject to sub. (3), a solicitor ~~who makes~~ <sup>who makes</sup> an electronic mail  
9 solicitation <sup>to a person</sup> without the consent of the person solicited <sup>is liable to the person solicited</sup> unless any of the following

applies <sup>10</sup> →

11 ~~1.~~ The person solicited has or had a business or personal relationship with the  
12 solicitor.

(a) is liable to the person solicited for damages under sub. (6)

13 ~~2.~~ The electronic mail solicitation contains a statement that it is made for the  
14 purpose of encouraging the person to purchase property, goods or services.

15 (3) INFORMATION REQUIRED. A solicitor ~~may not send~~ <sup>who makes</sup> an electronic mail  
16 solicitation ~~that meets the requirements~~ under sub. (2) unless the electronic mail  
17 solicitation clearly and conspicuously contains all of the following:

18 (a) ~~1.~~ The legal name, street address and electronic mail address of the solicitor.

19 (b) ~~2.~~ A notice that the person solicited may request that the solicitor discontinue  
20 making electronic mail solicitations to the person solicited.

(b) A solicitor who makes an electronic mail solicitation to a person from whom the solicitor has received a request that the solicitor discontinue making electronic mail solicitations, is liable to the person solicited under sub. (6).

for damages under sub. (6)

**BILL**

(c)  
↓  
(c)

1 A statement of the procedures a person may use to request that the solicitor  
2 discontinue making electronic mail solicitations to the person.

3 (4) EXCEPTIONS. ~~This section does not~~ <sup>Subsections (2) and (3) do</sup> apply to a person who provides computer  
4 users with access to a computer network and who, as part of that service, transmits  
5 electronic mail, other than electronic mail prepared by the person providing access  
6 to the computer network, to those users.

7 (5) TERRITORIAL APPLICATION. This section applies to any electronic mail  
8 solicitation received by a person in this state.

9 (6) DAMAGES. (a) ~~A person who suffers damages as a result of a violation of this~~  
10 ~~section may bring an action for damages incurred as a result of the violation or for~~  
11 ~~damages in an amount equal to~~ \$10 for each electronic mail solicitation made to the  
12 person in violation of ~~this section~~ <sup>sub. (2) or (3)</sup>, whichever is greater.

13 (b) In addition to the amounts under par. (a), a person who ~~suffers~~ <sup>recovers</sup> damages ~~as a~~  
14 ~~result of a violation of this section~~ <sup>under par. (a)</sup> may recover costs and, notwithstanding s. 814.04  
15 (1), attorney's fees.

16 (7) INJUNCTIVE RELIEF. A court may grant an injunction against a person who  
17 violates this section, in addition to awarding damages under sub. (6).

**SECTION 2.** 814.04 (intro.) of the statutes is amended to read:

**814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),  
106.04 (6) (i) and (6m) (a), 115.80 (9), 134.74, 769.313, 814.025, 814.245, 895.035 (4),  
895.75 (3), 895.77 (2), ~~895.79 (3)~~, 895.80 (3), 943.212 (2) (b), ~~943.245 (2) (d)~~ and 943.51  
(2) (b), when allowed costs shall be as follows:

NOTE: NOTE: Section 814.04 (intro.) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2).NOTE:

History: Sup. Ct. Order, 50 W (2d) vii (1971); 1971 c. 141; Sup. Ct. Order, 67 W (2d) 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; s. 13.93 (2) (e).

**SECTION Initial applicability.**

A solicitor who violates sub. (2) or (3) is liable to the person solicited in an amount equal to the person's damages or



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1966/1dn  
RNK.....

except that, unlike Nevada law, the draft also makes a solicitor liable for damages if the solicitor continues to send solicitations after being requested not to do so. Also,

1. Your instructions for this draft were to prohibit unsolicited electronic mail advertisements as they are prohibited under Nevada law. You also requested the incorporation of certain provisions under California law. The resulting draft reflects my understanding of how you want these provisions to work together, but please review this draft carefully to make sure that it meets your intent.

2. Under this draft, unsolicited electronic mail must contain a statement that it is for the purpose of encouraging the recipient to purchase property, goods or services, must contain certain information about the solicitor and must tell the recipient how he can discontinue receiving the solicitations. If the electronic mail was, in fact, solicited by the recipient, these statements and other information need not be included in the electronic mail. Is this consistent with your intent?

3. The civil damages provisions in this draft ~~are~~ consistent with Nevada law. Please note that the draft does not provide for the recovery of a forfeiture against a solicitor who sends unsolicited electronic mail in violation of the prohibitions created in the draft. Is this consistent with your intent?

or she

W.P.O. -  
Check  
spacing

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: Robin.Kite@legis.state.wi.us

91

4. you may wish to consider including a delayed effective date provision to give advertisers sufficient time to comply with the requirements created in the draft.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1966/1dn  
RNK:cmh:km

April 1, 1999

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Legislative Attorney  
Phone: (608) 266-7291  
E-mail: Robin.Kite@legis.state.wi.us

Jacket

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(Myers)