



February 5, 2003

SENATE BILL No. 74

DIGEST OF SB 74 (Updated February 3, 2003 3:45 PM - DI 75)

Citations Affected: IC 24-5; IC 34-30.

Synopsis: Deceptive commercial electronic mail. Provides that a person may not initiate or assist in the transmission of a commercial electronic mail message from a computer located in Indiana or to the electronic mail address of an Indiana resident if the message uses a third party's Internet domain name without permission of the third party, otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of the electronic mail, or contains false or misleading information in the subject line. Authorizes an interactive computer service to block the receipt or transmission through its service of such electronic mail. Provides that a violation is a deceptive act that is actionable under the deceptive consumer sales statute.

Effective: July 1, 2003.

Ford, Merritt, Antich

January 7, 2003, read first time and referred to Committee on Economic Development and Technology.
February 4, 2003, amended, reported favorably — Do Pass.

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SB 74—LS 6133/DI 75+



February 5, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 74

A BILL FOR AN ACT to amend the Indiana Code concerning consumer sales.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-22 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 22. Deceptive Commercial Electronic Mail**
5 **Sec. 1. As used in this chapter, "assist the transmission" means**
6 **to provide substantial assistance or support that enables a person**
7 **to formulate, compose, send, originate, initiate, or transmit a**
8 **commercial electronic mail message when the person providing the**
9 **assistance knows or consciously avoids knowing that the initiator**
10 **of the commercial electronic mail message is engaged or intends to**
11 **engage in a practice that violates this chapter.**

12 **Sec. 2. (a) As used in this chapter, "commercial electronic mail**
13 **message" refers to an electronic mail message sent to promote the**
14 **sale or lease of real property, goods, or services.**

15 **(b) The term does not include an electronic mail message to**
16 **which an interactive computer service provider has attached an**
17 **advertisement in exchange for free use of an electronic mail**

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1 account, if the sender has agreed to such an arrangement.

2 Sec. 3. As used in this chapter, "electronic mail address" means
3 a destination, commonly expressed as a string of characters, to
4 which electronic mail may be sent or delivered.

5 Sec. 4. (a) As used in this chapter, "initiate the transmission"
6 refers to the action by the original sender of an electronic mail
7 message.

8 (b) The term does not include an action by any intervening
9 interactive computer service that handles or retransmits the
10 message.

11 Sec. 5. (a) As used in this chapter, "interactive computer
12 service" means an information service, a system, or an access
13 software provider that provides or enables computer access to a
14 computer server by multiple users.

15 (b) The term includes the following:

16 (1) A service or system that provides access to the Internet.

17 (2) A system operated or services offered by a library, a
18 school, a state educational institution (as defined in
19 IC 20-12-0.5-1), or a private college or university.

20 Sec. 6. As used in this chapter, "Internet domain name" refers
21 to a globally unique hierarchical reference to an Internet host or
22 service, assigned through centralized Internet naming authorities,
23 comprising a series of character strings separated by periods, with
24 the rightmost string specifying the top of the hierarchy.

25 Sec. 7. (a) For purposes of this section, a person knows that the
26 intended recipient of a commercial electronic mail message is an
27 Indiana resident if that information is available, upon request,
28 from the registrant of the Internet domain name contained in the
29 recipient's electronic mail address.

30 (b) Subsection (c) applies only to a commercial electronic mail
31 message that:

32 (1) uses a third party's Internet domain name without
33 permission of the third party;

34 (2) otherwise misrepresents or obscures any information in
35 identifying the point of origin or the transmission path of the
36 commercial electronic mail message; or

37 (3) contains false or misleading information in the subject
38 line.

39 (c) A person may not initiate or assist in the transmission of a
40 commercial electronic mail message described in subsection (b):

41 (1) from a computer located in Indiana; or

42 (2) to an electronic mail address that the sender:

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(A) knows; or
 (B) has reason to know;
 is held by a resident of Indiana.

Sec. 8. (a) An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

(b) 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 message that it reasonably believes is or will be sent in violation of this chapter.

Sec. 9. (a) A person who violates this chapter:

(1) commits a deceptive act that is actionable by:

(A) the attorney general;
(B) an interactive computer service; or
(C) the recipient of the commercial electronic mail;
under IC 24-5-0.5; and

(2) is subject to the penalties of IC 24-5-0.5.

(b) The attorney general may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 34-30-2-96.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 96.5. IC 24-5-22-8 (Concerning the action of an interactive computer service in blocking the receipt or transmission of certain electronic mail messages).

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SENATE MOTION

Mr. President: I move that Senator Merritt be added as coauthor of Senate Bill 74.

FORD

SENATE MOTION

Mr. President: I move that Senator Antich be added as coauthor of Senate Bill 74.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 74, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 12, after "9." insert "**(a)**".

Page 3, line 13, after "by" insert ":

(A)".

Page 3, line 14, after "general" insert ";

(B) an interactive computer service;".

Page 3, line 14, after "or" begin a new line double block indented and insert:

"(C)".

Page 3, line 14, after "mail" insert ";

Page 3, line 15, begin a new line block indented beginning with "under".

Page 3, between lines 16 and 17, begin a new paragraph and insert:

"(b) The attorney general may adopt rules under IC 4-22-2 to implement this chapter."

and when so amended that said bill do pass.

(Reference is to SB 74 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 6, Nays 0.

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