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COMMERCE AND REGULATION

HOUSE FILE

324

BY RANTS

**WITHDRAWN**

3/23/99 (p. 792)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act prohibiting the transmission of electronic mail which  
2 includes advertisements in certain circumstances and providing  
3 for monetary damages, criminal penalties, and other remedies.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 324

1 Section 1. NEW SECTION. 714D.1 RESTRICTIONS ON USE OF  
2 ELECTRONIC MAIL -- DAMAGES -- EXCEPTIONS.

3 1. For purposes of this section, unless the context  
4 otherwise requires:

5 a. "Advertisement" means the same as defined in section  
6 714.16, subsection 1.

7 b. "Computer" means an electronic device that performs  
8 logical, arithmetical, and memory functions by manipulations  
9 of electronic or magnetic impulses, and includes all input,  
10 output, processing, storage, and communication facilities  
11 which are connected or related to the computer, including a  
12 computer network. As used in this paragraph, "computer"  
13 includes any central processing unit, front-end processing  
14 unit, miniprocessor, or microprocessor, and related peripheral  
15 equipment such as data storage devices, document scanners,  
16 data entry terminal controllers, and data terminal equipment  
17 and systems for computer networks.

18 c. "Computer network" means a set of related, remotely  
19 connected devices and communication facilities, including two  
20 or more computers with capability to transmit data among them  
21 through communication facilities.

22 d. "Electronic mail" means a message, file, data, or other  
23 electronic information that is transmitted through a local,  
24 regional, or global network, regardless of whether the  
25 message, file, data, or other electronic information is  
26 viewed, stored for retrieval at some future time, printed, or  
27 filtered or screened by a computer program that is designed or  
28 intended to filter or screen such message, file, data, or  
29 other electronic information.

30 e. "Interactive computer service" means an information  
31 service, system, or access software provider that provides or  
32 enables computer access by multiple users to a computer  
33 server, including specifically a service, system, or provider  
34 that provides access to the internet, and such systems  
35 operated or services offered by a library or an educational

1 institution.

2 | f. "Recipient" means a person who receives electronic  
3 mail.

4 2. a. A person shall not transmit or cause to be  
5 transmitted to a recipient an item of electronic mail that  
6 includes an advertisement unless any of the following applies:

7 | (1) The person has a preexisting business or personal  
8 relationship with the recipient.

9 | (2) The recipient has expressly consented to receive the  
10 item of electronic mail from the person.

11 | (3) The electronic mail is readily identifiable as a  
12 promotional advertisement, or contains a clear and conspicuous  
13 statement indicating that an item of the electronic mail is an  
14 advertisement, and clearly and conspicuously includes both of  
15 the following:

16 | (a) The legal name, complete address, and electronic mail  
17 address of the person transmitting the electronic mail.

18 | (b) A notice that the recipient may decline to receive  
19 additional electronic mail that includes an advertisement from  
20 the person transmitting the electronic mail and the procedures  
21 for declining such electronic mail.

22 b. A person shall not transmit or cause to be transmitted  
23 to a recipient an item of electronic mail that includes false  
24 or misleading information in the subject line of the  
25 electronic mail.

26 3. A person who transmits or causes to be transmitted  
27 electronic mail in violation of subsection 2 is liable to the  
28 recipient for monetary damages in an amount equal to any  
29 actual damages caused by such transmittal, or five hundred  
30 dollars, whichever is greater. In addition to the monetary  
31 damages, the recipient is also entitled to costs and  
32 reasonable attorney fees.

33 4. In addition to any other remedy under this section, a  
34 recipient may also petition the district court for an  
35 injunction to prohibit the person from transmitting to the

1 or \$500, whichever is greater. In addition to the monetary  
2 damages, the recipient is also entitled to reasonable attorney  
3 fees and costs, and may petition the district court for an  
4 injunction to prohibit the sender from transmitting to the  
5 recipient any other item of electronic mail which includes an  
6 advertisement.

7 The bill provides that an interactive computer service is  
8 not liable for an action voluntarily taken in good faith to  
9 block or prevent the receipt or transmission through its  
10 service of any commercial electronic mail which is reasonably  
11 believed to be in violation of the bill.

12 The bill creates new Code section 714D.2 and prohibits a  
13 person from initiating a communication for delivery of an  
14 advertisement that contains false information as to the point  
15 of origin or routing of the communication. A person who  
16 unknowingly violates this provision commits a serious  
17 misdemeanor, and is subject to a fine of at least \$250 but not  
18 to exceed \$1,500. A person who knowingly violates this  
19 provision commits an aggravated misdemeanor and is subject to  
20 imprisonment not to exceed two years and a fine of at least  
21 \$500 but not to exceed \$5,000.

22 The bill also requests the legislative council to create an  
23 interim committee to study the technical, legal, and cost  
24 issues implicated in the use of electronic mail for commercial  
25 purposes, and to make appropriate recommendations to the  
26 general assembly regarding the regulation of commercial  
27 electronic mail messages.

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