

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0719

## CONFERENCE COMMITTEE ENGROSSED NO. **SB** **183** - 02/22/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to prohibit misleading unsolicited commercial e-mails.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Terms used in this Act mean:

6 (1) "Assist the transmission," actions taken by a person to provide substantial assistance  
7 or support that enables any person to formulate, compose, send, originate, initiate, or  
8 transmit a commercial electronic mail message if the person providing the assistance  
9 knows or consciously avoids knowing that the initiator of the commercial electronic  
10 mail message is engaged, or intends to engage, in any practice that violates this  
11 chapter;

12 (2) "Commercial electronic mail message," an electronic mail message sent for the  
13 purpose of promoting real property, goods, or services for sale or lease. The term  
14 does not mean an electronic mail message to which an interactive computer service



1 provider has attached an advertisement in exchange for free use of an electronic mail  
2 account, if the sender has agreed to such an arrangement;

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

5 (4) "Initiate the transmission," the action by the original sender of an electronic mail  
6 message. The term does not refer to the action by any intervening interactive  
7 computer service that may handle or retransmit the message, unless such intervening  
8 interactive computer service assists in the transmission of an electronic mail message  
9 if it knows, or consciously avoids knowing, that the person initiating the transmission  
10 is engaged, or intends to engage, in any act or practice that violates this chapter;

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

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

19 Section 2. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 No person may initiate the transmission, conspire with another to initiate the transmission,  
22 or assist the transmission, of a commercial electronic mail message from a computer located in  
23 South Dakota or to an electronic mail address that the sender knows, or has reason to know, is  
24 held by a South Dakota resident that:

- 1       (1)    Uses a third party's internet domain name without permission of the third party, or
- 2                otherwise misrepresents or obscures any information in identifying the point of origin
- 3                or the transmission path of a commercial electronic mail message; or
- 4       (2)    Contains false or misleading information in the subject line.

5       For purposes of this section, a person knows that the intended recipient of a commercial  
6 electronic mail message is a South Dakota resident if that information is available, upon request,  
7 from the registrant of the internet domain name contained in the recipient's electronic mail  
8 address.

9       Section 3. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11       The Legislature finds that the practices covered by this Act are matters vitally affecting the  
12 public interest for the purpose of protecting the public. A violation of this Act is not reasonable  
13 in relation to the development and preservation of business and is an unfair or deceptive act in  
14 trade or commerce and an unfair method of competition for the purpose of applying this chapter.

15       Section 4. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
16 follows:

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

20       No interactive computer service is liable for any action voluntarily taken in good faith to  
21 block the receipt or transmission through its service of any commercial electronic mail which it  
22 reasonably believes is, or will be, sent in violation of this Act.

23       Section 5. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1       A recipient or a provider of internet access services may bring either or both of the following  
2 actions:

- 3       (1)   An action based on a violation of section 2 of this Act to enjoin such violation.
- 4       (2)   An action to recover damages for such a violation in an amount equal to the greater  
5       of:
  - 6       (a)   The amount of the actual monetary loss; or
  - 7       (b)   Five hundred dollars for each violation, not to exceed a total of ten thousand  
8       dollars.

9       If the court finds that the defendant willfully, knowingly, or repeatedly violated section 2 of  
10 this Act, the court may increase the amount of the award to an amount equal to not more than  
11 three times the amount available under this section.

12       In any such action, the court may require an undertaking for the payment of the costs of such  
13 action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

14       At the request of any party to an action brought pursuant to this section or any other  
15 participant in such an action, the court may issue protective orders and conduct legal proceedings  
16 in such a way as to protect the secrecy and security of the computer, computer network,  
17 computer data, computer program, and computer software involved in order to prevent possible  
18 recurrence of the same or a similar act by another person and to protect any trade secrets of any  
19 such party or participant.